Employer/Employee Relationships

R97-1-01
Commission Policy in Re: Employees of Temporary or Employee Leasing Agencies
January 28, 1997

WHEREAS, the Industrial Commission of Ohio adopted policy statement and guideline L.14 on November 12, 1996 and directed the inclusion of this policy statement and guideline in the hearing officer manual; and

WHEREAS, the Industrial Commission of Ohio modified policy statement and guideline L.14 on November 19, 1996 and directed the inclusion of the modified policy statement and guideline in the hearing officer manual; and

WHEREAS, the members of the Industrial Commission have received extensive public comment on modified policy statement and guideline L.14, asking for the repeal of said policy statement and guideline due to its wide scope and tremendous potential it creates for an adverse impact on Ohio's economy; and

WHEREAS, the public has urged the Industrial Commission to re-examine the law upon which the policy statement and guideline is based; and

WHEREAS, the Commission finds that the case of Daniels v. McGregor (1965), 2 Ohio St.2d 89, addresses the question of the proper employer solely with respect to the issue of tort immunity of a client company of a temporary employment agency or employee leasing company, and that Daniels does not have a broader application; and

WHEREAS, the court in Daniels did not find objectionable the fact that the underlying claim had been allowed against a temporary agency as opposed to the temporary agency's client; and

WHEREAS, after the court's decision in Daniels, no decision of the Supreme Court has dealt directly with the issue of whether a temporary agency, employee leasing company or the client company is the "employer" for all purposes under the workers' compensation act, in a situation where the claimant is injured while at the situs of the client company; and

WHEREAS, the Supreme Court in State ex rel. Newman v. Indus. Comm. (1997), 77 Ohio St.3d 271 extended the Daniels holding to cases involving violations of specific safety requirements; and

WHEREAS, it has generally been the practice of the Bureau of Workers' Compensation to recognize a temporary agency or employee leasing company as the "employer" under the workers' compensation act, and that practice has remained unchallenged for nearly thirty years; and

WHEREAS, the Industrial Commission has discretion to recognize that, for purposes other than assigning responsibility for a violation of a specific safety requirement and in cases where tort immunity is not an issue, a temporary agency or employee leasing company is considered to be the "employer":

THEREFORE BE IT RESOLVED that the Commission's policy statement and guideline L.14 be amended to read as follows:

In a claim involving a temporary or employee leasing agency, where the agreement between the customer company and the agency requires the agency to secure workers' compensation coverage for the temporary or leased employees, the claim should be filed against the agency as the employer and the hearing officer should enter an order with the agency named or identified as the employer of record. When addressing the issue of whether a customer company of a temporary or employee leasing agency is also an employer subject to a claim for a violation of a specific safety requirement, hearing officers shall apply the following paragraph:

Where an employer employs an employee with the understanding that the employee is to be paid only by the employer and at a certain hourly rate to work for a customer of the employer and where it is understood that the

customer is to have the right to control the manner or means of performing the work, such customer is the employer for purposes of claims for VSSR's within the meaning of the Workers' Compensation Act.

BE IT FURTHER RESOLVED THAT the Commission shall cooperate with the Bureau of Workers' Compensation to seek adoption of a comprehensive joint rule relating to the subject matter of this resolution and consistent with the terms of the resolution.