

# Shunneson Law Offices

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## Exclusivity Provisions of the Illinois Workers' Compensation Act: Dual-Capacity Doctrine

As a trade-off for automatic, fixed payment of Workers' Compensation benefits without regard to fault, the Workers' Compensation Act is the "exclusive remedy" against an employer or its' insured for compensable work-related injuries. [Sharp v. Gallagher](#), 447 N.E.2d 786 (1983). This exclusivity provision, however, is not a bar to suing employers that are operating in a "dual-capacity" with regards to an injured worker. Under the "dual-capacity" doctrine, an employer may be sued in a state court if he or she acted in a second capacity that created obligations independent of those imposed on the defendant as an employer. [Kolacki v. Verink](#), 384 Ill. App. 3d 674, 681, 893 N.E.2d 717, 724-25 (2008). A plaintiff (the injured worker who is suing an employer), must allege dual capacity in his or her lawsuit. Additionally, the plaintiff carries the burden of proving: (a) that the defendant operated in a second capacity, separate and distinct from his or her first capacity as the plaintiff's employer, co-employee, or agent and (b) that the plaintiff was injured by the defendant as a result of the activities performed by the defendant while engaging in that second capacity. *Id.* In some cases, Illinois Courts may also require an employee to show that there was an intent to actually injure the employee (because the Workers' Compensation Act covers "accidental injuries" and intentional injuries are not accidental). [See Bercaw v. Domino's Pizza, Inc.](#), 258 Ill.App.3d 211, 630 N.E.2d 166, 196 Ill.Dec. 469 (2d Dist. 1994), citing [Copass v. Illinois Power Co.](#), 211 Ill.App.3d 205, 569 N.E.2d 1211, 155 Ill.Dec. 600 (4th Dist. 1991).

As a general rule, a plaintiff will not be able to satisfy this test when the plaintiff's job duties are so intertwined that the defendant's conduct in the second capacity does not generate any additional obligations that are unrelated to those flowing from the defendant's first capacity as employer, co-employee, or agent. [Kolacki v. Verink](#), 384 Ill. App. 3d 674, 681, 893 N.E.2d 717(2008). [See Fitzgerald v. Pratt](#), 223 Ill.App.3d 785, 585 N.E.2d 1222, 166 Ill.Dec. 200

(5th Dist. 1992). James v. Caterpillar, Inc., 242 Ill.App.3d 538, 611 N.E.2d 95, 183 Ill.Dec. 242 (5th Dist. 1993).

If you, or a loved one, has been injured at work, then you need information about your rights. At [Shunneson Law Office](#), I am devoted to demanding an insurance company cover your injuries following accidents. Call (847) 693-9120 for more information or [contact us](#) to schedule a consultation. Located in Lake County, Illinois, with meeting locations throughout Chicago, we have the ability to meet with you at any convenient Chicagoland location from 9:00 a.m. to 5:00 p.m., Monday – Friday. However, evening and weekend appointments are available upon request by calling 847.693.9120.

-Drake Shunneson (copyright 2012)

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