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Exclusivity Provisions of the Illinois Workers' Compensation Act: Borrowed Employees

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). The exclusivity provisions also will generally prohibit an employee from suing an employer, its insured, or employees (co-workers) in a state court for injuries suffered while that employee is on loan to another company. This doctrine is known as the "borrowed employee" doctrine. [Willfong v. Dean Evans Co.](#), 287 Ill.App.3d 1099, 679 N.E.2d 1252, 223 Ill.Dec. 479 (4th Dist. 1997).

In a situation where an injured worker is a borrowed employee, the injured worker can, and should, file a claim against both employers at the [Illinois Workers' Compensation Commission](#). Even though the worker cannot maintain a lawsuit in state court against borrowing or lending employers, both employers are responsible (known as "jointly and severally" liable) for paying Workers' Compensation benefits to the injured worker in most situations. [820 ILCS 305/1\(a\)\(4\)](#).

For example, if a backhoe operator is on loan to another company and accidentally strikes, and injures, a co-worker, then the injured co-worker would be barred from filing a lawsuit in state court seeking damages against the borrowing employer or his own employer under §5 of the Act, but could maintain a claim against both employers before the Commission. As an aside, it is also important employees are aware that the Act could also bar an employee from filing a medical malpractice claim in state court against a company physician because that physician may be labeled a "co-employee" by the Commission. [Unger v. Continental Assurance Co.](#), 481 N.E.2d 68. [See also Lagerstrom v. Dupre](#), 542 N.E.2d 73 (Il. App. 1st Dist. 1989).

Illinois follows a two-part test to determine whether an employee is a borrowed employee. First, whether the borrower employer had the right to directly control the manner in which the

injured worker performed the work. Second, whether there existed a contract of hire, either express or implied, between the injured worker and the employer. [Barraza v. Tootsie Roll Industries, Inc., 294 Ill.App.3d 539, 690 N.E.2d 612, 228 Ill.Dec. 853 \(1st Dist. 1997\).](#)

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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