CONSTRUCTION BUSINESS OWNER

The Pennsylvania Construction Workplace Misclassification Act: What You Need to Know

Inside one Supreme Court case & how it affects workers' compensation claims for some independent contractors
by Derek J. Illar / Wednesday, July 17th, 2019

The Pennsylvania Construction Workplace Misclassification Act (CWMA) prohibits employers from improperly classifying their workers as independent contractors, not employees, to avoid their obligation to provide workers' compensation benefits.

In Dep't of Labor & Indus., Uninsured Emp'rs Guar. Fund v. W.C.A.B. (Lin and Eastern Taste), the Supreme Court of Pennsylvania recently ruled that the CWMA is applicable only where a putative employer is in the business of construction.

In that matter, Eastern Taste, a restaurant, hired Lin to perform remodeling work. Lin was not to work there after the remodeling. He had no written contract with Eastern Taste, and the business agreed to pay him on a per diem basis. Lin, who had 15 years of remodeling experience, worked without direction. While repairing a chimney, he fell from a beam and injured his spinal cord, causing him to become paraplegic. Lin thereafter requested workers' compensation benefits from Eastern Taste, and, then, the Uninsured Employer Guaranty Fund (Fund) because the restaurant did not have any workers' compensation insurance.

The Workers' Compensation Judge (WCJ) denied Lin's request for benefits because he failed to establish that he was Eastern Taste's employee. In reaching this decision, the WCJ found that Lin did not conduct his work in the regular course of Eastern Taste's business and his work was causal. The WCJ, furthermore, noted that the CWMA was not applicable because Eastern Taste "is a restaurant in the restaurant business and not in the construction business."

Lin thereafter filed an appeal. The Workers' Compensation Appeal Board (Board) reversed the WCJ's decision because Lin's work was not causal and he was Eastern Taste's employee. However, it did not consider whether the CWMA was applicable because it based its decision on the Workers' Compensation Act's general definition of an employee.

The Fund subsequently appealed the board's decision. On appeal, the commonwealth court reversed the Board's decision because Lin was an independent contractor, not an employee. It reached this conclusion because Eastern Taste did not control the manner in which Lin completed his work; Eastern Taste hired Lin to perform remodeling work, not to work in the restaurant; the business was not in the construction business; and Lin used his own tools.

The commonwealth court, furthermore, ruled that the CWMA was inapplicable because only businesses in the construction industry fall within its purview. It noted that the construction activity must be analyzed and considered in the context of the purported employer's industry,

and, in this particular instance, Eastern Taste was in the restaurant business, not the construction business.

Lin appealed the Commonwealth Court's decision to the Supreme Court. On appeal, he argued that the CWMA should be applicable based on the nature of the work that one performs for an employer, not the nature of the employer's business. The Fund, however, asserted that the legislature only sought to remedy the issue of construction businesses misclassifying their workers through the passage of the CWMA.

In affirming the Commonwealth Court's decision, the Supreme Court ruled that "the CWMA is inapplicable where the putative employer is not in the business of construction." The Justices noted that Lin's position could cause absurd and unreasonable results, such as making homeowners liable for workers' compensation benefits when they want to remodel their kitchens and they hire electricians, plumbers, painters or other contractors as independent contractors who then hurt themselves.

Derek J. Illar is an attorney with Eckert Seamans Cherin & Mellott and focuses his practice on labor and employment and business matters. He has significant experience representing clients in court proceedings and before administrative agencies, such as the Equal Employment Opportunity Commission (EEOC), the Pennsylvania Human Relations Commission (PHRC), the Department of Labor (DOL), the Department of Labor and Industry (DLI), and the Unemployment Compensation Board of Review (UCBR). In addition to litigation, Illar counsels clients to ensure their compliance with federal, state and local laws, represents them during administrative audits and investigations, assists them with internal audits and investigations, and advises them on the implementation of best practices. He also complements his practice by representing employers with respect to a variety of employment authorization matters and obtaining various employment-based visas, such as H-1Bs, Ls, Os and Ps. He may be reached at dillar@eckertseamans.com.