

Beyond The Cab

The only safety management newsletter dedicated exclusively to addressing injury prevention and workers' compensation cost control for trucking companies.



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Issue 7, Volume 2005

Jurisdictional Confusion

I recently had the opportunity to hear Carla Hounshel (Scopelitis, Garvin, Light & Hanson) speak on the topic of workers' compensation jurisdictional issues within the trucking industry. It was such a pertinent and informative presentation that I wanted to share it with the readers of "Beyond the Cab."

As you are very likely aware, each state's workers' compensation system is unique and the benefits paid to injured workers differ from one state to the next. This is of particular concern to trucking companies, as drivers routinely cross state (jurisdictional) lines.

Because of this, drivers occasionally seek to file a claim in the state that provides the greatest benefits. But what determines the state(s) in which a driver can file a claim? And how is jurisdiction for a workers' comp claim determined?

According to Ms. Hounshel, in determining jurisdiction for a workers' compensation claim, most states consider three things: (1) the location of the injury; (2) the place where work is principally localized; and (3) the location of employment contract.

The *location of the injury* is generally fairly clear-cut, particularly if the injury resulted from a traffic accident (since the location is easily reconciled with a police accident report). However, a driver who is willing to lie about the true location of the injury could report it to have occurred in a state that has more favorable workers' compensation benefits. This is much more feasible when there has been no third-party documentation of the incident and no reported witnesses to the incident, such as a fall when exiting the truck cab.

The second consideration governing jurisdiction for workers' compensation claims is the *place where work is principally localized*. Unfortunately, there is no clearly-defined criteria used to establish jurisdiction based upon the place where work is principally localized. In fact, any state can accept jurisdiction based upon principal localization if they believe that the facts support that determination. Some states make this determination based upon the state in which the driver has the most miles driven. In other states the determination might be based upon the location from which the driver is dispatched.



Lastly in this trio of jurisdictional considerations is the *location of the employment contract*. Again, there are no clearly-defined rules

governing the establishment of jurisdiction using this criterion either. In this current era in which many companies are continuously recruiting new drivers, many market their company nationally, hoping to attract new drivers. In doing this, a variety of techniques are employed, from placing telephone numbers on the rear of trailers, to job announcements in magazines, using mobile recruiters and Internet listings. So it is quite possible (and for some companies fairly routine) to receive a phone call from a prospective driver in a different state seeking employment. In such situations, the prospective driver is provided a preliminary telephone interview and is extended a conditional offer of employment over the telephone. The only caveat is that he must report to the company's facility for orientation. If injured on the job, there is nothing preventing that driver from filing a workers' compensation claim in the state

in which he saw the advertisement and made the telephone call that resulted in a conditional offer of employment.

Hearing Judges have accepted jurisdiction based solely upon the principal residence of the driver, although residence is seldom, if ever, a sole basis for jurisdiction. Although this can be appealed, the cost incurred by the appeals process may not be justified by the having the jurisdiction changed.

If all of that seems disconcerting, consider this. Because of the lack of uniformity with respect to how jurisdictional issues are determined, it is quite possible for a driver to file a single claim in three separate states. In fact, you could be faced with having three attorneys representing your company, because you have three claims (1 injury) pending in three states. Two of those attorneys are likely going to be trying to get the claim dismissed, so that it is accepted by the remaining state. However, all three states could accept concurrent jurisdiction, in which case the state paying the highest benefits is the one that will exercise the most control over the claim.

Ms Hounshel indicated that much of the time her firm recommends that during the orientation process, trucking companies have drivers sign an agreement that they will accept the workers' compensation benefits in the state in which the company is based. Although having drivers sign these agreements is advised, she was quick to interject that those agreements will not be honored in every state. Some states by statute will honor such an agreement, while other states will not. However, even though signed agreements are not officially honored by all states, they are still useful, as drivers may simply abide by the agreement they have signed.

Do your drivers sign such an agreement?