CAMBRIDGE
PROPERTY & CASUALTY
SPECIAL REPORT

WORKERS' COMPENSATION:

IT IS CRITICAL TO SCHEDULE ALL STATES WHERE YOU HAVE EMPLOYEES

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This Special Report is intended to address the various workers' compensation issues associated with temporary or non-permanent business operations conducted in states other than those states specifically listed on an employer's workers' compensation insurance policy.

The conclusion is relatively simple. In order to avoid tort liability, all employers should have workers' compensation insurance coverage for any and all states where they have employees working, employees residing, or where any employee entered into a contract of hire. If a workers' compensation policy is in force, the employee is barred from suing the employer in tort and the workers' compensation benefits become that employee's exclusive remedy.

On the other hand, if an employer does not purchase workers' compensation insurance coverage for those states where there are employees working, employees residing, or where any employee entered into a contract of hire, that employer is subject to full tort liability which is not covered by any policy of insurance, including a general liability or a excess liability policy. Thus, the employee is permitted to sue the employer for both economic and noneconomic damages and the employer becomes solely responsible for the defense costs as well as any civil judgment.

Employers should also consider the punitive aspects of noncompliance with the workers' compensation laws. Generally, a compulsory state is one in which a statute requires that an employer maintain state-specific workers' compensation insurance depending on certain employer criteria. Failure to comply with the workers' compensation laws in a compulsory state has far reaching civil and criminal ramifications. In Michigan, failure to comply is misdemeanor offense punishable by up to 6 months in jail and/or a fine of $1,000 for each day of noncompliance.

In most states, the employee of an uninsured employer can collect workers' compensation benefits from a state guaranty fund and the state will in turn enter a judgment against the employer for the amount of benefits paid. In addition, the employee may be able to bring a civil action against the employer in tort for any damage in excess of their workers' compensation benefits. In most states, officers, directors, and partners of a noncomplying organization become personally liable for the employee's unpaid workers' compensation benefits. Moreover, most statutes deny the noncomplying employer the right to plead personal defenses in any resulting civil action.

Specifically, employers forgo the defense of assumption of risk or negligence or that the injury was due to a co-employee. In these cases, proof of the injury is deemed prima facie evidence of negligence on the part of any such employer and the burden shifts to the employer to show freedom of negligence resulting in the injury. Finally, the employer is not permitted to join any other defendant, or claim third party fault, in any such civil action. Clearly, the noncomplying employer is at a disadvantage.

By way of comparison, if a state's statute is voluntary and does not require the employer to maintain a workers' compensation policy, the employee is not eligible to claim workers' compensation benefits but rather must bring a tort action against the employer to recover damages. Again, the employer's defense and/or indemnification would not be covered by any policy of insurance. In non-compulsory states, the employers have the option to voluntarily participate in the workers' compensation program. Employers who voluntarily maintain workers' compensation insurance, even though they are not required to do so, are protected by the statutes exclusive remedy provision. This means that employees are limited to recovery of their workers' compensation benefits and barred from bringing an action in tort against the employer. The employer who voluntarily elects to participate in a state's workers' compensation program is clearly at an advantage.

In those cases where benefits could potentially be paid under more than one state's workers' compensation plan, the employee has the election of remedy. Although most often determined by employee convenience, forums are also selected based on the extent of the benefits provided. For example, if the Nevada statute pays a higher percentage of wage loss than Michigan, it is likely that the employee will elect Nevada benefits.

The solution to this problem is simple: the employer's workers compensation policy must list every state where that employer has employees working, employees residing, or where any employee entered into a contract of hire or in the alternative remain subject to the uninsured civil and criminal liabilities associated with an employee's injuries in an unlisted state. To be safe, the policy should always include any state where there are employees located as of the annual date of policy inception.

The following is a brief survey of the workers' compensation statutes from a sampling of states, namely: Michigan, Illinois, Ohio, Nevada, New York, and Florida. The interpretation and application of the statutory provisions is governed by state-specific case law. Wherever possible, state-specific cases that speak to the issue of interstate employment have been included. However, statutes changes and cases are overruled and/or amended. This analysis is not intended to be a comprehensive review of the various statutes nor a complete analysis of each state's case law but rather a general overview of the relevant issues.

Many statutes include specific provision governing agricultural, municipal and/or construction related industries. For purposes of this discussion, those provisions will not be discussed.

The analysis begins with a review of the relevant portions of the Michigan Workers' Disability Compensation Act (WDCA) and then examines comparable statutory provisions within the other states.

MICHIGAN

Governing Statute: *Michigan Worker's Disability Compensation Act of 1969*
MCL 418.101 et. seq.

Summary:

Michigan workers' compensation is compulsory for those private employers, other than agricultural employers, who regularly employ three or more employees at one time *or* private employers, other than agricultural employers, who regularly employ less than three employees if at least one of them has been regularly employed by that same employer for 35 or more hours per week for 13 weeks or longer during the preceding 52 weeks. In short, three part-time or one full-time. Workers' compensation insurance for all other employers is elective. Employees who suffer injuries outside this state are only eligible for Michigan workers' compensation benefits where the injured employee is a resident of Michigan at the time of injury and the contract of hire was made in Michigan.

Relevant Case Law:

Karaczewski v Farbman Stein & Co 478 Mich 28, 33, (2007).
Where an employee's injury occurs outside Michigan, the Michigan Workers' Compensation Bureau has jurisdiction only where (1) the injured employee was a resident of Michigan at the time of the injury and (2) the contract of hire was made in Michigan. Plainly, the use of the conjunctive term "and" reflects that both requirements must be met before the bureau has jurisdiction over an out-of-state injury.

Viele v DCMA Intern, Inc, 211 Mich App 458 (1995).
A California corporation that hired claimant's employer to dismantle crane was subject to Worker's Disability Compensation Act, though it did not have three or more employees in Michigan, where Michigan resident was injured, and it had three or more regular employees; statute did not require employer to have employees in Michigan. MCLA § 418.115(a).

Rodwell v Pro Football, Inc, 45 Mich App 408 (1973)
A nonresident employer is subject to Michigan Workmen's Compensation Act for an out-of-state injury to a Michigan resident, hired in Michigan to do work mainly outside of Michigan. MCLA §§ 413.19, 418.115, 418.845.

Leininger v. Jacobs, 270 Mich 1 (1934)
An employer who elected to come under Michigan Compensation Act was not relieved from liability because employee and his dependents were not domiciled in Michigan. Comp.Laws 1929, § 8407 et seq., as amended.

Wearner v. West Michigan Conference of Seventh Day Adventists, 260 Mich 540 (1932)
That deceased employee was nonresident rendering services outside of state would not preclude recovery of compensation where work was being done for the Michigan employer under Michigan contract.

Relevant Statutory Provisions:

The two most relevant statutory provisions are 418.845 and 846 as excerpted below.

418.845 Out of state injuries; jurisdiction, benefits.
The bureau shall have jurisdiction over all controversies arising out of injuries suffered outside this state where the injured employee is a resident of this state at the time of injury ***and*** the contract of hire was made in this state. Such employee or his dependents shall be entitled to the compensation and other benefits provided by this act.

418.846 Worker's compensation benefits received under law of another state for same personal injury; credit.
If an employee or the employee's dependents receive worker's compensation benefits from an employer, a carrier, a principal, or a subcontractor under the law of another state for the same personal injury for which benefits are payable under this act, the amount recovered under the law of the other state, whether paid or to be paid in future installments, shall be credited against the benefits payable under this act.

Although not entirely dispositive of the issues related to out-of-state coverage, the following provisions should also be noted for purposes of this discussion.

418.111 Persons subject to act.
Every employer, public and private, and every employee, unless herein otherwise specifically provided, shall be subject to the provisions of this act and shall be bound thereby.

418.161 "Employee" defined
(1) As used in this act, "employee" means:

* * *

(l) Every person in the service of another, under any contract of hire, express or implied, including aliens; a person regularly employed on a full-time basis by his or her spouse having specified hours of employment at a specified rate of pay; working members of partnerships receiving wages from the partnership irrespective of profits; a person insured for whom and to the extent premiums are paid based on wages, earnings, or profits; and minors, who shall be considered the same as and have the same power to contract as adult employees. Any minor under 18 years of age whose employment at the time of injury shall be shown to be illegal, in the absence of fraudulent use of permits or certificates of age in which case only single compensation shall be paid, shall receive compensation double that provided in this act.

* * *

(n) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to this act.

418.115 Employers covered
This act shall apply to:
(a) All private employers, other than agricultural employers, who regularly employ 3 or more employees at 1 time.
(b) All private employers, other than agricultural employers, who regularly employ less than 3 employees if at least 1 of them has been regularly employed by that same employer for 35 or more hours per week for 13 weeks or longer during the preceding 52 weeks.
* * *

418.151 Employers subject to act.
The following constitutes employers subject to this act:

* * *

(b) Every person, firm, limited liability company, limited liability partnership, and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written, unless those employees excluded according to the provisions of section 161(5) comprise all of the employees of the person, firm, limited liability company, limited liability partnership, or corporation.

418.611 Methods of securing payment of compensation

(1) Each employer under this act…shall secure the payment of compensation under this act by either of the following methods:

* * *

(b) By insuring against liability with an insurer authorized to transact the business of worker's compensation insurance within this state.

418.641 Noncompliance as misdemeanor; penalty; separate offenses;

(1) An employer who fails to comply with the provisions of section 611 is guilty of a misdemeanor and may be fined not more than $1,000.00, or imprisoned for not more than 6 months, or both. Each day's failure is a separate offense. An individual employee of an employer who refuses to provide information requested by the fund trustees under section 532(10) is guilty of a misdemeanor and may be fined not more than $1,000.00, or imprisoned for not more than 6 months, or both.

(2) The employee of an employer who violates the provisions of section 171 or 611 shall be entitled to recover damages from the employer in a civil action because of an injury that arose out of and in the course of employment notwithstanding the provisions of section 131.

(3) The director of the bureau shall have the right and obligation to recover on behalf of the workplace health and safety fund from an uninsured employer in a civil action the amounts provided in section 723. If the employer is a corporation, the officers and directors of the corporation shall be individually and jointly and severally liable for any portion of the obligation and expenses that are not satisfied by the corporation.

(4) Any amounts collected pursuant to subsection (3) shall be paid to the uninsured employer's security account within the workplace health and safety fund established in sections 722 and 723.

(5) For the purposes of this section, the director shall be considered a party as described in section 863.

(6) Subsections (3), (4), and (5) shall apply to injuries that occur on or after June 29, 1990.

418.301 Compensation for personal injury or death resulting from personal injury arising out of and in the course of employment; time or date of injury

(1) An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act. Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death.

* * *

(3) An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this act. Any cause of action brought for such an injury is not subject to section 131.

* * *

ILLINOIS

Governing Statute: *Illinois Workers' Compensation Act*
§ 820 ILCS 305/1 et seq.

Summary:

Illinois workers' compensation is compulsory for those employers meeting the hazardous industry descriptions provided in Section 3 of the statute (defined below). All other employers are elective.

Based on the holding in *Gomez v. Industrial Com,* infra, and pursuant to Section 1(b)(3) of the Act, any nonresident employee working in Illinois at a fixed location, regardless of the duration, is eligible to claim Illinois Workers' Compensation Benefits so long as their injury occurred in the State of Illinois. On the other hand, a transitory employee such as truck driver is not eligible to receive Illinois benefits since they were not positioned at a fixed location but rather traveling over Illinois roads.

Only those employers listed in Section 3 of the act (defined below) are required to purchase Illinois workers' compensation coverage. All other employers have the option to voluntarily elect Illinois coverage prior to a loss occurring. Michigan employers with employees working in Illinois are not required to purchase Illinois workers' compensation insurance so long as their employees do not fall within one of the Section 3 categories. However, any employer that does not purchase the Illinois coverage remains subject to tort liability for employees injuries which occur in the state of Illinois and arise out of the course and scope of employment. So, the risk is that if a Michigan employer with employees in Illinois at policy inception does not secure coverage under 3A, then no workers' compensation insurance coverage is available under that policy for claims under Illinois law.

Based on the *Gomez* decision, a Michigan resident who is temporarily working in Illinois is eligible to claim Illinois workers' compensation benefits so long as they were positioned at a fixed location for any duration.

The Illinois workers' compensation website states that the statute allows the following individuals to claim Illinois workers' compensation benefits: (1.) Persons whose employment results in injury within Illinois; or (2.) Persons whose work is principally localized within Illinois; or (3.) Persons whose contract of hire was made in Illinois. Further, the agency has taken the position that if an out-of-state company conducts business with its employees in Illinois (i.e. does any work at all in Illinois, even if all the workers reside in the same state as the company), that company must provide a workers' compensation insurance policy that includes Illinois coverage for those workers. If an employee from an out-of-state company is injured doing work in Illinois, he or she has the right to file a claim in Illinois. Only a workers' compensation insurance policy that includes ILLINOIS on its coverage is legitimate for this purpose.

Relevant Case Law:

> *Arnold v Industrial Com,* 21 Ill 2d 57(1960) & *McLain Dray Lines v Industrial Com* 41 Ill 2d 554(1969)
> In *Arnold* and *McLain* this court held that the mere situs of the accident in Illinois is insufficient to confer jurisdiction. There must be "some connection between Illinois and the employment relationship;" and, if the contract for employment is not made

in Illinois, workmen's compensation coverage is not afforded a nonresident employee of a foreign employer who is injured in this State. (*Arnold v. Industrial Com.* (1960), 21 Ill.2d 57, 61.) A State interest in the employment relationship or incidents thereto must exist. One commentator has remarked that the State of an employee's residence alone has never been held to entitle implementation of that State's compensation statute although this is one of the factors in determining the applicability of the law of a particular State. 3 A. Larson, The Law of Workmen's Compensation, secs. 86.10, 87.60 (1973).

Gomez v. Industrial Com., 63 Ill. 2d 374 (1976)
The claimant was involved in an accident when a scaffold on which he and the foreman were standing fell to the ground. The sole question to be decided was whether the claimant's accidental injury fell within the coverage of the Illinois Workmen's Compensation Act, Ill. Rev. Stat. ch. 48, para. 138.1 et seq. (1967). Respondent employer contended that an injury incurred in Illinois was not within the jurisdiction of the Commission where the employer and the claimant were nonresidents and the employment contract was entered into outside the State. The court found that the claimant was injured at a fixed work site within the State of Illinois. The claimant's presence in Illinois was not merely transitory since he had been sent to Illinois to work at a fixed construction site. He was engaged in an occupation which was extensively regulated by the State. The source of the claimant's income was his activity in Illinois. The court concluded that the circumstances established that Illinois had a substantial interest in the claimant's employment relationship sufficient to confer jurisdiction upon the Commission. (Employee was hired and employed in St. Louis, MO and traveled to Illinois to work on a temporary construction contract. Employee was injured on the first day on the job when the scaffolding collapsed. Illinois benefits were collectible since the employee was working at a fixed work site and not merely traveling over state roads.)

M. W. M. Trucking Co. v. Industrial Com., 62 Ill. 2d 245 (1976)
The *MWM Trucking* decision recognizes the holding in *Arnold* and *McLain* but determined that since the employee was a resident of the Illinois, he was entitled to claim Illinois benefits notwithstanding that fact that he was working for an out of state employer.

P.I.&I. Motor Express, Inc. v. Indus. Comm'n (Faulkenberry), 368 Ill. App. 3d 230 (2006)
Although the claimant signed a form electing Ohio's workers' compensation statute as his exclusive remedy for a work-related injury, the court determined that the Commission was not obligated to enforce either the agreement or Ohio Rev. Code Ann. § 4123.54 because 820 Ill. Comp. Stat. Ann. 305/23 prohibited an employer and employee from entering into an agreement depriving the Illinois Workers' Compensation Commission of jurisdiction. As the state where the employment contract was entered into, Illinois had a legitimate concern over the employer-employee relationship and could apply its own workers' compensation statute even though the claimant's injury occurred elsewhere.

Relevant Statutory Provisions:

Section 1(b)2 of the Illinois Workers Compensation Act, defines an employee as follows:

§1(b)2: Employee: The term "employee" as used in this Act means:
Every person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois where the contract of hire is made within the State of Illinois, persons whose employment results in fatal or non-fatal injuries within the State of Illinois where the contract of hire is made outside of the State of Illinois, and persons whose employment is principally localized within the State of Illinois, regardless of the place of the accident or the place where the contract of hire was made, and including aliens, and minors who, for the purpose of this Act are considered the same and have the same power to contract, receive payments and give quittances therefore, as adult employees.

§1(b)3: Coverage—Elections—Exemptions
An employee or his dependents under this Act who shall have a cause of action by reason of any injury, disablement or death arising out of and in the course of his employment may elect to pursue his remedy in the state where injured or disabled, or in the State where the contract of hire is made, or in the State where the employment is principally localized.

§2: Employer May Elect Coverage
Section 2. An employer in this State, who does not come within the classes enumerated by Section 3 of this Act, may elect to provide and pay compensation for accidental injuries sustained by himself or any employee, arising out of and in the course of the employment according to the provisions of this Act, and thereby relieve himself from any liability for the recovery of damages, except as herein provided. The State of Illinois hereby elects to provide and pay compensation according to the provisions of this Act.

(a) Election by any employer to provide and pay compensation according to the provisions of this Act shall be made by the employer filing notice of such election with the Commission, or by insuring his liability to pay compensation under this Act in some insurance carrier authorized, licensed or permitted to do such insurance business in this State.

(b) Every employer within the provisions of this Act who has elected to

§3: Automatic Coverage
The provisions of this Act hereinafter following shall apply automatically and without election to … all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

1. The erection, maintaining, removing, remodeling, altering or demolishing of any structure.
2. Construction, excavating or electrical work.
3. Carriage by land, water or aerial service and loading or unloading in connection therewith, including the distribution of any commodity by horsedrawn or motor vehicle where the employer employs more than 2 employees in the enterprise or business.
4. The operation of any warehouse or general or terminal storehouses.
5. Mining, surface mining or quarrying.
6. Any enterprise in which explosive materials are manufactured, handled or used in dangerous quantities.
7. In any business or enterprise, wherein molten metal, or explosive or injurious gases, dusts or vapors, or inflammable vapors, dusts or fluids, corrosive acids, or atomic radiation are manufactured, used, generated, stored or conveyed.
8. Any enterprise in which sharp edged cutting tools, grinders or implements are used, including all enterprises which buy, sell or handle junk and salvage, demolish or reconstruct machinery.
9. In any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, guarding, use or the placing of machinery or appliances or for the protection and safeguarding of the employees or the public therein; each of which occupations, enterprises or businesses are hereby declared to be extra hazardous.

10. Any enterprise, business or work in connection with the laying out or improvement of subdivisions of tracts of land.
11. Any enterprise for the treatment of cross-ties, switch-ties, telegraph poles, timber or other wood with creosote or other preservatives.
12. Establishments open to the general public wherein alcoholic beverages are sold to the general public for consumption on the premises.
13. The operation of any public beauty shop wherein chemicals, solutions, or heated instruments or objects are used or applied by any employee in the dressing, treatment or waving of human hair.
14. Any business or enterprise serving food to the public for consumption on the premises wherein any employee as a substantial part of the employee's work uses handcutting instruments or slicing machines or other devices for the cutting of meat or other food or wherein any water, or foods, or other hot fluids, substances or objects.
15. Any business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof.
16. Any business or enterprise in which goods, wares or merchandise are produced, manufactured or fabricated.
17. (a) Any business or enterprise in which goods, wares or merchandise are sold or in which services are rendered to the public at large, provided that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of injury shall be in excess of $1,000.
    (b) The corporate officers of any domestic or foreign corporation employed by the corporation may elect to withdraw themselves as individuals from the operation of this Act. Upon an election by the corporate officers to withdraw, written notice shall be provided to the insurance carrier of such election to withdraw, which election shall be effective upon receipt by the insurance carrier of such written notice. A corporate officer who thereafter elects to resume coverage under the Act as an individual shall provide written notice of such election to the insurance carrier which election shall be effective upon receipt by the insurance carrier of such written notice. For the purpose of this paragraph, a "corporate officer" is defined as a bona fide President, Vice President, Secretary or Treasurer of a corporation who voluntarily elects to withdraw.
18. On and after July 1, 1980, but not before, any household or residence wherein domestic workers are employed for a total of 40 or more hours per week for a period of 13 or more weeks during a calendar year.
19. Nothing contained in this Act shall be construed to apply to any agricultural enterprise, including aquiculture, employing less than 400 working days of agricultural or aquacultural labor per quarter during the preceding calendar year, exclusive of working hours of the employer's spouse and other members of his or her immediate family residing with him or her.
20. Nothing contained in this Act shall be construed to apply to any sole proprietor or partner or member of a limited liability company who elects not to provide and pay compensation for accidental injuries sustained by himself, arising out of and in the course of the employment according to the provisions of this Act.

4(d) Noncomplying Employers Lose Protections of Act

Employers who are subject to and who knowingly fail to comply with this Section (identified in Section 3 or voluntary submit to Act) shall not be entitled to the benefits of this Act during the period of noncompliance, but shall be liable in an action under any other applicable law of this State. In the action, such employer shall not avail himself or herself of the defenses of assumption of risk or negligence or that the injury was due to a co-employee. In the action, proof of the injury shall constitute prima facie evidence of negligence on the part of such employer and the burden shall be on such employer to show freedom of negligence resulting in the injury. The employer shall not join any other defendant in any such civil action. Nothing in this amendatory Act of the 94th General Assembly shall affect the employee's rights under subdivision (a)3 of Section 1 of this Act. Any employer or carrier who makes payments under subdivision (a)3 of Section 1 of this Act shall have a right of reimbursement from the proceeds of any recovery under this Section.

NEVADA

Governing Statute: *Nevada Industrial Insurance Act*
§ NRS 616A.005 et seq.

Summary:

In Nevada, workers' compensation insurance is compulsory for all employees regardless of the duration of the work in that state. There is no statutory exception for temporary work nor is temporary work even defined. If a Michigan employee is injured in Nevada during a temporary work assignment and that employee elects to claim Nevada workers' compensation benefits, the employer's workers' compensation policy must have Nevada listed in section 3A or 3C in order for the claim to be covered. If Nevada is not listed, then the workers' compensation benefits, along with any penalties for noncompliance, are completely uninsured and become the sole obligation of the employer. Moreover, the employee is not barred by the exclusive remedy provision and can sue the employer in tort for noneconomic damages.

616A.105 "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed…"

616A.230 "Employer" means…Every person, firm, voluntary association and private corporation, including any public service corporation, which has in service any person under a contract of hire.

616A.495 Employer to make available evidence of his coverage; penalty for noncompliance.

1. Each employer shall ensure that a copy of his:
   (a) Policy of industrial insurance, including the declaration page, if the employer is insured by a private carrier;
   (b) Certificate issued by the Commissioner pursuant to NRS 616B.312, if the employer is self-insured; or
   (c) Certificate issued by the Commissioner pursuant to NRS 616B.359 and of a certificate or letter issued by the association of self-insured public or private employers verifying that the employer is a member in good standing of the association, if the employer is a member of an association of self-insured public or private employers, is available at all times for inspection by the Administrator or his auditor or agent or an investigator of the Attorney General at each of the employer's places of business, except that if such a place of business is situated in a temporary location and is intended to remain in the temporary location for not more than 1 year, the copy must be made available at that place of business within 24 hours after being requested by the Administrator, auditor, agent or investigator.
2. An employer insured by a private carrier, self-insured employer or employer who is a member of an association of self-insured public or private employers who violates the provisions of subsection 1 is guilty of a misdemeanor.

616A.020(5) If an employee receives any compensation or accident benefits under chapters 616A to 616D, inclusive, of NRS, the acceptance of such compensation or benefits shall be in lieu of any other compensation, award or recovery against his employer under the laws of any other state or jurisdiction and such employee is barred from commencing any action or proceeding for the enforcement or collection of any benefits or award under the laws of any other state or jurisdiction.

616B.600 Exemption of employer and employee temporarily within State; exception; effect of employee working in another state where coverage required.

1. Except as limited in subsection 3, any employee who has been hired outside of this State and his employer are exempted from the provisions of chapters 616A to 616D, inclusive, and chapter 617 of NRS while the employee is temporarily within this State doing work for his employer if his

employer has furnished industrial insurance pursuant to the Nevada Industrial Insurance Act or similar laws of a state other than Nevada so as to cover the employee's employment while in this State if:

(a) The extraterritorial provisions of chapters 616A to 616D, inclusive, and chapter 617 of NRS are recognized in the other state; and

(b) Employers and employees who are covered in this State are likewise exempted from the application of the Nevada Industrial Insurance Act or similar laws of the other state.

The benefits provided in the Nevada Industrial Insurance Act or similar laws of the other state are the exclusive remedy against the employer for any injury, whether resulting in death or not, received by the employee while working for the employer in this State.

2. A certificate from the Administrator or similar officer of another state certifying that the employer of the other state is insured therein and has provided extraterritorial coverage insuring his employees while working within this State is prima facie evidence that the employer carried the industrial insurance.
3. The exemption provided for in this section does not apply to the employees of a contractor, as defined in NRS 624.020, operating within the scope of his license.
4. An employer is not required to maintain coverage for industrial insurance in this State for an employee who has been hired or is regularly employed in this State, but who is performing work exclusively in another state, if the other state requires the employer to provide coverage for the employee in the other state. If the employee receives personal injury by accident arising out of and in the course of his employment, any claim for compensation must be filed in the state in which the accident occurred, and such compensation is the exclusive remedy of the employee or his dependents. This subsection does not prevent an employer from maintaining coverage for the employee pursuant to the provisions of chapters 616A to 616D, inclusive, and chapter 617 of NRS.

SOUTH CAROLINA

Governing Statute: *The South Carolina Workers' Compensation Law*
S.C.Code § 42-1-10 et seq.

Summary:

South Carolina workers' compensation is elective for those employers who maintain (1) a casual employee, as defined in Section 42-1-130; or (2) any employer who has regularly employed in service less than four employees in the same business within the South Carolina; or (3) any employer who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period. All other employers are compulsory.

In South Carolina, there is no statutory exception for temporary work nor is temporary work even defined. If a Michigan employee is injured in South Carolina during a temporary work assignment and that employee elects to claim South Carolina workers' compensation benefits, the employer's workers' compensation policy must have South Carolina listed in section 3A or 3C in order for the claim to be covered. If South Carolina is not listed, then the workers' compensation benefits, along with any penalties for noncompliance, are completely uninsured and become the sole obligation of the employer. Moreover, the employee is not barred by the exclusive remedy provision and can sue the employer in tort for noneconomic damages.

Relevant Case Law:

> Employer of a deceased employee was not liable to the employee's widow and children because the employer was exempt from the South Carolina Workers' Compensation Act; the employer never had more than three employees in South Carolina. *Nolan v. National Sales Co.*, 292 S.C. 1, 354 S.E.2d 575, 1987, affirmed by 294 S.C. 371, 364 S.E.2d 752, 1988
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> That an employer had no offices, facilities, or office staff in South Carolina did not make it exempt from the South Carolina Workers' Compensation Act under S.C. Code Ann. § 42-1-360(2), because: (1) according to South Carolina Employment Security Commission reports, it had more than four employees in South Carolina; and (2) it filed income taxes with the South Carolina Department of Revenue for South Carolina employees. *Hill v. Eagle Motor Lines*, 373 S.C. 422, 645 S.E.2d 424, 2007
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> Where an employer employed at most two employees during all times relevant to an employee's workers' compensation claim, the employer was not subject to S.C. Code Ann. § 42-1-360(2), which required at least four employees, even though a total of six employees had worked for the employer from time to time. *Harding v. Plumley*, 329 S.C. 580, 496 S.E.2d 29, 1998
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> "Regularly employed," as used in S.C. Code Ann. § 42-1-360(2) is defined as employment of the same number of persons with some constancy throughout a relevant time period, and the relevant time period should be identified by

considering: (1) an employer's established mode of operation; (2) whether the employer generally employs the jurisdictional number at any time during the employer's operation; and (3) the period during which employment is definite and recurrent rather than occasional, sporadic, or indefinite. *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 647 S.E.2d 691, 2007.

Employer did not regularly employ four or more persons during the relevant time period and was, thus, exempt from workers' compensation under S.C. Code Ann. § 42-1-360(2) as during the relevant period, the claimant and another worker were employees, were not business partners, and were regularly employed during the relevant period, but a third worker was not regularly employed by the employer; furthermore, even if a fourth worker worked for the employer at the same time, but in another location, the claimant did not show the employer regularly employed at least four workers with some constancy during the relevant period. *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 647 S.E.2d 691, 2007

Where an employer employed at most two employees during all times relevant to an employee's workers' compensation claim, the employer was not subject to S.C. Code Ann. § 42-1-360(2), which required at least four employees, even though a total of six employees had worked for the employer from time to time. *Harding v. Plumley*, 329 S.C. 580, 496 S.E.2d 29, 1998

Worker who suffered serious injury when a van driven by a customer pinned him against a wheel-balancing machine was not entitled to workers' compensation benefits, because, at the time of the accident, the owner employed two employees in addition to the worker, and the owner's daughter kept the books and performed secretarial duties for her father's business and ran a produce stand for him on the property without salary; S. C. Code Ann. § 42-1-360(2) exempted the employer from the workers' compensation scheme because it regularly employed in service less than four employees in the same business within the State. *Kirksey v. Assurance Tire Co.*, 311 S.C. 255, 428 S.E.2d 721, 1993, affirmed by 314 S.C. 43, 443 S.E.2d 803, 1994

Statutory Provisions:

42-15-10. State law under which claim is authorized to be filed.
Any employee covered by the provisions of this Title is authorized to file his claim under the laws of the state where he is hired, the state where he is injured, or the state where his employment is located. If an employee shall receive compensation or damages under the laws of any other state, nothing contained in this section shall be construed to permit a total compensation for the same injury greater than that provided in this Title.

42-1-130. "Employee" defined
"employee" means every person engaged in an employment under any appointment, contract of hire, or apprenticeship, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, but excludes a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer;…" Any reference to an employee who has been injured or when the employee is dead, includes also his legal representative, dependents, and other persons to whom compensation may be payable.

Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers' compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included. Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title.

42-1-360. Exemption of casual employees and certain other employments from Title.
This title does not apply to:
(1) a casual employee, as defined in Section 42-1-130;
(2) any person who has regularly employed in service less than four employees in the same business within the State or who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period;

* * *

42-1-310. Presumption of acceptance of provisions of Title.
Every employer and employee, except as stated in this chapter, shall be presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby.

42-5-10. Employer shall secure payment of compensation; extent of liability.
Every employer who accepts the compensation provisions of this Title shall secure the payment of compensation to his employees in the manner provided in this chapter. While such security remains in force he or those conducting his business shall only be liable to any employee who elects to come under this Title for personal injury or death by accident to the extent and in the manner specified in this Title.

FLORIDA

Governing Statute: *Florida Workers' Compensation Law*
440.01 Fla. Stat.

Summary:

Florida workers' compensation is compulsory for nearly all employers. 440.02(15)(d) defines the limited exceptions where coverage is elective. The only exception relevant to this discussion is where the employment is both casual and not in the course of the trade, business, profession, or occupation of the employer. This does not apply to the present case.

There is no statutory exception for temporary work nor is temporary work even defined. If a Michigan employee is injured in Florida on a temporary work assignment and that employee elects to claim Florida workers' compensation benefits, the employer's workers' compensation policy must have Florida listed in section 3A or 3C in order for the claim to be covered. If Florida is not listed, then the workers' compensation benefits, along with any penalties for noncompliance, are completely uninsured and become the sole obligation of the employer. Moreover, the employee is not barred by the exclusive remedy provision and can sue the employer in tort for noneconomic damages.

Relevant Case Law:

Philyaw v. Arthur H. Fulton, Inc., 569 So. 2d 787
Appellant employee, a resident of Georgia employed as a truck driver working principally out of Georgia and Virginia, sustained an injury while driving in Florida and received workers' compensation benefits in Georgia. The compensation judge dismissed his claim for compensation in Florida. The court concluded that Florida had jurisdiction under Fla. Stat. ch. 440 to entertain his claim, and there was no provision authorizing a judge of compensation claims to decline to exercise of jurisdiction for discretionary reasons. The public policy of Florida was to permit a person in whom the state had sufficient interest to pursue a workers' compensation claim in Florida as well as in another jurisdiction to recover up to the total amount of benefits authorized by law. Occurrence of the injury in Florida was a sufficient state interest for coverage to exist in Florida. Thus, the order of dismissal was reversed and the cause was remanded for further proceedings on appellant employee's claim.

440.10 (1)(a) Every employer coming within the provisions of this chapter[1] shall be liable for, and shall secure, the payment to his or her employees, or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16.

* * *

(f) If an employer fails to secure compensation as required by this chapter, the department shall assess against the employer a penalty not to exceed $5,000 for each employee of that employer who is classified by the employer as an independent contractor but who is found by the department to not meet the criteria for an independent contractor that are set forth in s. 440.02.

[1] have four (4) or more employees, full-time or part-time.440.02(17),

(g) Subject to s. 440.38, any employer who has employees engaged in work in this state shall obtain a Florida policy or endorsement for such employees which utilizes Florida class codes, rates, rules, and manuals that are in compliance with and approved under the provisions of this chapter and the Florida Insurance Code. Failure to comply with this paragraph is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The department shall adopt rules for …construction-industry employers with regard to the activities that define what constitutes being "engaged in work" in this state, using the following standards:

1. For employees of non-construction industry employers who have their headquarters outside of Florida and also operate in Florida and who are routinely crossing state lines, but usually return to their homes each night, the employee shall be assigned to the headquarters' state.

2. The payroll of executive supervisors who may visit a Florida location but who are not in direct charge of a Florida location shall be assigned to the state in which the headquarters is located.

* * *

Employees who are hired for a specific project in Florida shall be assigned to Florida.

NEW YORK

Governing Statute: *New York Workers' Compensation Law*

Summary:

New York workers' compensation is compulsory for most all employers. The exceptions listed within Section 2 are not relevant to this discussion.

There is no statutory exception for temporary work nor is temporary work even defined. If a Michigan employee is injured in New York during a temporary work assignment and that employee elects to claim New York workers' compensation benefits, the employer's workers' compensation policy must have New York listed in section 3A or 3C in order for the claim to be covered. If New York is not listed, then the workers' compensation benefits, along with any penalties for noncompliance, are completely uninsured and become the sole obligation of the employer. Moreover, the employee is not barred by the exclusive remedy provision and can sue the employer in tort for noneconomic damages.

On July 12, 2007, the NYS Workers' Compensation Board Issued the following Board Release regarding the recent changes to Section 50 (2) of the Workers' Compensation Law:

Bulletin:

Effective September 9, 2007, all out–of–state employers with employees working in New York State ("NYS") are required to carry a full, statutory NYS workers' compensation insurance policy. An employer has a full, statutory NYS workers' compensation insurance policy when New York is listed in Item "3A" on the Information Page of the employer's workers' compensation insurance policy.

Accordingly, if an out–of–state employer is getting a permit, license or contract from a government agency in NYS, then that employer must fulfill requirements effective September, 2007 under Workers' Compensation Law Section 57. Also, every out–of–state employer doing any construction related activity in New York State is required to carry a full, statutory NYS workers' compensation insurance policy.

The Workers' Compensation Board is currently reviewing the remainder of this provision, along with the comments and concerns of its stakeholders, and seeking appropriate assistance to develop other rules implementing this section of the new law.

An out-of-state employer needs a New York State disability benefits insurance policy if the employer employs one or more individuals on each of at least 30 days in a calendar year in New York State. If an out-of-state employer meets this criterion, the employer is required to carry a New York State disability benefits policy and must file a DB-120.1 form (the business' insurance carrier will send this form to the government entity issuing the permit, license or contract upon the business' request) as proof of this coverage. (The employer has four weeks from the completion of the 30th day of work by one or more individuals to obtain the disability benefits policy.) If an out-of-state employer does not employ one or more individuals on each of at least 30 days in a calendar year in New York State, NYS disability benefits coverage is not required and the employer may be able to file a WC/DB-100 exemption form. (Independent contractors are not considered to be employees under the Disability Benefits Law.)

§ 10. Liability for compensation

1. Every employer subject to this chapter shall in accordance with this chapter, except as otherwise provided in section twenty-five-a hereof, secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment without regard to fault as a cause of the injury, except that there shall be no liability for compensation under this chapter when the injury has been solely occasioned by intoxication from alcohol or a controlled substance of the injured employee while on duty; or by willful intention of the injured employee to bring about the injury or death of himself or another; or where the injury was sustained in or caused by voluntary participation in an off-duty athletic activity not constituting part of the employee's work related duties unless the employer (a) requires the employee to participate in such activity, (b) compensates the employee for participating in such activity or (c) otherwise sponsors the activity.

* * *

§ 25-b. Awards to non-residents: Non-resident compensation fund

1. There is hereby created a fund to be known as the non-resident compensation fund. Whenever an award is made to or on behalf of alien dependents, non-residents of the United States, Canada or Newfoundland, or an award is made to a non-resident citizen of the United States, which calls for the payment of compensation or death benefits, or where there is outstanding an unpaid balance of compensation or death benefits payable to such non-resident, and it shall appear that the person or persons to whom the award has been made or any balance of such award is payable, would not have the full benefit or use or control of the money payable under such award, or where other special circumstances made it desirable that present payment of the award shall be withheld, the employer, or if insured, his insurance carrier, or any special fund liable for such payment, may, by order of the board, be required to pay to the comptroller of the state of New York all amounts then due or thereafter to become due under the terms of the award to such non-resident. The moneys so paid in shall be held by the comptroller in the non-residents compensation fund.

* * *

2. The payment of the amount of any such award into the non-resident compensation fund shall constitute a complete discharge of the employer or insurance carrier from all liability for such award.

* * *

5. Any moneys so paid into such fund shall be held by the comptroller until the further order of the board. Whenever the board shall find that the reasons and conditions which made it desirable that payment into the fund be made have changed and that the cause for such withholding shall no longer exist, the board may make findings and issue its order thereon directing the payment without interest of the whole or any part thereof then due by the comptroller to the person or persons for whose benefit the award was made.

OHIO

Governing Statute: *Ohio Workers' Compensation Act*
ORC 4123.01

Summary:

Ohio workers' compensation is both compulsory and monopolistic. Not only are employers required to purchase coverage but employers must purchase that insurance from the State sponsored insurance program.

There is no statutory exception for temporary work nor is temporary work even defined. If a Michigan employee is injured in Ohio during a temporary work assignment and that employee elects to claim Ohio workers' compensation benefits, the employer must file the appropriate paperwork with the Ohio Bureau of Workers' Compensation and get coverage through the State of Ohio. If not, then the workers' compensation benefits, along with any penalties for noncompliance, are completely uninsured and become the sole obligation of the employer. Moreover, the employee is not barred by the exclusive remedy provision and can sue the employer in tort for noneconomic damages.

> 4123.01 (A)(1) (b) "Employee" means: Every person in the service of any person, firm, or private corporation, including any public service corporation, that (i) employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, or (ii) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund the premiums provided by this chapter.

> 4123.01(B) "Employer" means: (2) Every person, firm, and private corporation, including any public service corporation, that (a) has in service one or more employees regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, or (b) is bound by any such contract of hire or by any other written contract, to pay into the insurance fund the premiums provided by this chapter. All such employers are subject to this chapter. Any member of a firm or association, who regularly performs manual labor in or about a mine, factory, or other establishment, including a household establishment, shall be considered an employee in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more employees and the employer shall report the income derived from such labor to the bureau as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.