

Court Rejects Caregiver's Workers' Compensation Claim Against Care Recipient

An important issue to elderly and disabled individuals who receive in-home care is whether they can be liable under workers' compensation law for a caregiver who suffers an injury while providing care. A recent court decision addressed this very issue and held, under the facts at issue in the case, that the care recipient had no such liability – for two separate and independent reasons, namely, because (i) the caregiver was an independent contractor and (ii) the care recipient was not engaged in a trade or business.

Gamez v. Pinke, 2012 La. App. LEXIS 1017 (La. App. Aug. 1, 2012), involved a caregiver who alleged that she slipped and fell while performing home care for an individual, and asserted a workers' compensation claim against the individual. The court found that the plaintiff caregiver worked for the individual twelve hours per day, seven days per week; and that the work consisted of bathing the individual, driving her to appointments and sitting with her. The court also found that the care recipient's sister set the caregiver's hours of work and issued her checks, from which no taxes were withheld. The caregiver testified that she paid her own taxes. The caregiver, while working for the care recipient, also concurrently performed housekeeping work for another person.

The care recipient filed a motion for summary judgment, premised on an affidavit by her sister attesting that:

- The plaintiff caregiver was a sitter hired to attend to the needs of the care recipient, including administering medication, general hygiene and supervision of the care recipient;
- The plaintiff was paid by checks payable to cash, with no tax withholdings;
- Neither the care recipient nor her sister in any way directed the caregiver in how to do her job, but only set the time in which she was expected to work;
- The caregiver did not engage in any manual labor as part of her job; and
- The care recipient was 99 years old, retired and was not engaged in a sitter-related trade, business, or occupation.

The trial court granted summary judgment in favor of the care recipient, finding no workers' compensation liability. The caregiver appealed, and the appeals court affirmed.

The appeals court explained that under Louisiana workers' compensation law, a person rendering service for another in any covered trades, businesses or occupations is presumed to be an employee for purposes of workers' compensation; but the presumption can be rebutted by establishing that (1) the services provided were not pursuant to any trade, business, or occupation or (2) the individual was performing services but was doing so as an independent contractor.

Reasoning that the hiring of a sitter does not equate to the entering into the home healthcare trade, business, or occupation, the appeals court held that the care recipient, whom the court described as a frail, elderly lady in her nineties, was not engaged in any trade, business, or occupation.

In addition, the court held that the caregiver was an independent contractor, reasoning that the care recipient did not control the caregiver's work or her hours, no taxes were withheld from the caregiver's pay, the caregiver's earnings were reported on a Form 1099, and the caregiver did not engage in manual labor.

Comments:

- The *Gamez* decision offers two separate grounds that can enable a care recipient to avoid workers' compensation liability with respect to an in-home caregiver.
 - The first is that the caregiver can be determined to be an independent contractor, and therefore not covered.
 - The second, which can apply regardless of whether the caregiver is an employee or independent contractor, is that the care recipient can be determined not to be in the in-home care business.
- While the *Gamez* case was decided under Louisiana workers' compensation law, and the workers' compensation law of each state can differ, the provisions of the Louisiana workers' compensation statute that were determinative of this case are not outliers relative to other states.