

# OHIO EMPLOYERS' LIABILITY FOR ACTIONS OF EMPLOYEES AND INDEPENDENT CONTRACTORS

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February 19, 2008

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In today's world, claims and litigation have become increasingly commonplace. For this reason, companies must minimize their potential exposure to liability for the acts of employees and independent contractors. Such exposure may vary depending upon whether an individual would be recognized by the courts as an independent contractor rather than as an employee.

In order to determine whether an individual is an employee or an independent contractor, Ohio courts examine whether a company retains the right to control the means and method of performing work. The more control the company retains, the more likely it is that the courts will consider the individual to be an employee. If the individual is solely responsible to the company for the result, not the means of achieving that result, the individual is more likely to be considered an independent contractor.

The distinction between an employee and independent contractor is critical because companies are generally liable for actions of employees, as long as those actions are performed within the scope of the employment relationship. However, companies are not generally liable for the actions of independent contractors.

As with nearly all legal principles, there are exceptions to each of these general rules and, of course, exceptions to the exceptions. For example, even where an employee is not acting within the scope of employment, the employer may still be liable if the employee's actions were calculated to promote the business of the employer. As another example, while companies are generally not liable for the actions of independent contractors, the company may be liable if the work performed by the contractor is inherently dangerous or where a special relationship is created by statute.

When a statute or other rule of law creates an employment relationship, the courts refer to that individual as a "statutory employee" of the company. Statutory employees are created in a variety of ways and based upon any number of statutes. One such scenario occurs when an interstate motor carrier leases a vehicle to a driver and the vehicle displays the motor carrier's identification placard. If the driver causes an accident during the lease term, the driver and truck are presumed to be employed by the motor carrier and to have been acting within the scope of employment. Based upon this relationship, the carrier is presumptively liable to the injured third-parties for the driver's negligence, even if the driver was not acting for the benefit of the carrier at the time of the accident.

Now, more than ever, companies must manage their exposure to liability in order to reduce claim-related costs. In assessing their exposure, companies need to understand their legal relationship with the individuals who allegedly caused injury to a third-party. Recognizing the legal relationship that Ohio courts place upon the parties is the first step toward managing such exposure.

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