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### STATUTES & CASES: HOMEOWNER CLAIMS

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#### **-RESIDENTIAL EMPLOYEE STATUTES-**

**EE Defined/L.C. Section 3351(d):** A residential employee includes any person employed by the owner or occupant of a residential dwelling, whose duties involve the use or maintenance of the dwelling or care of children, and whose duties are not connected with the trade, business or occupation of the owner or occupant, and is not otherwise excluded under wage/hour requirements of L.C. Section 3352(a)(8).

**EE Family Exclusion/L.C. Section 3352(a)(1):** An individual who qualifies as an employee under L.C. Section 3351(d) is *excluded* if he/she was employed by his/her own parent, spouse, or child.

**EE Wage & Hour Exc./L.C. 3352(a)(8):** An individual who qualifies as a residential employee under L.C. Section 3351(d) is *excluded* if he/she did not work or was contracted (added in 2017) to work at least 52 hours and earn \$100 during the last 90 calendar days preceding the injury.

**Trade/Business Defined/L.C. 3355 & 3356:** Trade/business refers to tending to the preservation, maintenance or operation of the employer's business or business occupation property; and includes a business the employer is engaged in with some degree of regularity (i.e. main income source). [See *Stewart vs. WCAB* (1985) 50 CCC 524, 526].

**Uninsured Owner/L.C. Section 3708:** An injury is presumed the result of employer negligence if failed to secure work comp coverage; but *inapplicable* if worker qualified as a L.C. Section 3351(d) residential employee. [Note: Presumption does apply if EE' fails to meet L.C. Section 3351 requirements (*Jones v. Sorenson* (2018) 83 CCC 1397 or is domestic worker per L.C. Section 3715(b)].

**Uninsured Owner/L.C. Section 3715(b):** Worker of an uninsured homeowner is an "employee" if works at the home more than 52 hours weekly, part-time gardener working +44 hours monthly, or work is contemplated to last at least 10 working days. [See *Hestehauge* below].

#### **-MISCELLANEOUS RELATED STATUTES-**

**Postings/L.C. Section 3550(c):** The California State laws regarding "posting" requirements do *not* apply to residential employment.

**A.W.W./L.C. Section 4454:** Earnings for calculating indemnity rates includes wages, meals, lodging, and other financial benefits that are part of the workers' re-numeration, whose monetary value can be determined. [Wages include room/board for live-in employee.]

**D.O.I./L.C. Section 5500.6:** CT liability is limited to last date of exposure (not last 52 weeks as per L.C. Section 5500.5).

**Ins Code Section 11590:** Requires all personal liability (i.e. homeowner) policies to contain work. comp. coverage.

**Ins. Code Section 11591:** Provides Ins. Code Section 11590 does not apply if the personal liability policy is connected to the insured's trade, business, profession or occupation as defined in Labor Code Sections 3355 and 3356.

**IHSS/W+I Code Sections 12300-12314:** Domestic servants paid by state/county agencies to provide in-home support services are generally considered an employee of both state/county and the service receiver. (Cf. *IHSS v. WCAB (Bouvia)*(1984) 49 CCC 177).

#### **-CASE DECISIONS-**

##### **DUAL EMPLOYMENT**

**Heiman v. WCAB** (2007) 72 CCC 314: Worker injured first day of job installing rain gutters on condos; was an employee jointly of the unlicensed general contractor and the property management company/homeowners association. The L.C. 3352(h) hours/wages defense was not applicable to the contractor nor HOA since they were not "owners".

**DIR v. WCAB (Chas. Arnold)** (2015) 80 CCC 1477: Applicant was the homeowner's renter, housekeeper, and illegal drug making apprentice who became a paraplegic from gunshot wound. WCAB determined applicant's housekeeper status = residential employee = benefits.

## **EMPLOYEES OF UNLICENSED/UNINSURED I.C.: L.C. 3352(h) STILL APPLICABLE**

**Rinaldi vs. WCAB** (1990) 55 CCC 256: Worker employed by unlicensed/uninsured contractor, worked insufficient hours to qualify as a residential employee, under the homeowner policy. Liability remained with unlicensed contractor for UEF purposes.

**Sepanshirabad vs. WCAB** (1995) 60 CCC 241: Unlicensed tree trimmer was neither an independent contractor (no license) nor qualified as a residential employee (insufficient hours worked under L.C. Section 3352).

**Cedillo v. WCAB** (2003) 68 CCC 140: Worker struck by car while working for unlicensed/uninsured contractor, insufficient hours to qualify under L.C. Section 3352(h). Potential remedies were work comp benefits through the UEF and/or a civil suit against the contractor.

## **ESTOPPEL AGAINST CLAIMING “EMPLOYEE” STATUS**

**Chin v. Namvar** (2008) 16 Cal. App. 4<sup>th</sup> 994: Based upon prior jobs, property company thought painter was still licensed and covered, which he wasn't. Painter was estopped from claiming “employee” status due to intentionally misleading company about his license/insurance status. [See also Evidence Code Section 623].

**SCIF v. WCAB (Meier)** (1983) 40 Cal.3d 5: Worker is not estopped from asserting “employee” status merely because his lack of a contractor's license or insurance was never discussed between the parties.

## **FAMILY EXCLUSION**

**State Farm Fire & Casualty v. WCAB** (1997) 62 CCC 1629: 35-year-old carpenter was injured working at his father's rental property. Qualified as residential ee; and was not barred despite L.C. Section 3352(a) exclusion involving parent/child relationships, because the father had “intended” the son to be covered and Insurance Code Section 11590 does not reference L.C. 3352 exclusions. (**Heiman**). [CA Supreme Court].

## **INJURY RELATED TO HOMEOWNER'S BUSINESS**

**Unicare v. WCAB (Gamez)** (1996) 61 CCC 1516: Mason was employed at both the homeowner's businesses and residence, always on business payroll and injured at the residence. Worker was excluded as a residential ee' because his duties were largely “incidental to the owner's business”, resulting in the business' carrier being responsible for benefits.

**IWC Group v. WCAB (Fieldhouse)** (2003) 68 CCC 1217: Car dealership hired, paid wages and benefits to applicant who actually worked and lived at the business owner's home where he was injured. Deemed a company employee as company president had wide discretion to add ee's to payroll. [See also *State Farm v. WCAB* (2018) 78 CCC 758].

## **GARAGE AS A PART OF RESIDENCE**

**Allstate Insurance v. WCAB (Diaz)** (2007) 72 CCC 113: Applicant fell from roof of new garage/storage unit that was being built per a County Order to hide the owner's cars. Applicant was a residential employee per L.C. 3351 because the garage was incidental to the property owner's dwelling.

## **HOURS AND EARNINGS**

**Carter v. WCAB (Miller)** (2001) 66 CCC 1346: Wages and hours worked on D.O.I are included in the L.C. 3352(a)(8) calculation.

## **TORT LIABILITY**

**Tomas Vehr v. Cary Culp** (2015) 80 CCC 1311: Painting contractor was licensed, but uninsured when his employee fell from a ladder the first day on the job. Worker's lawsuit against homeowner dismissed for lack of evidence. Appeals Court acknowledged the CA Supreme Court has not definitively stated whether a person who is “technically” an ee' in work comp is also an ee' for OSHA or tort liability or other purposes.

## **UNINSURED HOMEOWNER/EMPLOYER**

**CSAA v. WCAB (Hestehauge)** (2006) 71 CCC 347: Painter expected to work 10 days fell from scaffolding on his first day. The WCJ and WCAB applied L.C. 3715(b) to find employment and liability under homeowner's policy. Decision was overturned on appeal because L.C. 3715(b) only applies to uninsured homeowners; and applicant was not a residential employee per L.C. 3352(h) due to lack of sufficient hours worked.

## **UNOCCUPIED BUILDING**

**Scott v. WCAB** (1981) 46 CCC 1008: L.C. Section 3351(d) contemplates the dwelling being habitable as a residence before imposing liability under the homeowner policy.

**Forrest v. WCAB** (1983) 50 CCC 128: A worker painting a motel room being remodeled for her employer's eventual residence was not a “residential employee” because the site was not then serving as a “residence”.

## **VIOLATIONS OF OSHA AS AGAINST HOMEOWNER**

**Fernandez v. Lawson** (2003) 68 CCC 1021: Employee of an unlicensed contractor could not file civil suit against the homeowner for violating OSHA Act because “household domestic service employees” are not covered under OSHA. [See also *Rosas v. Dishong* (1998)].