

BH LEVY JR: Know the latest regarding workers' compensation

Business in Savannah

Upcoming changes to workers' compensation laws will benefit employers, thanks to House Bill 412 passed during the 2015 Georgia legislative session.

One of these changes will overturn the result in a recent Georgia case, *Estate of Mack Pitts v. City of Atlanta, et al.*, that substantially eroded the time-honored maxim that workers' compensation benefits are an injured employee's exclusive remedy against his employer for an occupational injury.

The Pitts case was heard twice in the Georgia Court of Appeals and once in the Georgia Supreme Court.

The case involved the construction of the new international terminal at Hartsfield-Jackson Airport in Atlanta. Mack Pitts, a worker on the job, was killed when he was struck by a vehicle driven by a trucking company employee working as a subcontractor on the project.

After Pitts' estate obtained a wrongful death judgment against the company and its driver, the estate then brought a separate action against the city of Atlanta, the general contractor and the subcontractor who had contracted with the trucking company on the project.

The action was brought on the basis that those companies had breached contractual duties that required each subcontractor to carry a minimum amount of motor vehicle liability insurance. On appeal, the final ruling designated the deceased employee as an intended beneficiary of the general contractor's master insurance program.

The Supreme Court of Georgia ruled, in part, that the exclusive remedy provision in the Workers' Compensation Act did not bar the estate from bringing suit because the injury for which the estate sought damages was not a physical injury but rather a loss of access to insurance coverage resulting from breach of a contract.

During the General Assembly's 2015 legislative session, the Senate gave final passage to HB 412, the bill addressing the appeals court decision in *Pitts v. City of Atlanta*. Gov. Deal signed HB 412 on May 6, and it will take effect July 1.

Prior to July 1, there will continue to be a legal loophole that allows employees to sue other contractors associated with a project if one contractor's liability insurance coverage does not comply with contractual requirements.

For employers, the new law will be a welcome one, meaning claimants will no longer be able to receive workers' compensation benefits and also collect civil damages from contractors on the project.

HB 412 further clarifies that, unless the contract specifically enhances benefits for a work-related injury, contract provisions do not nullify the exclusive remedy — the legal provision that protects employers from common lawsuits by employees for work-related injuries.

Although this new law will potentially reduce costs for employers, it is imperative for employers to understand their risks and to ensure that their insurance program properly protects their business. For some, the workers' compensation insurance premium is a substantial portion of the payroll, which gives rise to the temptation to let that coverage lapse — which is never advisable.

In addition to closing the previously described loophole, HB 412 will also increase the maximum weekly income benefit from \$525 to \$550 and, for the first time in more than 10 years, the cap on death benefits will increase — from \$150,000 to \$220,000. Finally, the sunset date for the Subsequent Injury Trust fund will be extended from 2020 to 2023.

Although the modifications coming to workers' compensation are subtle ones, employers should be aware of the changes and how they could conceivably impact their business. Those who are unsure about their liability insurance coverage or workers' compensation issues should consult with a legal or insurance professional.

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Practice Areas

- Workers Compensation

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