

1975 S.C. Op. Atty. Gen. 227 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4166, 1975 WL 22461

Office of the Attorney General

State of South Carolina

Opinion No. 4166

October 27, 1975

*1 Clients of the Vocational Rehabilitation Facility who are injured while on non-paying job tryouts with local businesses would probably be eligible for Workmen's Compensation coverage under that of businesses affording the tryouts, assuming the businesses themselves were subject to the Workmen's Compensation Act.

TO: Mr. Douglas P. Crossman
Director of Coverage and Compliance
S. C. Industrial Commission

Question:

Are clients of the Vocational Rehabilitation Facility injured while on non-paying job tryouts with local businesses eligible for workmen's compensation benefits?

Authorities:

Section 72-11, Code of Laws of South Carolina, defines 'employee' as: '. . . every person engaged in an employment under any appointment, contract of hire or apprenticeship, expressed or implied, oral or written . . .'

Section 72-132, supra, provides: 'No agreement by an employee to waive his rights to compensation under this Title shall be valid.'

The Workmen's Compensation Act is to be given a liberal construction to include injured workmen within its protection. [Bailey v. Santee River Hardwood Co.](#), 205 S.C. 433, 32 S.E.2d 365 (1944). Employment, however, presupposes an understanding between the parties to the arrangement. [Chavis v. Watkins](#), 256 S.C. 30, 180 S.E.2d 648 (1971).

The more recent cases involving tryout periods have been held compensable. Larson's Workmen's Compensation Law, § 47.42(b) and § 47.43(a).

The deliberate avoidance of an employment relation is possible but rests basically on rights established in the contract and the nature of the work performed. Larson's, supra, § 46.10.

Discussion:

While there is no case law in South Carolina directly on point, the trend appears to be in favor of coverage of persons in trainee positions, unless they paid a fee. The broad definition of 'employee' and the liberal construction given the Act certainly make such a decision possible in South Carolina. The fact that no money is involved does not take the relationship out of employment since payment can be in other values such as training. Furthermore, since the trainee might be employed on satisfactory completion of the trial period, this fact and/or the nature of the work performed take such out of the independent contractor relationship.

Conclusion:

Trainees who are injured during a non-paying trial period with a business are subject to workmen's compensation benefits.

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