

# Pa. Workers' Compensation Act provides broad coverage for injuries sustained both inside and outside of Pa.

By Shane Miller

There is little dispute that if a Pennsylvania resident suffers a work injury in the Commonwealth, the injured employee can seek benefits under the Pennsylvania Workers' Compensation Act (Act). But things are instantly more confusing if the injured employee resides in a different state or sustains the injury in a different state.

For example, what if a New Jersey or Ohio resident suffers an injury while working in Pennsylvania? Conversely, what if a Pennsylvania resident is injured while working in New York or West Virginia? This article will address whether a non-Pennsylvania resident can obtain workers' compensation benefits under the Act for a work injury suffered in Pennsylvania. In addition, it will discuss whether Pennsylvania residents can obtain benefits under the Act for work injuries sustained in other states.

## Can a non-Pennsylvania resident obtain workers' compensation benefits under the Act for a work injury suffered in Pennsylvania?

The Act firmly establishes that non-Pennsylvania residents who are injured while working in Pennsylvania can receive benefits under the Act. The Act expressly states that it applies "to all injuries occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended..."



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77 P.S. § 1 (emphasis added). The Act thus applies to all compensable injuries that occur in Pennsylvania, regardless of the injured worker's residency or place of hire. See *Wheeling Pittsburgh Steel Corp. v. W.C.A.B. (Sesco)*, 828 A.2d 1189, 1194 (Pa. Commw. Ct. 2003) (stating that the Act applies to all injuries occurring in Pennsylvania).

Given that non-Pennsylvania residents can receive workers' compensation benefits under the Act, the Act sets forth a process for an out-of-state employer to provide post-hoc Pennsylvania insurance coverage. Specifically, the out-of-state employer can file a certificate from its own state's compensation authorities with the Pennsylvania Department of

Labor & Industry indicating that the employer has "secured the payment of compensation under the workers' compensation law of such other state and that with respect to such injury such employee is entitled to the benefits provided under such law." 77 P.S. § 411.2(c).

Upon proper certification, a qualified self-insurer under the second state's law (i.e., the state where the out-of-state employer is domiciled) will be deemed to be a qualified self-insured under the Act. Similarly, an employer's carrier will (upon proper certification) be deemed to be an insurer authorized to write insurance under and subject to the Act. Through this process, workers' compensation coverage from the second state becomes post-hoc coverage for the employee's injury in Pennsylvania. Once this post-hoc coverage is established, the next question becomes what benefits must be paid to the injured employee. The Act provides that a self-insurer who obtains post-hoc Pennsylvania coverage must pay full Pennsylvania benefits. 77 P.S. § 411.2(c)(3)(i). For an insured entity, the carrier's liability will be at the level demanded by the domiciliary state law, unless a special contractual provision applies. 77 P.S. § 411.2(c)(3)(ii). The employer must make up the difference between Pennsylvania benefits and the benefits required to be paid by the carrier under the domiciliary state law. 77 P.S. § 411.2(c)(4).

## Can Pennsylvania residents obtain benefits under the Act for work injuries suffered in other states?

The Act also clearly establishes that Pennsylvania residents can receive benefits under the Act for injuries sustained in other states, provided that certain conditions are met. Specifically, an injured worker will be entitled to benefits for an otherwise compensable injury that occurred outside of Pennsylvania in the following circumstances:

1. The employee's employment is "principally localized" in Pennsylvania; or
2. The employee is working under a contract of hire made in Pennsylvania in employment not "principally localized" in any state; or
3. The employee is working under a contract of hire made in Pennsylvania in employment "principally localized" in another state whose workers' compensation law is not applicable to the employee's employer; or
4. The employee is working under a contract of hire made in Pennsylvania for employment outside the United States and Canada. 77 P.S. § 411.2(a).

The Act provides three methods for determining if a person's employment is "principally localized" in Pennsylvania (or another state). First, a person's employment is "principally localized" in Pennsylvania (or another state) if

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the employee's employer has a place of business in Pennsylvania (or the other state at issue) and the employee regularly works at or from such place of business. Alternatively, a person's employment is "principally localized" if the employee worked at or from the employer's place of business in Pennsylvania (or the other state at issue) and the employee's job duties required him or her to go outside of Pennsylvania (or the other state at issue) for one year or less. Finally, if the first two methods do not apply, a person's employment is "principally localized" in Pennsylvania (or the other state at issue) if the employee is domiciled and spends a substantial part of his or her working time in the service of his or her employer in Pennsylvania (or the other state at issue). 77 P.S. § 411.2(d)(4).

### Conclusion

In sum, the Act clearly provides that all compensable injuries that occur within Pennsylvania are eligible for benefits under the Act, regardless of whether the injured employee resides in Pennsylvania or another state. In addition, the Act establishes that Pennsylvania residents may be entitled to benefits under the Act for work injuries suffered in other states. ■

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Barton who had just been named as the new Dean at Duquesne Law. Dean Barton started at Duquesne this past July and has just completed her first semester as Dean here in Pittsburgh.

Following our Duquesne session, the Board was invited to hear argument at Temple University as part of the centennial celebration of the Fox School of Business which also houses the school's pre-law advising department. Temple had already hosted similar argument sessions of the Superior Court and the Commonwealth Court, and we were pleased to be included.

Our special session at Penn State Law at University Park took place in April of 2019 and was co-hosted by the Law School and the School of Labor and Employment Relations where Paul Whitehead, the former Chief Counsel to the United Steelworkers Union, is a professor. Students and faculty of both schools attended the argument, resulting in a packed house.

Our latest special session was held at Widener Law School in September.

The session was attended by Dan Schuckers, the former Prothonotary of the Commonwealth Court who is currently teaching workers' compensation at Widener, along with a number of students and faculty members. Afterwards, the commissioners got to meet with the law students and get their thoughts on the arguments and listen to their career plans.

On behalf of the Board, I want to extend our thanks to all the attorneys who participated in these special sessions. The level of advocacy has been outstanding, and the students have found the programs to be helpful in their understanding of the law of workers' compensation and appellate advocacy. Special thanks to Board Chairman Alfonso Frioni and Board Secretary Steven Loux for making this project happen and to all the commissioners for the work they put in on this project. We look forward to seeing everyone this year at Dickinson and Pitt. ■

*Robert A. Krebs is Commissioner of the Pennsylvania Workers' Compensation Appeal Board.*

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