Inmate Workers' Compensation Claims

A county prisoner working voluntarily at the direction of the county will be deemed to be an employee of the county unless the county has adopted an ordinance pursuant to Penal Code section 4017, requiring prisoners to perform forced labor. The ordinance makes them "not employees" for involuntary work unless injured doing fire prevention/suppression. Penal Code Section 4017 says that a person in custody will be considered to be an employee for purposes of WC benefits if injured or killed while working the prevention or suppression of forest, brush or grass fires. In all other circumstances, if the inmate is working under compulsion of an ordinance or resolution, they would not be considered to be an employee. The key question is whether the work was voluntary.

In order to determine whether or not a county jail inmate is an ''employee'' for purposes of the workers' compensation law, the following questions must be considered:

(1) Did the county require the inmate to work as a condition of incarceration?

(2) Did the inmate volunteer for the assignment?

(3) What considerations were received, if any (for example, monetary compensation, work-time credits, freedom from incarceration)?

A county jail inmate who sustained injury during the performance of his duties under a work-release program that he had entered into voluntarily in exchange for release from confinement was an employee of the county for purposes of the workers' compensation law, even though he received neither work-time credit nor monetary compensation from the county for his labor. The court noted that consideration other than wages may support a contract of hire within the meaning of Labor Code Section 3351. Since the program was voluntary and the inmate received consideration in the form of a release from confinement during the hours he was not working, the inmate was an employee within the meaning of Section 3351. In another case, an inmate of a county jail who was injured while working as a member of a road gang was found to be an employee of the county at the time of injury, and thus entitled to workers' compensation benefits, because there was no county ordinance requiring him to work**,** the work was voluntary, it was performed under the direct supervision and control of county employees, and he was paid for the work. The inmate's wages of 50 cents a day were held to be sufficient consideration to support a contract of hire. The court specifically noted that the meagerness of the compensation paid for the inmate's services was not a factor in determining the nature of his relationship with the county, although it would affect the amount of benefits he would be entitled to receive.

Effect of Ordinance Requiring Prisoners to Work

All persons confined in a county or city jail, industrial farm, or road camp under a final judgment of imprisonment rendered in a criminal action, or as a condition of probation after suspension of imposition or execution of a sentence, may be required by an order of the board of supervisors or city council to perform labor on the public works or ways in the county or city. A similar provision applies to persons confined to a city or county jail for a definite period of time for contempt. If a county jail inmate's participation in a work-release program is not voluntary, but is required by a county ordinance or resolution adopted pursuant to these provisions, then the inmate will not be considered to be a county employee. In such a case, the inmate's work is considered compulsory, as incidental to his or her incarceration, and not under a contract of hire. As a result, the inmate will not be entitled to workers' compensation benefits for injuries sustained in the course of his or her work.

For example, a county jail inmate injured while performing work at a county correctional road camp was not an employee for purposes of the workers' compensation law, when the inmate's term at the road camp was a condition of his probation, and when county ordinances and resolutions compelled road camp inmates to work, thus negating any consensual employment relationship. The inmate received no consideration for his labor other than what he would have received had he served his time in jail, and the privilege of working at the camp rather than being confined in jail did not qualify as sufficient consideration to support an employment relationship. Similarly, the Appeals Board found that a county jail inmate was not an employee of the county when he was required by county ordinance to work for a county department in lieu of confinement when ordered to do so by the sheriff. The Appeals Board also found that a county jail inmate working in the kitchen in exchange for a reduced sentence was not a county employee, when the county had adopted a resolution pursuant to Penal Code Section 4017 requiring county prisoners to perform public service work during their confinement and providing that if they refused to do so, they would lose work-time credit. The fact that an inmate could refuse to work did not make the work voluntary, because it would be illogical for an inmate to refuse to work if the inmate's work-time credit would be taken away and his or her period of incarceration increased as a consequence of the refusal.

An employment relationship may be found to exist, however, if a city or county adopts an ordinance that merely provides that inmates *may* be required to perform labor. In one such case, an inmate filed an application against the county for workers' compensation benefits for an injury he sustained while working as a trustee on the grounds of a county government facility under the direction of a county employee. The Appeals Board found that the inmate was an employee of the county at the time of his injury because the work he was performing was voluntary and not required of him as incidental to his incarceration, since the relevant ordinance merely provided that the county *could* require inmates to work. In another case, however, the Appeals Board determined that an inmate injured while on an assigned work detail was not employed by the county because the county had enacted an ordinance giving the sheriff the power to decide

whether or not to require county prisoners to perform work. The Board found that the inmate was not voluntarily performing work for the county and therefore did not qualify as a county employee.

Prisoners Loaned Out for Work

Case law has held that when a county jail inmate is loaned out to a third party for work on a voluntary basis, whether that third party be a private corporation or a municipality, and when the inmate is under the control of the third party with the right to direct the manner in which the service shall be performed, there is a relationship of master and servant and an implied contract of hire and therefore, by statutory definition, (Labor Code 3351), the inmate becomes an employee of the third party. The case involved a county jail inmate who volunteered to work for a city pursuant to an arrangement between the city and county, and who received 5 days' credit for each 30 days that he worked plus one carton of cigarettes each week. The court found he was an employee of the city, not the county, for workers' compensation purposes. The court noted that when a county jail inmate is loaned to a third party for work on a voluntary basis and works under the control of the third party, there is an implied contract for hire within the meaning of Labor Code Section 3351, even if the only consideration the inmate receives is of nominal value.