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EMPLOYER AS "JOINT EMPLOYER" FOR PURPOSES OF FAIR LABOR STANDARDS ACT

Anne M. Payne, J.D.*

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Scope
This article discusses issues of proof relating to the establishment of “joint employer” status under the Fair Labor Standards Act (FLSA), including, but not limited to, proof of each of the factors that the court may consider in determining joint employer status, and the consequences of establishing such status. The focus is on whether employers who would otherwise meet the definition of an employer can be deemed to be “joint employers”; as such, the article presumes “employer” status, and does not deal extensively with whether a particular person or entity constitutes an “employer” under the FLSA definition. The article also does not generally discuss proof of particular violations of
RETENTION OF CONTROL, BY EMPLOYER OF INDEPENDENT CONTRACTOR, OVER CONTRACTED WORK OR PART THEREOF*

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§ 22 Proof that defendant general contractor retained control over contracted work, or part thereof, performed by independent contractor—Testimony of defendant’s on-site supervisor/project manager

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Scope

Generally, the employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the independent contractor or an employee of the independent contractor. As an exception to this general rule of nonliability, an employer of an independent contractor who retains the right to control any part of the contracted work will be liable for injuries resulting from the employer’s failure to exercise such right of control with reasonable care.

This article discusses proof that an employer of an independent contractor has retained the right of control over or interfered in the independent contractor’s performance of the work for which the independent contractor was engaged. This fact issue may arise where an action is brought by the independent contractor or an employee of an independent contractor against the employer to recover for injuries sustained in the course of performing the work, and where an action is brought by a third party against the employer to recover for injuries caused by the tortious conduct of the independent contractor or an employee of the independent contractor. A hypothetical is presented, which is the basis for sample pleadings and discovery requests. Sample direct and cross-examinations, based on the hypothetical, are also provided.

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Labor and Employment ⇔3179(4); Negligence ⇔202, 1011

Westlaw Search Query
“(retain** /2 control) /s owner /s contractor”

A.L.R. Library
A.L.R. Index, Independent Contractors
West’s A.L.R. Digest, Labor and Employment ⇔3179(4); Negligence ⇔202
PROOF OF “SPECIAL HAZARD” EXCEPTION TO “COMING AND GOING” EXCLUSION FROM WORKERS’ COMPENSATION COVERAGE

*Cecily Fuhr, J.D.*

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*Cecily Fuhr is a member of the New York bar, specializing in employment law and civil litigation. A former attorney editor at Thomson Reuters, Ms. Fuhr has published a number of legal articles and guides for practitioners, most recently including Litigation of Disqualification from Unemployment Compensation Benefits Based on Allegations of Misconduct, 158 Am. Jur. Trials 105 (Thomson Reuters 2019); Proof of Associational Discrimination in Employment Law, 172 Proof of Facts 3d 381 (Thomson Reuters 2018); Cause of Action Under State Law Against Primary or Secondary School for Discrimination Against Student on Basis of Race or National Origin, 82 Causes of Action 2d 1 (Thomson Reuters 2018); Litigation of Use of “Last Chance” Agreements in Employment Law, 152 Am. Jur. Trials 1 (Thomson Reuters 2017); and Cause of Action Under State Law Against College or University for Sexual Harassment of Student by School Personnel or Other Student, 80 Causes of Action 2d 599 (Thomson Reuters 2017). She received a B.A. with honors from Oberlin College and a J.D. with high honors from the University of Washington School of Law.*
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Monique C.M. Leahy, J.D.*

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*Monique C.M. Leahy is recognized as an authority on medical and personal injury litigation, employment, and workers' compensation issues, Internet law, and state-specific civil litigation in her over 90 published works that include over 40 practitioner publications. Ms. Leahy's recently published works include: Proof of Liability for Injury Caused by Compounded Drug, 174 Am. Jur. Proof of Facts 3d 417; Proof of Physician's Failure to Obtain Informed Consent to Experimental Treatment, 168 Am. Jur. Proof of Facts 3d 235; Proof of Excessiveness or Adequacy of Damages Awarded for Injuries to Brain, 167 Am. Jur. Proof of Facts 3d 1; Proof of Facts Supporting Liability for Causing, or Failing to Warn or Protect Against, Chronic Traumatic Encephalopathy (CTE), Am. Jur. Proof of Facts 3d 427. She is the Principal of Wordsworth Publishing and is an attorney licensed in Washington, Missouri, and Kansas. Wordsworth publishes an online medical litigation report, Medical Risk Law, providing in-depth medical litigation information and news. While in private practice, Ms. Leahy focused on litigation as well as corporate transactions and telecommunications law. She is a former managing editor at Lawyers Cooperative Publishing/Research Institute of America, a subsidiary of Thomson Reuters.
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Scope
This article discusses the proof of facts necessary to show that an expert witness whose testimony is to be offered in medical malpractice litigation, practices in the same specialty as the defendant health care provider, or is otherwise qualified to testify as to the standard of care applicable in that specialty. Some
PROOF OF FALSE ADVERTISING OR OTHER REPRESENTATION ON INTERNET THAT GOODS OR SERVICES ARE THOSE OF ANOTHER

Ralph Gerstein, J.D.*

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Research References

West's Key Number Digest
Trademarks ⇝1435

Westlaw Search Query
internet online website /35 “passing off” “palming off” (confus! mislead desig! /5 origin originat!) “unfair competition” lanham “fair trade” “unfair trade” /35 advertisement ads popups banner

Primary Authority
15 U.S.C.A. § 1114(1)
15 U.S.C.A. § 1125(a)

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Lanham Act Trademark Infringement Actions in Internet and Website Context, 197 A.L.R. Fed. 17