



What's New in HR Law

Right to Sue Applications: WSIB Proceedings as a Shield

August 03, 2021

Bottom Line

In a [recent decision](#), the Workplace Safety and Insurance Appeals Tribunal (“WSIAT”) held that a grocery store manager was not entitled to sue a third party bakery (the “Bakery”) or its landlord after he was injured in a slip-and-fall in the shared parking lot outside the bakery. This case illustrates how companies may be able to use the employment status of third parties who are injured on their premises to shield themselves from personal injury claims.

Background

The injured worker (the “Worker”) managed the baked goods section of a grocery store. His regular hours of work were from 7am to 7pm. As manager of the baked goods section, the Worker was responsible for regularly visiting suppliers and purchasing product on behalf of the store.

One winter evening, after his scheduled work-time was over, the Worker left the grocery store and traveled to the Bakery. The Bakery was a pre-existing supplier that was located in an industrial plaza along with a number of other businesses. The Worker had visited the Bakery on previous occasions to purchase product for his employer. The Worker parked outside the Bakery

This update is for general discussion purposes and does not constitute legal advice or an opinion.

in a parking lot that was jointly shared with other businesses, and which was managed by a landlord.

While at the Bakery, the Worker sampled and purchased product for the grocery store. While leaving the Bakery, the Worker slipped on snow in the parking lot and injured himself. He was transported to the hospital.

Subsequently, the Worker filed a lawsuit against the Bakery and its landlord in relation to his slip and fall. The Bakery and the landlord jointly filed a right to sue application with the WSIAT arguing that the *Workplace Safety and Insurance Act* (“*WSIA*”) barred the Worker from filing a civil claim against them and alleging that the proper forum for the claim was a Workplace Safety and Insurance Board (“*WSIB*”) claim against the grocery store.

The Worker was barred from Bringing a Civil Claim

At the hearing, the WSIAT concluded that the Worker was statutorily barred from filing a civil action against the Bakery and its landlord.

Under section 27 and section 28 of the *WSIA*, an employee of a Schedule 1 employer is statutorily barred from commencing a civil action against both their own employer *and any other Schedule 1 employer* where the injury is sustained in a manner that would entitle them to benefits under the *WSIA*. In this case, the grocery store, the Bakery, and the Bakery’s landlord were all Schedule 1 employers.

Under the *WSIA*, the key to determining whether a worker is entitled to benefits from the *WSIB* is whether the injury was sustained in the course of and arising out of their employment. In finding the Worker was statutorily barred from filing a claim against the Bakery and its landlord, the WSIAT confirmed that the key factors were that (i) the Worker regularly attended at the Bakery to purchase goods on behalf of his employer, including during the evenings, and (ii) that job-related function was the sole reason he had attended at the Bakery that evening. In making its determination, the WSIAT reasoned:

- It did not matter that the accident occurred after the Worker’s regularly scheduled work hours, nor did it matter that because it was after hours the Worker was not being compensated at the time the injury was sustained;
- Because the Worker was performing a job-related function that he normally performed in the course of his duties, it did not matter that he had not been expressly directed by his employer to attend at the Bakery at the time of the incident; and
- It also did not matter that the parking lot in which the injury was sustained was not under the care and control of either the Worker’s employer or the Bakery that he was visiting when he sustained the injury.

Check the Box

Where a company receives a civil claim involving allegations that a third-party was injured on its premises, a key consideration in defending the claim should be whether there is *any* connection between the worker’s employment and the reasons for which they were present on the

This update is for general discussion purposes and does not constitute legal advice or an opinion.

company's premises. Where a third-party is injured on a company's premises while performing a function that was part of, or incidental to, their job, then the company may consider filing a right to sue application with the WSIAT. If successful, any WSIB-related liabilities will be attributed to the third-party employer's WSIB account, and not the company's.

Need more information?

For more information or assistance with respect to a prospective right to sue application or other workplace matters that engage the *WSIA*, please contact [James Jennings](#) at 416.408.5503 or your regular lawyer at the firm.



management labour and employment law



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filiation.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filiation.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filiation.on.ca

This update is for general discussion purposes and does not constitute legal advice or an opinion.