

California Rules for Hirer of Independent Contractor in Contractor's Employee's Suit Based on Claimed Safety Violation by Hirer

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When an employer in California hires an independent contractor, what duty, if any, does the hirer owe to the contractor's employee injured on the job? Generally, when employees of independent contractors are injured in the workplace, their remedy is limited to workers' compensation. They cannot sue the contractor or the party that hired the contractor. This applies even where the on-the-job injury is allegedly caused by the hirer's failure to comply with workplace safety requirements concerning the precise subject matter of the contract between the hirer and the independent contractor, the California Supreme Court has ruled, giving Golden State employers a small victory. *Seabright Ins. v. US Airways*, No. S182508 (Aug. 22, 2011). By hiring the independent contractor, the Court explained, the hirer implicitly delegates to the contractor any tort law duty it owes *to the contractor's employees* to ensure the safety of the specific workplace that is the subject of the contract.

Was Safety Duty Delegable?

US Airways uses a conveyor to move passenger luggage. The airport is the owner of the conveyor and US Airways has a permit to use it and is responsible for its maintenance. US Airways hired independent contractor Lloyd W. Aubry Co. to maintain and repair the conveyor. Aubry employee Anthony Verdon Lujan, who goes by the name Verdon, was inspecting the conveyor when his arm was caught in the moving parts. The conveyor did not have certain safety guards required by applicable regulations.

Aubry's workers' compensation insurer, SeaBright Insurance Company, paid Verdon benefits based on the injury and then sued US Airways, claiming the airline caused Verdon's injury and seeking to recover what it paid Verdon in benefits.

The trial court found no evidence that US Airways affirmatively contributed to the Verdon's injury and granted summary judgment for US Airways. The Court of Appeal reversed, holding that under of California Occupational Safety & Health Act ("Cal-OSHA"), defendant US Airways had a *nondelegable* duty to ensure that the conveyor had safety guards and that the question of whether the airline's failure to perform this duty affirmatively contributed to Verdon's injury remained a triable issue of fact, precluding summary judgment.

Court Relies on *Privette* Rule

Reversing the Court of Appeal, the California Supreme Court held that the rule in *Privette v. Superior Court*, 5 Cal.4th 689 (1993) (barring a suit by an independent contractor's employees against the party that hired the independent contractor) applies when the hirer fails to comply with workplace safety requirements concerning the precise subject matter of the contract between hirer and independent contractor and the injury is alleged to have occurred as a consequence of that failure.

By hiring an independent contractor, the Supreme Court explained, the hirer implicitly delegates to the contractor any tort law duty it owes *to the contractor's employees* to ensure the safety of the specific workplace that is the subject of the contract. That implicit delegation includes any tort law duty the

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hirer owes to the contractor's employees to comply with applicable statutory or regulatory safety requirements. Such delegation, however, does not include the tort law duty the hirer owes *to its own employees* to comply with the same safety requirements. Under the definition of "employer" that applies to California's workplace safety laws (Labor Code § 6304), the employees of an independent contractor are not considered to be the hirer's own employees.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

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