

## Financial Consideration is Essential in Order to Establish the Existence of an Employment Relationship

An employment relationship is established when the petitioner receives financial consideration in return for services provided (N.J.S.A. 34:15-36). However, there are occasions where an employment relationship is established when the petitioner receives non-salaried benefits in return for services provided. I have personally handled such a claim.

While the petitioner has the burden of proof of establishing an employment relationship, the respondent has the burden of establishing the existence of a valid defense. One such defense is that the petitioner is considered to be a volunteer. In general, a volunteer is not considered to be an employee under the Workers' Compensation Act (WCA). A volunteer is one who has not entered into a contract for hire and does not receive or expect to receive financial consideration in return for services. Under the WCA, volunteers acting in the line of public duty such as firemen, first aid workers and rescue workers are treated differently.

Multiple courts in New Jersey have addressed the issue of what constitutes receipt or expectation of receipt of financial consideration. Financial consideration need not always be salary, but it must constitute something of value in return for services provided. This could include receipt of free board and lodging, rent-free apartments, vocational instruction, training and incidental equipment. However, this does not include receipt of discounts received in connection with items purchased if one would have provided services regardless of receipt of such discounts. Finally, this does not include the hope of future favors.

Once an employment relationship is established, a challenging task involves the calculation of the petitioner's average weekly wage and rate. Depending upon the calculation, there may be application of a capped permanency rate that acts to reduce exposure in connection with the payment of permanent disability benefits. The respondent must confirm the frequency of receipt as well as valuation of the individual non-salaried benefits.

In conclusion, a workers' compensation defense attorney may encounter a claim whereby the petitioner received non-salaried benefits in return for services. In order to establish a valid defense, the respondent must conduct a thorough fact investigation and discovery in order to address the above referenced issues. In the event that these efforts are not sufficient, a bifurcated trial addressing the issue of an employment relationship may become necessary.

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