

# compUpdate



## Casual employment: It may not be what you think

*XYZ Tire Company's building needed painting, so the company owner asked Joe Goodguy, a college student on summer break, if he wanted to paint the shop for \$8 an hour. The owner said he would supply everything needed to do the job. Goodguy agreed.*

*On the second day on the job, Goodguy climbed up an old, rickety, wooden ladder he had leaned against the building. After about five minutes on the ladder, he heard the crack of the rung he was standing on as it broke. He fell about 10 feet to the ground, landing on his left shoulder and arm and striking his head on the asphalt below. He suffered fractures, torn ligaments and a concussion.*

Goodguy's injuries required surgery and several days of hospitalization. Would his medical bills be covered by XYZ Tire Company's workers compensation insurance policy? Based on case law, probably not, because although Goodguy was an employee of XYZ, he was a "casual employee." Under Idaho law<sup>1</sup> "casual employment" is one of several employments that are exempt from workers compensation coverage unless coverage is elected. What this means is that in Idaho there is no coverage under a workers compensation policy for injuries suffered by an individual performing casual employment, unless the employer has a written declaration on file with the Industrial Commission specifically electing coverage on its casual employees.

What is "casual employment"? The term "casual employment" is not specifically defined in Idaho Code, but it has been defined by the Idaho Supreme Court<sup>2</sup> as:

*"employment that is only occasional, or comes at uncertain times, or at irregular intervals, and whose happening cannot be reasonably anticipated as certain or likely to occur or to become necessary. It is employment that arises only occasionally or incidentally and is not part of the usual trade or business of the employer."*

Generally speaking, it is the relationship between the specific employer and the employee that determines whether the specific employment is casual. Based on the case law, it appears that to determine if employment is "casual employment," the employment needs to be looked at with the following two factors in mind:

**1. Duration and regularity of work:** By its nature, casual employment is usually

temporary or short-lived. The long-term regular permanent employees of a business are not casual employees, but employment that is temporary or for a short duration is not necessarily always casual employment. Casual employment usually occurs on a non-regular or sporadic basis and cannot be reasonably planned for. Typically, work in the nature of repairs or one-time construction projects are casual employment.

**2. Nature of the work:** To be casual employment, the nature of the work done for the employer must be incidental to or not a regular or usual part of the business of the employer. Generally, employments that fall outside the normal scope of an employer's

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business are the types of employment that might be considered casual employment.

Some examples of employments that have been held to be casual by either the Idaho Supreme Court or the Idaho Industrial Commission include claims arising from:

- Roof repairs for a business that owns rental or commercial property.<sup>3</sup>
- Reforestation of property for a hydroelectric power business.<sup>4</sup>
- Construction of buildings for an agricultural service business.<sup>5</sup>
- Painting a clubhouse for golf course.<sup>6</sup>

Conversely the following are examples where the Idaho Supreme Court or the Idaho Industrial Commission have held that the employment was not casual employment:

- A retired bus driver hired on a temporary basis to drive for a bus company.<sup>7</sup>
- A person hired to remove roof shingles for a building contractor.<sup>8</sup>
- Occasional work splitting wood for an employer who sawed, stored, and sold firewood.<sup>9</sup>

Based on the case law, the key issues in determining whether an employee's work amounts to casual employment is whether the work is such that it is infrequent or sporadic to the point it can not be regularly planned for, and whether the type of work performed is generally outside the scope of regular work performed in the normal course of the employer's business. For example, employing a person as a janitor on a weekly basis to clean the business premises may constitute normal employment, whereas hiring a person to clean up those same premises after a flood or fire tends to be more in the nature of casual employment. On one hand, the janitor is employed on a regular ongoing basis to keep the business clean as part of its normal operation, while on the other hand a person cleaning up after an unexpected disaster is hired to do work that is sporadic and not ongoing on a one-time basis not normally incurred in the normal course of the employer's business.



So, getting back to our original example, what would happen if Joe Goodguy filed a workers compensation claim for his injuries and XYZ had not elected coverage for casual employment?

XYZ's insurance company will look into the merits of the claim. If it is determined that Goodguy was injured while performing casual employment and there was no elected coverage in place, the surety will likely deny coverage on the grounds that casual employment does not constitute covered employment under the workers compensation law. If, on the other hand, the surety determines Goodguy was in fact working for XYZ as a regular employee and his claim is otherwise compensable, then the surety will provide workers compensation benefits for Goodguy's workplace injury, just as it would any other injured employee.

If Goodguy's claim is denied and Goodguy chooses to file a complaint with the Industrial Commission to recover workers compensation benefits, the insurance company will defend against the complaint. If the Industrial Commission should conclude the claimant's injuries are compensable under workers compensation law, then the insurer will be obligated to pay the claim.

If Goodguy's claim is determined to be non-compensable by the Industrial Commission on the grounds his work was casual employment and therefore not covered employment, Goodguy may attempt to recover civil damages from his employer.

To do so, Goodguy would have to prove that his injuries were proximately the result of his employer's negligence. However, such claims based on negligence, if filed, may not be covered under XYZ's business liability policy, since most such policies contain exclusions for injuries arising out of employment, casual or otherwise.

How can an employer protect himself or herself when using casual employees? A business that hires casual employees from time to time may consider electing coverage in order to afford protection to that business and the casual employee. Electing coverage on casual employment benefits casual employees by providing workers compensation benefits for on-the-job injuries and also provides the employer with the protections afforded under the exclusive remedy doctrine, to the extent an employee cannot recover civil damages if a claim is covered under the workers compensation law.

If you want more information about electing coverage for casual employees, contact your underwriter.

<sup>1</sup> Under Idaho Code Section 72-212(2) "casual employment is employment exempt from workers compensation coverage unless coverage is otherwise elected pursuant to Idaho Code Section 72-213.

<sup>2</sup> *Larson vs. Bonneville Pacific Services Co.*, 117 Idaho 988, 793 P.2d 220 (1990).

<sup>3</sup> *Schindler vs. McFee*, 69 Idaho 436, 207 P.2d 1158 (1949); *Keator vs. Pennell*, 97 IWCD 10168, 1997 IIC 0539 (1997); *Shook vs. Palanco, Buywise Drug Store Inc., & Demeyer*, 89 IWCD 2672, 1989 IIC 0193 (1989).

<sup>4</sup> *Larson vs. Bonneville Pacific Services Co.*, 117 Idaho 988, 793

P.2d 220 (1990).

<sup>5</sup> *Howell vs. Intermountain Farmers Association, Inc.*, 95 IWCD 8876, 1995 IIC 1193 (1995).

<sup>6</sup> *Stricklin vs. Riverside Golf Course*, 89 IWCD 2991, 1989 IIC 611 (1989).

<sup>7</sup> *Flynn vs. Carson*, 42 Idaho 141, 243 P.2d 818 (1926).

<sup>8</sup> *Trevino vs. Beckman*, 90 IWCD 3205, 1990 IIC 0517 (1986).

<sup>9</sup> *Fox v. McDonald*, 92 IWCD 5081, 1992 IIC 0690 (1992).

For more information, you may want to consult your attorney.



## Keep fall protection in mind this spring

Falls from elevations are all too common in the construction industry and usually result in severe injuries whose costs are staggering.

According to the Fund's Claims staff, there has been an increase in fall-related claims recently.

Today, more and more contractors are realizing that fall protection can be provided economically and practically. The following information from OSHA Construction Codes provides a brief overview on fall protection.

### Definitions

- A fall restraint system is the equipment used to keep a worker from reaching a potential fall point. Fall restraint includes the use of perimeter cables, guardrails, floor opening covers, scaffolds or work platforms with standard guardrails, or the utilization of a Class III safety harness and lanyard secured to an anchorage point restricting the worker from a fall hazard.
- A fall arrest system is the equipment used to protect a worker from falling more than six feet or from striking a lower object in the event of a fall. This equipment always includes a Class III full body harness.
- A competent person is a person who is able to recognize hazards, has the authority to stop work and correct hazards, is knowledgeable about the standards that apply and is able to recognize or train qualified workers.

Before starting work above any elevation greater than 6 feet, it is recommended that a fall protection work plan be developed. (There are instances when fall protection doesn't need to be used until working at elevation levels of 10 feet, i.e. residential-type construction for certain activities. As a rule, it is best to use fall protection at any elevation greater than 6 feet.)

## Fall protection work plan

A fall protection work plan should be task- or activity-specific. Each employee that will work over an elevation of 6 feet should be given instructions on the proper use of fall protection devices. They should also review and sign the fall protection work plan that pertains to their specific task.

A fall protection work plan should include the following:

- Project name/number.
- Date developed.
- Person(s) preparing plan.
- Specific work area.
- Activities planned.
- Identify hazards in the work place.
- Identify methods of fall restraint or arrest to be used, such as a standard guardrail, double lanyard system, full body harness, or boom lift/scissor lift.
- Describe procedures for assembly, maintenance, inspection and disassembly of systems.
- Describe procedures for handling and securing tools and equipment and for providing overhead protection for workers.
- Describe method for prompt, safe removal of fallen workers.

## Fall protection maintenance and inspection checklist

### Daily inspections:

Before leaving for the construction site, a daily visual inspection of all safety equipment should be done. Defective equipment must be tagged and removed from use immediately. Follow the manufacturer's recommendations for maintenance, inspection, assembly, and disassembly of equipment.

### Overhead protection:

Hard hats are a requirement on all jobsites where there are overhead hazards. When there are existing hazards, post warning signs, barricades, and warning tape to alert and caution workers. All floor openings must be covered appropriately with wood or metal. When necessary, use debris nets or covered walkways for additional protection.

### Tools and materials:

Equipment and tools are stored in the company tool room or work shack each night and are distributed daily. Make sure all power tools and cords are unplugged and locked up at night. Bolt buckets, torch carts and ladders must be secured to existing structures when conditions impose a hazard. All materials should be stored in a neat and orderly manner to avoid blocking any access or egress routes. All materials must be secured to restrict movement during adverse weather conditions.

### Removal of an injured worker:

First aid procedures should be performed as the situation requires. If the area is safe for entry, first aid should be done by a certified first aid person. If the area is not safe for entry, follow procedures necessary to remove worker from dangerous conditions and then have certified person perform first aid. **Dial 911 for emergency services.**

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You can request a Certificate of Insurance 24-hours a day by calling our automated certificate line and leaving a message. Please leave your name, your policy number, and the name and address of the party you want to receive the certificate. If you want the certificate faxed, leave a fax number. If you wish to speak with an underwriting representative about your certificate, please call during normal business hours.



**Tip: Use our envelope**

We recently had an address change for policy premium payments. To ensure we receive your payments promptly - and at the correct address - please use the return envelope we provided with the invoice. It is coded to return to the correct address: P.O. Box 990002, Boise, ID 83799-0002. You might want to discard any old envelopes you received from us.

**Call ASAP after serious injury!**

In the event of serious injuries, we will assign a nurse to assist the injured worker, family members, the employer, and the claims examiner in coordinating the medical activities.



**File notice of injury  
via e-mail**



You can now file a claim via e-mail.

Our First Report of Injury and Illness is available as a Word form document. If you have Microsoft Word software, you can complete the form on your computer and e-mail it to us as an attachment.

To receive a copy of the form and instructions, e-mail your request to [forms@isif.state.id.us](mailto:forms@isif.state.id.us). Please include:

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