8-40-203. Employer.

(1) "Employer" means:

(a) The state, and every county, city, town, and irrigation, drainage, and school district and all other taxing districts therein, and all public institutions and administrative boards thereof without regard to the number of persons in the service of any such public employer. All such public employers shall be at all times subject to the compensation provisions of articles 40 to 47 of this title.

(b) Every person, association of persons, firm, and private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, who has one or more persons engaged in the same business or employment, except as otherwise expressly provided in articles 40 to 47 of this title, in service under any contract of hire, express or implied.

(c) Repealed.

Source: L. 90: Entire article R&RE, p. 473, § 1, effective July 1. **L. 91:** (1)(c) repealed, p. 1294, § 5, effective July 1.

Editor's note: This section is similar to former § 8-41-105 as it existed prior to 1990.

Cross references: For the scope of the term "employer", see § 8-40-302.

ANNOTATION

Analysis

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 82 Am. Jur.2d, Workers' Compensation, §§ 102-119.

C.J.S. See 99 C.J.S., Workers' Compensation, §§ 100-134.

Law reviews. For article, "One Year Review of Corporations, Partnership and Agency", see 37 Dicta 11 (1960). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L. J. 82 (1970).

Annotator's note. Since § 8-40-203 is similar to § 8-41-105 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

The definition of "employer" in this section should be broadly or liberally construed, in order to effectuate the purpose of the legislation. Conover v. Indus. Comm'n, 125 Colo. 388, 244 P.2d 875 (1952).

Consequently, the workmen's compensation act extends the concept of "employer" far beyond the meaning of that term at common law. Doyle v. Missouri Valley Constructors, Inc., 288 F. Supp. 121 (D. Colo. 1968).

But the rule of liberal construction cannot be extended to a case that is removed by the statute itself. Smith v. Indus. Comm'n, 134 Colo. 454, 306 P.2d 254 (1957).

Proper characterization of the employer-employee relationship depends on the facts of each case and is for the commission to determine. Melnick v. Indus. Comm'n, 656 P.2d 1318 (Colo. App. 1982).

An employment contract need not provide for the payment of "wages" in order for one employed under such a contract to qualify as an "employee" under this article. Aspen Highlands Skiing Corp. v. Apostolou, 866 P.2d 1384 (Colo. 1994).

Applied in Hefley v. Morales, 197 Colo. 523, 595 P.2d 233 (1979); Ellis v. Rocky Mt. Empire Sports, Inc., 43 Colo. App. 166, 602 P.2d 895 (1979); Stampados v. Colo. D & S Enters., 833 P.2d 815 (Colo. App. 1992).

II. PUBLIC EMPLOYERS.

All state agencies are considered a single "employer" and all persons in the service of the state are its employees. Rodriguez v. Bd. of Dirs., 917 P.2d 358 (Colo. App. 1996).

A city becomes an employer of those persons defined as employees in § 8-41-106. State Comp. Ins. Fund v. Alishio, 125 Colo. 242, 250 P.2d 1015 (1952).

III. PRIVATE EMPLOYERS.

Where two or more companies form a joint venture, the joint venture itself is an "association of persons" and an "employer" within the meaning of the workmen's compensation act. Being of that status, a joint venture and its insurance carrier could be made to respond to claims asserted under the act. D. E. Jones Constr. Co. v. Heirs of Jones, 29 Colo. App. 482, 487 P.2d 822 (1971).

And the joint venture and each of its participants are jointly and severally liable for claims asserted by or on behalf of an employee engaged in work being prosecuted by the joint venture. As to a claimant for benefits, there is nothing which makes the liability of any one of such parties primary to, or exclusive of, the liabilities of the others. The insurance coverage of one liable as a participant in the joint venture extends to and follows that participant within the joint venture operations. Consequently, an employee, may assert his claim against the joint venture itself, or any or all members thereof and their respective insurer or insurers must discharge the claim. Indus. Comm'n v. Lopez, 150 Colo. 87, 371 P.2d 269 (1962); D. E. Jones Constr. Co. v. Heirs of Jones, 29 Colo. App. 482, 487 P.2d 822 (1971).

Thus, employer status not divested by engaging in joint venture. Where a joint venture is in furtherance of business in which two cement contractors are engaged, and each is an employer with respect to his own operation, they cannot divest themselves of such status by engaging in a joint venture in the same business in which each is individually engaged, notwithstanding they employ less than four employees on particular job. Indus. Comm'n v. Lopez, 150 Colo. 87, 371 P.2d 269 (1962).

An "association of persons" need not measure up to the requirements of a partnership in order to come within the meaning of "employer" as used in this section. Conover v. Indus. Comm'n, 125 Colo. 388, P.2d 875 (1952).

Employment of employee need not be same as his employer. There is no discernible legislative intent in this section which would require that the employment of the employee be the same as that of the employer. Schultz v. Indus. Comm'n, 34 Colo. App. 122, 523 P.2d 164 (1974).

Parent corporation, sued by employee of its wholly-owned subsidiary, is not an "employer" entitled to immunity from tort liability under the workmen's compensation act. Peterson v. Trailways, Inc., 555 F. Supp. 827 (D. Colo. 1983).

Unincorporated self-employed repairman not "employer". Self-employed sheet metal and heating repairman, using the name "M. Kunz and Sons, Inc.", although he had not completed incorporation, is not an "employer" and not required to carry workmen's compensation insurance for himself. Canda v. Indus. Comm'n, 44 Colo. App. 70, 607 P.2d 403 (1980).

The requirement of contract of hire was written into the workmen's compensation act for two reasons: First, the necessity for a "contract" was felt to insure that an employee did not give up legal rights against an employer without receiving value in return; and second, the contract had to be one "of hire" because, absent the expectation of remuneration at some rate, there was no way to compute benefits. Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

And this section and § 8-41-107 speak of "any contract of hire, express or implied", indicating that several "contracts of hire" may exist in a given situation and recovery had upon "any". Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

So that both an express and implied "contract of hire" could exist between the same parties but covering different employment or covering the same employment but with differing parties. Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

Usual master-servant relationship. If the relationship between the parties is that of the usual master-servant variety, then workmen's compensation liability is determined by analyzing the factual situation in terms of the statutory inclusions and exclusions stated in this section. Schultz v. Indus. Comm'n, 34 Colo. App. 122, 523 P.2d 164 (1974).

A general servant of one party may be loaned by his master for some special purpose so as to become for that service the servant of the party to whom he is loaned and to impose on him the usual liabilities of a master. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

Thus, there may exist at one time the relationship of general employer and a special employer as to one employee. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

Liability of employer determined by "control" or "whose business" test. The liability of a general or special employer is sometimes determined by ascertaining who has control of the borrowed employee and equipment used in rendering the service, and sometimes it is determined by ascertaining in whose business the special employee was engaged. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

The control test is that the relation of master and servant exists whenever one person stands in such a relation to another that he may control the work of the other and direct the manner in which it shall be performed. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

The whose business test holds the owner of the business liable if a servant or employee at the time of a negligent act resulting in damages to others is actually engaged in performing work or labor for the special, rather than the general, employer. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

But each case must be determined in the light of the existing facts and circumstances, and frequently it is necessary that both the control test and whose business test be considered in determining upon whom the liability shall rest where there is a general, as well as a special, employer, and damages are claimed because of the negligence of an employee. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

A real estate brokerage concern which manages properties for others as a part of its business, collecting rent and making improvements and repairs, and which employs men to wash the walls of a building it has in charge, is an employer within the definition of this section. Alson Inv. Co. v. Youngquist, 107 Colo. 1, 108 P.2d 228 (1940).

But the act does not apply to nonresident employers. Hall v. Indus. Comm'n, 77 Colo. 338, 235 P. 1073 (1925).