Workmen's Compensation

Legal Opinions on Various Phases of the Iowa Workmen's Compensation Act

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Legal Opinions on Various Phases of the Iowa Workmen's Compensation Act.

NOTE.—The public has become greatly interested in the subject of compensation legislation as a method for improving some conditions which have prevailed under the common law system and for solving the problem of dealing justly with the unfortunate victims of our industrial life. Owing to this general interest and because this legislation affects both employers and employes, it has been deemed advisable to provide in convenient form a few of the more important opinions relating to the subject of workmen's compensation so that the same can be sent to those who are particularly interested in information of this character. To have included them in the biennial report would have made that report too large for general distribution, and would not have resulted in as general and satisfactory distribution of the opinions included in this pamphlet as is hoped to be accomplished in this manner.

An index has been placed in the back of the work, so arranged as to give first a reference to the sections in the supplement to the code, 1913; second, a reference to the sections in chapter 147, acts 35th G. A., and third a reference to the pages of this pamphlet.—GEORGE COSSON, *Attorney General.*

The Iowa Law is Optional.

COMPENSATION LAW OPTIONAL—INSURANCE REQUIRED—MEMBERS OF PARTNERSHIP NOT EMPLOYES—EMPLOYER PRIMARILY LIABLE, THOUGH INSURED.

May 7, 1914.

SHAVER CARRIAGE CO.,
Des Moines, Iowa.

GENTLEMEN: Replying to your letter of the 5th instant addressed to the attorney general will say that the last legislature of Iowa enacted what is known as the workmen's compensation act, same being found in Chapter 8-A, Title XII, Supplement to the Code, 1913.

The law is optional or elective, and the employer can avail himself of its provisions or elect to reject same, as he sees fit. It will

be conclusively presumed that he has elected to be governed by its provisions unless he rejects the same in accordance with the requirements of the act. In the event he elects to reject the act, or fails to provide the insurance required under Section 2477-m41, Supplement to the Code, 1913, he will be liable to his injured employes the same as under the common law, as modified by statute, and he can no longer plead what is commonly known as the three common law defenses, that is, contributory negligence, fellow servant rule, and assumption of risk. He will also be required to rebut the presumption that the injury to his employe was the direct result and growing out of the negligence of the employer, and that such negligence was the approximate cause of the injury.

If you prefer to avail yourselves of the compensation features of this act, you must either insure your liability under the act in some company approved by the insurance department of Iowa, or comply with Section 2477-m49, Supplement to the Code, 1913, wherein it is provided that you need not comply with said Section 2477-m41 requiring insurance if you furnish satisfactory proof to the insurance department and to the Iowa industrial commissioner of your solvency and financial ability to pay the compensation required under the act.

Answering your second question will say that the word "employe" as defined by the legislature excludes one who holds an official position or stands in a representative capacity of the employer. Under such a definition I am of the opinion that a partner in a partnership and a managing officer in a corporation would be considered as persons standing in "a representative capacity," and therefore not entitled to compensation under the act. Partners are employers rather than employes. Employes are no doubt entitled to compensation even though their wages are fixed in part by the profits of the concern for which they work.

Answering your third question will say that an employer is not relieved from liability to pay compensation to his employes according to the terms of the act even though he provides insurance as required under Section 2477-m41, the purpose of the insurance being to insure certain and prompt payment, and to reimburse him for any and all amounts which he has so paid. He is primarily liable.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Certain Employes Excluded.

COMPENSATION LAW APPLICABLE TO EMPLOYERS OF ONE OR MORE EMPLOYES—WORD "EMPLOYES" DEFINED—CLASSES OF EMPLOYES EXCLUDED.

May 11, 1914.

M. H. CALDERWOOD,
Eldridge, Iowa.

DEAR SIR: Replying to your letter of the 9th instant addressed to Attorney General Cosson will say that the Iowa workmen's compensation act, enacted by the last general assembly, is optional or elective with both the employer and the employe. Unless they take the affirmative action required under the statute, it will be conclusively presumed that they prefer to avail themselves of the provisions of the act.

The only important class of employers excluded from the act is the class engaged in farm or agricultural pursuits. The statutes of some states limit the law to those employers having five or more employes, but the Iowa act does not contain such a provision, and therefore applies to employers having one or more employes. The employers mentioned in your letter as having one or two employes are therefore included within the provisions of this act unless they, by affirmative action, elect to reject its provisions.

The word "employe" is defined by the act to mean any person who has entered into the employment of or works under contract of service, express or implied, except:

(a) A person whose employment is purely casual and not for the purpose of the employer's trade or business;

(b) A person engaged in clerical work, but clerical work shall not include one who may be subjected to the hazards of the business;

(c) A person who holds an official position or stands in a representative capacity of the employer;

(d) An official elected or appointed by the city or town;

(e) A public contractor doing work for such city or town;

(f) Household or domestic servants;

(g) Laborers engaged in farm or agricultural pursuits.

(h) General contractors.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Casual Employment.

CASUAL EMPLOYMENT DISCUSSED—TWO ESSENTIAL ELEMENTS—EMPLOYES NOT EXCLUDED EXCEPT WHERE BOTH ELEMENTS PRESENT.

September 13, 1914.

C. J. DUNCAN, Vice Pres.,
Iowa Mutual Liability Co.,
Cedar Rapids, Iowa.

DEAR SIR: Replying to your letter of September 7th, addressed to Hon. Warren Garst, will say that the Iowa workmen's compensation act is peculiar in that it defines "casual employment" to refer to a person whose employment is purely casual *and* not for the purpose of the employer's trade or business. The statutes of most of the other states used the word "or" in place of the word "and." For that reason no employers are excluded from the provisions of the Iowa workmen's compensation act unless there are two essential elements present: First, that the employment is purely casual, that is, indefinite, uncertain and temporary, and, second, that such employment is not for the purpose of the employer's trade or business. In other words, if the employment is not of the casual character, it is not necessary that the employment be for the purpose of the employer's trade or business, or, on the other hand, if the employment is for the employer's trade or business, it is not necessary that such employment be of a casual character. To repeat, employers come within the provisions of the Iowa workmen's compensation act except in those cases where both of the essential elements mentioned above are present.

In view of the foregoing, it is my judgment that an employe working under the conditions mentioned in your letter might be included within the provisions of the Iowa workmen's compensation act, and, in fact, would be included except where the employment was clearly of the casual character and in no way connected with the employer's trade or business. To illustrate, a laborer picked up on the street to repair a porch of the residence of a doctor, which repair job was unimportant and required but a few hours labor, would be excluded from the provisions of the Iowa workmen's compensation act under the exception that he was "a person whose employment was purely casual and not for the purpose of the employer's trade or business."

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Counties as Employers.

COUNTIES ARE EMPLOYERS UNDER THE ACT—PUBLIC OFFICERS AND PUBLIC CONTRACTORS NOT EMPLOYES—COUNTY ENGINEERS AND LABORERS EMPLOYED BY COUNTY ARE EMPLOYES—COUNTY MUST CARRY INSURANCE UNLESS RELIEVED FROM SO DOING.

June 3, 1914.

STATE HIGHWAY COMMISSION,
Ames, Iowa.

GENTLEMEN: Replying to your letter of June 1st relative to the Iowa workmen's compensation act will say that this law is found in Chapter 8-A, Title XII, Supplement to the Code, 1913.

The terms, conditions and provisions of this act are compulsory and obligatory upon counties and the employes thereof (Section 2477-m-b). Men employed by the day and engaged in road, culvert or bridge work would be employes within the definition found in Section 2477-m16b of the act and hence the county would be liable for compensation for injuries to employes of this character and would be required to provide the insurance specified in Section 2477-m41 for the protection of such employes unless they are relieved from furnishing such insurance by complying with the provisions of Section 2477-m49.

The terms "employe" and "workman," as used in the act, are defined in Section 2477-m16-b, and as so defined expressly exclude public officials, elected or appointed, and therefore members of the board of supervisors would not be included within the terms of the workmen's compensation act.

Section 1527-s3, Supplement to the Code, 1913, provides for the employment by the board of supervisors of a county engineer, his term of office and compensation to be fixed by such board. It is my opinion that the county engineer is not a public official within the meaning of Section 2477-m16-b, and that he is not excluded from the provisions of said act.

It is further provided in Section 2477-m16-b of the act that public contractors who have contracts with counties are not to be considered as employes thereof and hence the county contracting with such public contractors would not be liable to the contractors for compensation in case of personal injury or to the employes of such contractors. In such a case the public contractor would be an employer within the meaning of the act and must, unless he elects

to reject the provisions of such act, compensate his injured employes and carry insurance for their protection in accordance with the provisions of Section 2477-m41.

It is my opinion that members of the board of supervisors and public contractors contracting with such county are not included within the provisions of the workmen's compensation act, but that county engineers and employes working by the day for such counties are included within the terms and provisions of such act.

By the provisions of Section 2477-m41, counties, as well as other employers, are required to insure their liability under such act in some insurance company approved by the state department of insurance and should they fail so to do, they are liable in damages to an injured employe who sustains personal injury which arises out of and in the course of his employment, and the county is no longer permitted to rely upon what is commonly known as the three common law defenses. This is a risk which few counties will care to assume.

Section 2477-m49 provides that employers, including counties, may furnish proof satisfactory to the insurance department of Iowa and to the Iowa industrial commissioner of their solvency and financial ability to pay the compensation provided for under the act, and when they have so done they will be relieved of the necessity of providing the insurance required under Section 2477-m41. This will amount to the county carrying its own insurance. If they do not care to do this, they can secure insurance in any stock company or mutual association which has been approved by the commissioner of insurance.

Yours very truly,
HENRY E. SAMPSON,
Assistant Attorney General.

Cities as Employers.

CITIES AND TOWNS ARE EMPLOYERS—STREET COMMISSIONER, MANAGER OF WATERWORKS, AND OTHERS ARE EMPLOYES—CITIES MUST CARRY INSURANCE, OR BE RELIEVED THEREFROM BY INDUSTRIAL COMMISSIONER AND COMMISSIONER OF INSURANCE.

April 24, 1914.

W. A. TEMPLETON,
Wheaton, Iowa.

DEAR SIR: Your letter of the 18th instant addressed to Frank G. Pierce has been forwarded to me for attention.

In reply to same will say that the last legislature enacted what is generally known as the workmen's compensation act, which you will find in Chapter 8-A, Title XII, Supplement to the Code, 1913. Section 2477-m-b expressly provides that the terms, conditions and provisions of the act shall be exclusive, compulsory and obligatory upon all municipal corporations, cities under special charter and cities under the commission form of government, and also upon all the employes thereof.

The definition of "employe" is broad enough to include your city marshal, your street commissioner and your manager in charge of the waterworks, and would of course include a person employed to perform all of these duties.

Section 2477-m41 provides that in order to avoid certain penalties therein named, it will be necessary for cities and towns to insure their liability under the act, but Section 2477-m49 expressly provides that cities and towns need not provide such insurance if they furnish satisfactory proof to the insurance department and the Iowa industrial commissioner of the city's or town's solvency or financial ability to pay the compensation or benefits provided for by the act and to make such payments to the parties when entitled thereto.

It is my understanding that Hon. Warren Garst, Iowa industrial commissioner, expects to provide blanks upon which you can make a showing of the financial condition of the town of which you are clerk.

Yours very truly,
HENRY E. SAMPSON,
Assistant Attorney General.

Farmers and The Act.

COMPENSATION ACT DOES NOT APPLY TO FARMERS—FARMERS CAN MAKE COMPENSATION ACT A PART OF THEIR CONTRACT WITH THEIR HIRED HELP, AND THEN INSURE THEIR LIABILITY UNDER SUCH CONTRACT.

September 13, 1915.

GEORGE F. COAR,
1313 Insurance Exchange Bldg.,
Chicago, Ill.

DEAR SIR: Your letter of September 8th addressed to Hon. Warren Garst referring to the matter of Juergon Olderog has

been referred to me for attention and in reply to same will say that the Iowa workmen's compensation act, as it appears in Chapter 8-A, Title XII, Supplement to the Code, 1913, does not apply to farmers or those engaged in agricultural pursuits and that no provision is made in said statute whereby farmers and their employes can come within the provisions of such act even by notice of acceptance of such act by the farmer.

However, there can be no objection to the farmer and his farm hand including in the contract of employment a special term providing in effect that the liability of the farmer to his farm hand for all injuries sustained would be governed, controlled and limited by the terms and conditions set forth in the chapter of the law referred to above. If such a provision were inserted in the contract of employment I can see no objection to your company entering into a contract with the farmer by which you agree to indemnify him for any amount which he is required to pay out under his contract of service. You would insure his liability under the contract rather than under the statute. All of these arrangements, however, would be purely matters of contract between the farmer and his farm hand and between the farmer and your company.

In view of the fact that no provision is made for the Iowa workmen's compensation act applying to farmers and those engaged in agricultural pursuits, the Iowa industrial commission would have nothing to do in regard to any such contract which you might make with the farmers of Iowa.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Threshing Machine Operators.

OPERATORS OF THRESHING MACHINES UPON A COMMERCIAL BASIS ARE WITHIN THE ACT WHEN THEY THRESH OTHER PEOPLE'S GRAIN FOR HIRE—A FARMER OPERATING HIS OWN THRESHING MACHINE AND USING SAME EXCLUSIVELY FOR HIS OWN PRIVATE USE IS ENGAGED IN AN AGRICULTURAL PURSUIT, AND THEREFORE EXCLUDED.

July 9, 1914.

DUKEHART MACHINERY COMPANY,
Des Moines, Iowa.

GENTLEMEN: You ask whether or not the operators of threshing machines and their employes are covered by the Iowa workmen's compensation act.

This statute expressly excludes "farm or other laborers engaged in agricultural pursuits," and so the answer to your question depends upon whether or not the employes of these threshing machine operators are farm laborers engaged in agricultural pursuits. If the employer is operating a threshing machine as an independent and separate business and is separating grain for others for hire, it is my opinion that he is engaged in a commercial enterprise that cannot properly be considered as farming or as being engaged in an agricultural pursuit and that both he and his employes are covered by the compensation act. If, however, a farmer buys a threshing machine and uses the same exclusively for his private use and does not separate the grain of his neighbors for hire, it may more properly be said that he is not engaged in a commercial enterprise and that his employes while helping with the threshing are still engaged as farm laborers.

The two cases represent different occupations, and the former would be covered by the act and the latter would be excluded from its provisions.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Sugar Mill Proprietors.

OWNER OF A SUGAR MILL WHO GOES ABOUT COUNTRY OPERATING SAME FOR HIRE IS ENGAGED IN A COMMERCIAL ENTERPRISE AND IS NOT ONE "ENGAGED IN AN AGRICULTURAL PURSUIT."

November 27, 1914.

WALTER J. FLUENT,
Charles City, Iowa.

DEAR SIR: Your letter of November 23d addressed to Hon. Warren Garst has been handed to me for attention, and in reply to same will say that the Iowa workmen's compensation act does not apply to or include "farm or other laborers engaged in agricultural pursuits." (Section 2477-m (a), Supplement to the Code, 1913.)

It is my opinion, however, that when a farmer purchases a sugar cane mill and goes about the community grinding cane for those who employ him for a consideration to do this character of work he is at the time engaged in a commercial enterprise which cannot properly be considered farm work or as an agricultural pursuit. The term "agricultural pursuit" is so defined and limited as to apply to those engaged in the tillage of the soil. The man who is operating a sugar cane mill for hire is not at the time engaged in the tillage of the soil any more than is the owner of a threshing machine who goes about the country threshing grain for these who employ him. The employe who is working for the owner or operator of a sugar cane mill is therefore in my opinion not excluded from the compensation act on the ground that he is a farm laborer. In the event one of the employes of an operator of a sugar cane mill is injured in the course of and arising out of his employment while so employed upon the place of another he is entitled to compensation according to the provisions of the Iowa workmen's compensation act.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Co-operative Companies.

FARMERS' CO-OPERATIVE CREAMERY COMPANIES ARE EMPLOYERS AND MUST PROVIDE INSURANCE OR BE RELIEVED FROM SO DOING.

June 29, 1914.

FARMERS' CO-OPERATIVE CREAMERY COMPANY,
Greene, Iowa.

GENTLEMEN: Replying to your letter of the 27th instant addressed to the attorney general will say that from the information contained in your letter it is my opinion that you are an employer within the meaning of the Iowa workmen's compensation act and that unless you reject the same in accordance with the provisions thereof, you will be bound by its terms.

Section 2477-m41, Supplement to the Code, 1913, requires that you must insure your liability thereunder in some insurance company approved by the insurance department of Iowa. Provision is made, however, in section 2477-m49 whereby you can carry your own insurance if you are able to satisfy the insurance department and the industrial commissioner of Iowa of your financial ability to pay the compensation required under the act and at the times provided for therein.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Charitable Institutions.

CHARITABLE INSTITUTIONS ARE EMPLOYERS AND MUST INSURE THEIR LIABILITY UNLESS RELIEVED AS PROVIDED IN THE STATUTE.

June 26, 1914.

PHIL HOFFMANN,
Oskaloosa, Iowa.

DEAR SIR: Replying to your letter of the 25th instant addressed to the attorney general will say that while this department has not yet prepared a formal opinion upon the question submitted in your letter, yet it is my personal opinion that the Iowa workmen's compensation act applies to and includes charitable institutions such as public hospitals.

The law as originally drafted was only intended to apply to industrial employments carried on by employers for pecuniary gain, but these provisions were afterwards stricken out and the law as finally passed was given a much wider scope and as it now stands includes practically all occupations except farming.

Section 2477-m41, Supplement to the Code, 1913, requires that all employers must insure their liability with some insurance company approved by the insurance department of Iowa and should you fail to do so your status would be not unlike what it would be were you to reject the compensation features of the act. This department cannot advise you as to whether or not you should reject the act or avail yourself of its privileges.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Professional Nurse Not An Employe.

August 18, 1914.

HON. WARREN GARST,
Iowa Industrial Commissioner.

DEAR SIR: The proposition presented by you involves the single legal question of whether or not a professional nurse is an employe within the definition of Section 2477-m16, Supplement to the Code, 1913.

Answering your inquiry will say that in my judgment a professional nurse performing her duties with a skill which is the result of training in that profession is not a servant but rather one who renders a personal service to an employer in pursuit of an independent calling. In this view I am supported by the opinion of the court in the case of Parker vs. Seasongood, 152 Fed., 583, and also by the author of Moll in his work on "Independent contractors and employers' liability."

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Physician Is Not An Employe.

July 19, 1914.

HON. WARREN GARST,
Iowa Industrial Commissioner.

DEAR SIR: You ask to be advised whether or not a practicing physician is an employe, within the meaning of the Iowa workmen's compensation act. Answering your inquiry will say that a physician is engaged in a distinct calling, one in which he is entirely free from the control of his employer. (See the case of Pearl vs. West End Railway Company, 49 L. R. A., 846.)

A physician is, in fact, an independent contractor free from the control or direction of the person employing him. (See York vs. C. M. & St. P. Ry. Co., 98 Iowa, 544; also O'Brien vs. Cunard Steamship Co., 13 L. R. A., 329 and Allan vs. State Steamship Co., 15 L. R. A., 166.)

In view of the foregoing authorities, it is my judgment that your question should be answered in the negative and that a physician is not an employe within the meaning of the Iowa workmen's compensation act.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Church Pastors.

PASTORS OF CHURCHES ARE NOT EMPLOYES.

July 20, 1914.

WM. F. WILEY,
705 Security Bank Bldg., Sioux City, Iowa.

DEAR SIR: Answering your letter of the 14th instant will say that in my judgment pastors of churches are not workmen within the meaning of the Iowa workmen's compensation act.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Public Lecturers.

PUBLIC LECTURERS ARE NOT "WORKMEN."

July 11, 1914.

S. M. HOLLADAY,
Youngerman Bldg., Des Moines, Iowa.

DEAR SIR: Replying to your letter of the 9th instant addressed to the attorney general will say that in my judgment lecturers on your circuit are not employes within the meaning of the Iowa workmen's compensation act and that you would not be obliged to pay them the compensation required under such act or to carry insurance as contemplated by Section 2477-m41, Supplement to the Code, 1913.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Chauffeurs.

CHAUFFEURS ARE EMPLOYEES, UNLESS EMPLOYED UNDER SUCH CIRCUMSTANCES AS TO BRING THEM WITHIN THE EXCLUDED CLASS OF "DOMESTIC OR HOUSEHOLD SERVANTS"—"DOMESTIC SERVANTS" DEFINED.

May 28, 1914.

HON. WARREN GARST,
Iowa Industrial Commissioner.

DEAR SIR: You ask to be advised whether or not a chauffeur employed to operate the employer's private automobile for the pleasure of the employer and his family is covered by the Iowa workmen's compensation act. You state that the chauffeur is employed by the month and that he does not live with the employer under such circumstances as to constitute him a member of the family.

You also ask to be advised whether or not a man employed to tend furnace, mow the lawn and perform various services about the house and premises is covered by the Iowa workmen's compensation act. You state that this man is the husband of the matron of the house, that he and his wife are provided with a room in the house, that they sleep in that room, and that he and his wife eat at the family table.

It is my opinion that the chauffeur would be included within the act for the reason that he does not belong to any one of the several classes of workmen excluded from the act either by the provisions of Section 2477-m (a), or 2477-m16-b, Supplement to the Code, 1913.

The man employed to tend the furnace and work about the house would, in my opinion, be excluded from the act because he is a household servant within the meaning of Section 2477-m (a).

Section 2477-m (a), expressly provides that the Iowa workmen's compensation act shall not apply, among other classes, to

(a) Domestic servants;

(b) Household servants.

The term "domestic servant" means one who lives and works in the house and does not include a servant whose employment is out of doors and not in the house. Bouvier in his law dictionary says that the term "domestic" does not extend to workmen and laborers employed out of doors. Another writer has said that domestic servants are those who receive wages and stay in the house of the person paying and employing them for their services. They are sometimes referred to as menial servants, who are defined as persons retained by others to live within the walls of the house and to perform the work of the household.

A household servant is a servant dwelling under the same roof and under circumstances which make him a member of the family. The word "household" comes from the Latin word "familia." It is generally used to denote persons dwelling together and composing a family. Webster defines the household as those who dwell under the same roof and constitute a family. The status of a household servant is determined rather by his relation to the family than by the character of the service which he performs. If he is taken into the family and occupies a relation such that he could properly be considered a member of that household, then he could with propriety be considered a household servant. I do not understand that private chauffeurs occupy this close relationship with the employer. He usually lives in another house than his employer; he boards at a different table; his laundry is done at a public laundry, his clothes are mended at a public tailor shop, and he does not sustain such close relationship with the employer and his family as would make him a member of the

family. In view of the way in which these terms have been defined by the courts, it is my opinion that it would be improper to consider the private chauffeur as a household servant within the meaning of the Iowa workmen's compensation act and is therefore covered by the act, but that on the other hand, it would be entirely proper to consider a man who worked about the house and lived with the family in the house as a household servant within the meaning of the Iowa workmen's compensation act, and therefore excluded from the act.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Servants.

SERVANTS, WHO ARE—MEMBERS OF PAID ORCHESTRA PERMANENTLY ENGAGED FOR THEATRE, ARE EMPLOYES.

November 16, 1914.

L. W. WARFIELD, Special Agent,
Travelers Insurance Company, Hippee Bldg,
Des Moines, Iowa.

DEAR SIR: You ask to be advised as to whether or not musicians regularly employed to play in theater orchestras are employes within the meaning of Section 2477-m16-b, Supplement to the Code, 1913.

I understand that the members of these orchestras are employed by the management of the theater for a definite period at a regularly fixed salary and that they are subject to the direction and control of the theater management. I also understand that in many cases they are members of the musicians' labor union.

Whether or not these members of the orchestra are employes within the meaning of the Iowa workmen's compensation act depends upon the relationship which exists between them and their employer. They are not employes unless there is the relationship of master and servant which includes the right of the employer to control the way in which the services of such employes are to be rendered. One cannot be a workman or employe unless there is a contract of service, and it should be remembered that a contract *of* service is not a contract *for* services. The former relationship constitutes one an employe and brings him within the purview of the law; the latter relationship makes one an independent contractor, or in other words, a self-serving employe and excludes him from the purview of the law.

The courts have frequently decided who are and who are not employes and who are "servants," and in their opinions we find such language as the following:

"A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master."

"A servant is one who does work under the direction of another, who not only prescribes to the workman the nature of his work, but directs his time as any moment may direct, the means also, or, as it has been put, retains the power of controlling the work."

"The real test by which to determine whether a person is acting as servant of another is to ascertain whether, at the time the injury was inflicted, he was subject to such person's order and control and so liable to be discharged by him for disobedience of orders or misconduct."

"Within the ordinary acceptation of the term one who is engaged to render services in a particular transaction is not an employe. The word implies continued service and excludes those employed for a single transaction."

"The term 'employe' indicates persons hired to work for wages as the employer may direct, and does not embrace the acts of the employment of a person carrying on a distinct trade or calling to perform services independent of the control of the employer."

"An employe is a person bound in some degree at least to the duties of a servant and not a mere contractor bound only to produce, or cause to be produced a certain result."

In the case In re Caldwell, 164 Fed., 515, the court held that musicians at regular wages to play in a theater or other place are "servants" within the meaning of the bankruptcy act. July 1, 1898, c-541, par. 64-b. Lexicographers define these words differently but courts have not considered themselves bound by the definitions found in dictionaries and have construed these words so as to carry into effect the intention of the law-makers, and with this thought in mind it is my opinion that the members of the orchestra would usually be employes within the meaning of the compensation

act. The contract of employment may, however, be such as to change the relationship of the parties so that they would be independent contractors or perhaps employes of the director of the orchestra.

In view of the foregoing it is my opinion that you should carefully examine the contract under which these orchestra members are employed and ascertain the relationship which exists between them and their employer, and if you find that the relationship of master and servant does in fact exist you should consider them as employes within the definition of Section 2477-m16-b, referred to above.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Employes on Commission Basis.

PAYMENT OF EMPLOYE ON COMMISSION BASIS NOT CONTROLLING RELATIONSHIP OF MASTER AND SERVANT MUST EXIST.

October 15, 1914.

HON. WARREN GARST, Iowa Industrial Commissioner.

DEAR SIR: Replying to your inquiry as to whether or not one working upon a commission basis is an employe within the meaning of the Iowa workmen's compensation act will say that the fact that the compensation of such employe is computed on the basis of sales made instead of upon the number of days or weeks spent is unimportant since it is merely a different method of computing the compensation he is to receive for his work. The important element to be considered in cases of this character is the relationship which exists between the parties. One cannot be a workman or employe unless there is a contract of service. There must be the relationship of master and servant which includes the right of the employer to control the way in which the services shall be rendered. Payment of an employe on a commission basis, in whole or in part, or wages or salary does not determine the relation of the employer and the employe. This relationship must be determined rather upon whether or not the employer has control of

the time of the employe and in the manner in which his work is to be performed.

In all such cases it is necessary to carefully examine the contract under which the employe is working.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Liability to Employes of Contractors.

CARPENTERS EMPLOYED BY GENERAL CONTRACTOR ARE NOT EMPLOYES OF THE OWNER OF THE BUILDING BEING CONSTRUCTED, REGARDLESS OF THE FINANCIAL ABILITY OF CONTRACTOR.

February 17, 1915.

WALTER J. FLUENT,
Charles City, Iowa.

DEAR SIR: For answer to your letter of February 16th I am enclosing pamphlet which answers most, if not all, of your questions.

The owner of the building being constructed would be liable, under the compensation act, to carpenters employed by him, if the relationship of master and servant existed between them. If the carpenters were working as or for independent contractors, then there would not be the relationship of master and servant and the owner of the building would not be their employer within the meaning of the act. The owner of the building would not be liable in case of an injury to an employe who was working for a contractor even though the contractor might be without insurance and not financially able to pay the compensation provided by law.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Employes Under Age.

COMPENSATION MUST BE PAID EVEN THOUGH THE INJURED EMPLOYE MAY BE UNDER AGE AND UNLAWFULLY EMPLOYED.

July 13, 1914.

MORRISON RICKER MFG. CO.,
Grinnell, Iowa.

GENTLEMEN: Replying to your letter of the 10th instant addressed to the attorney general will say that under the laws of Iowa it is unlawful for a boy thirteen years of age to work in your factory even under the conditions mentioned in your letter.

However, should he be permitted by you to work in your establishment and while so engaged should sustain a personal injury arising out of and in the course of his employment, it is my judgment that you would still be liable to him for the compensation provided under the Iowa compensation act, unless either one or both of you have elected to reject its provisions.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Extra Territorial.

EXTRA TERRITORIAL EFFECTS OF THE IOWA COMPENSATION ACT—AUTHORITIES CITED.

March 24, 1914.

HON. WARREN GARST, Industrial Commissioner.

DEAR SIR: You ask to be advised when, under the provisions of Chapter 8-A, Title XII, Supplement to the Code, 1913, may the authorities of Iowa enforce the provisions of the compensation act of their state in relation to accidents which happen beyond the border of their own state.

It is my opinion that because of the express provisions of said Chapter 8-A, Title XII, the compensation act of Iowa is broad enough to include accidents which happen beyond the borders of the state of Iowa, and that an employe working for an employer living in Iowa under a contract of employment made in Iowa, can recover compensation according to the terms of said Chapter 8-A,

Title XII, for an accident which occurred outside of the state of Iowa.

Section 2477-m16-d expressly provides that the personal injuries for which compensation shall be allowed "shall include injuries to employes whose services are being performed on, in or about the premises which are occupied, used or controlled by the employer, and *also injuries to those who are engaged elsewhere in places where their employer's business requires their presence* and subjects them to dangers incident to the business." This language is general and broad enough to include injuries occurring without the state.

The Massachusetts court in Mulhall vs. Fallon, 126 Mass. 266, held that it was within the power of the legislature to give the act extra territorial effect. The point to be decided is whether the language quoted above indicates a purpose to make its terms applicable to injuries received outside of the state. This must be determined by a critical examination of the words of the statute in the light of its humane purposes.

The statute further provides that:

"Where the employer and employe have not given notice of an election to reject the terms of this act, every contract of hire, express or implied shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure and pay, and on the part of the employe to accept compensation in the manner as by this act provided for all personal injuries sustained arising out of and in the course of the employment."

This provision of the statute would indicate that there is an implied contract to compensate for injuries arising out of and in the course of the employment. The statute itself may have no extra territorial effect, but it can require a contract to be made by two parties to a hiring, which shall have an extra territorial effect. It would appear that a reasonable construction of the statute is that it writes into the contract of employment certain additional terms. The cause of action of a person injured outside of the state of Iowa is ex-contractu. The lex loci contractus governs the construction of the contract and determines the legal obligations arising from it. 9 Cyc. 664.

If it be conceded that the claim of the injured employe is ex contractu and not ex delicto, the rights of the employe injured be-

yond the borders of the state would be governed by the statute of Iowa.

Deeny vs. Wright & Cobb Co., 36 N. J. L. J., 121;
Ray E. Schwartz, Claim No. 6, Ohio Indust. Brd. July 10, 1912.

Attention should be called to the fact that several courts have taken an opposite view, but under statutes which made the claim of the employe ex delicto instead of ex contractu. In this connection see

Gould's Case, 215 Mass. 480;
Keys Co. vs. Allerdyce, Mich. Indus. Brd., April, 1913;
Ruling of Wisconsin Industrial Com.;
Hicks vs. Maxton, (1907) 1 B. W. C. C. 150;
Tomalin vs. Pierson & Son, (1909) 100 L. T. 685;
Schwartz vs. I. G. & T. Wks. Co., (1912) 2 K. B. 299.

The object of our act is to protect the citizens and inhabitants of Iowa. It is based upon the proposition that the inherent risks of an employment should in justice be placed upon the shoulders of the employer, and that the statute should be interpreted with this intent of the legislature in mind.

Therefore, in view of the foregoing, it is my opinion that the statute of Iowa has an extra territorial effect to the extent indicated above.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Injury Due to Wilful Intent.

COMPENSATION UNCOLLECTIBLE FOR INJURY DUE TO WILFUL INTENT OF THE INJURED EMPLOYE OR ON ACCOUNT OF AN INJURY SUSTAINED BY REASON OF THE INTOXICATION OF INJURED EMPLOYE.

June 3, 1914.

PELLA COMMERCIAL ASSOCIATION,
Pella, Iowa.

GENTLEMEN: Replying to your letter of the 29th ultimo addressed to the attorney general will say that an attack has been made upon the constitutionality of the Iowa workmen's compensation act in the federal court and Hon. Smith McPherson now has the matter under advisement.* We do not expect the law to be held unconstitutional, but as you know, that is a matter for the court.

The law expressly exempts farm or other laborers engaged in agricultural pursuits, but I do not believe that this provision makes the law unconstitutional on the ground of being special or class legislation.

Under the provisions of Section 2477-m41, Supplement to the Code 1913, employers are required to provide insurance and the policy of insurance provides that the insurance company will pay any and all amounts required of the employer under the compensation act and at the time or times provided for therein. If the insurance company makes the payments required of the employer at the time or times required in the act, then there is no further liability on the part of either the employer or the insurance company. The injured employe cannot recover from both the insurance company and the employer.

Section 2477-m1a provides that no compensation shall be allowed for an injury caused by the employe's wilful intention to injure himself, and also that no compensation should be paid to an injured employe if the injury was sustained on account of the intoxication of the employe. If it can be shown that the injured employe purposely violated the instructions of his employer with the wilful intention to injure himself and that as a result of such wilful act he is injured, then he cannot recover compensation, but in my opinion an employe may recover compensation even though he disregard the instructions of his employer and is injured because of such disregard. Many employes do violate instructions without any wilful intention of injuring themselves and the fear of being hurt is, in most instances, sufficient to prevent employes from being grossly careless. The protection of an employer against a careless employe who is constantly violating the rules and thereby endangering himself is to discharge such employe.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

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*The decision of the Hon. Smith McPherson sustained the constitutionality of the act. It has since been appealed to the Supreme Court of the U. S.

No Compensation for Diseases.

IOWA STATUTE PECULIAR IN THAT IT EXCLUDES DISEASES—PNEUMONIA DUE TO EXPOSURE NOT COMPENSATED FOR—COMPENSATION PAID FOR DISEASE DUE TO AN INJURY.

September 21, 1915.

HON. WARREN GARST, Iowa Industrial Commissioner.

DEAR SIR: You ask to be advised as to whether or not, under the Iowa workmen's compensation act, compensation should be paid to an employe who contracts a disease due to exposure received in the course of his employment, and, in answer to your inquiry will say that by the express provisions of sub-division (f) of Section 2477-m16, Supplement to the Code, 1913, the words "injury" and "personal injury" do not include a disease except as it shall result from the injury. Under the provisions of the Iowa statute, an employe who receives a personal injury from which blood poison afterwards develops can recover compensation for the reason that his disease is the result of an injury, but if he contracts pneumonia due to exposure it cannot be said that his pneumonia is the result of any injury and, therefore, he is not entitled to compensation.

Therefore, it is my opinion that, except in those cases where the disease is the result of an injury received by the employe arising out of and in the course of his employment, there can be no recovery of compensation for diseases contracted by the employe in the course of his employment.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Sunstroke.

SUNSTROKE RECEIVED UNDER NORMAL CONDITIONS IS NOT SUCH AN INJURY AS WOULD ENTITLE THE EMPLOYE TO COMPENSATION.

August 5, 1914.

HON. WARREN GARST, Iowa Industrial Commissioner.

DEAR SIR: You ask to be advised whether or not compensation should be paid under the Iowa workmen's compensation act to an

employe who is sunstruck during the course of his employment. Your question cannot be answered either in the affirmative or the negative but must depend upon the facts and circumstances surrounding each case.

It is my opinion that where the employe sustains such injury when put to work at a task which peculiarly exposes him to such injury, he should be paid the compensation provided for in the act. Such was the express holding in the case of Morgan vs. Zenaida (1909) 25 T. L. R. 446; 2 B. W. C. C. 19. In that case the employe, an ordinary seaman, while engaged in painting the vessel while she was lying at a port on the coast of Mexico was incapacitated by sunstroke. The medical evidence was to the effect that the seaman painting the outside of a ship is running a greater risk of sunstroke than while employed on deck because he not only gets the direct rays of the sun, but he also gets the reflected rays from the ship's side.

The foregoing view does not require one to hold that sunstroke received under the circumstances mentioned above is an *accidental* injury, since the Iowa statute applies to "all *personal* injuries." It is sufficient to say that sunstroke received under circumstances such as indicated above should be considered a personal injury.

Sunstroke received under normal conditions has been regarded in some instances as a disease rather than as a personal injury, and except in those cases where you find from the facts that the sunstroke was due to an exposure peculiarly severe because of the nature and location of the employment, I believe you would be warranted in holding that a sunstroke received under ordinary and not unnatural conditions should be treated as an illness due to the weakened condition of the employe rather than as a personal injury, and in all such cases no compensation should be paid.

In writing the foregoing opinion I have not overlooked the following authorities:

Feder vs. I. S. T. M. A., 107 Iowa 538;
Bryant vs. Continental Co., 147 S. W. 636;
Dozier vs. F. & C. Co., 46 Fed. 446;
Sec. 2477-m 16-g, Supp. Code, 1913.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General

Burns from Gasoline.

COMPENSATION IS DUE TO AN EMPLOYE OF A CLOTHES CLEANING ESTABLISHMENT WHEN HE IS BURNED BECAUSE OF THE GASOLINE UPON HIS HANDS.

August 10, 1914.

FRED L. GRAY COMPANY,
Minneapolis, Minn.

GENTLEMEN: Your letter of the 27th ultimo addressed to the Hon. Warren Garst has been laid on my desk for attention and awaited my return to the city.

You ask to be advised whether or not compensation should be paid under the Iowa workmen's compensation act to an injured employe whose work required him to clean clothing with gasoline and who after performing such work and while his hands were still moist with the gasoline undertook to light his pipe and in so doing severely burned his hand.

In the case of Moore vs. Manchester Liners (1910) A. C. 498, the Lord Chancellor said:

"I think an accident befalls a man 'in the course of' his employment if it occurs while he is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time to do that thing."

This rule was afterwards applied in the case of M' Lauchlin vs. Anderson (1911), 48 S. C. L. R. 349; 4 B. W. C. C. 376. In that case a workman was employed as a laborer in connection with loading and unloading wagons and accompanying them while being hauled from one traction engine to another. While sitting on the wagon while being so hauled, he dropped his pipe and in attempting to get down to recover it, lost his balance and fell in front of the wheels of the wagon, which went over his leg, fatally injuring him. The court held that the accident arose out of and in the course of the employment, saying:

"Now this man's operation of getting down from the wagon to recover his pipe seems to satisfy all those conditions. Taking them in their inverse order, he had a right to be at the place riding on or walking beside the wagon. He was within the time during which he was employed because the accident happened during the actual period of transit, and *he was doing a thing which a man while working may reasonably do,—a working man of this sort may reasonably smoke, he may reasonably drop his pipe and he may reasonably pick it up again.*"

In view of the foregoing authorities, it is my opinion that your question should be answered in the affirmative, and this is especially true since the injury was in fact caused by the presence of the gasoline upon his hand due to the nature of his employment. It is an injury which could be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment. It was an injury which can fairly be traced to the employment as a contributing approximate cause and which came from the hazard to which the workman would not have been equally exposed apart from the employment.

The foregoing opinion is supported by the following American authorities:

Employers Liab. Assurance Ass'n., 102 N. E. (Mass.) 697;
Milliken vs. Atowle, 103 N. E. (Mass.) 898;
Johnson vs. London Guarantee & Accident Co., 104 N. E. (Mass.) 735;
In re Hurle, 104 N. E. (Mass.) 336;
In re Donovan, 104 N. E. (Mass.) 431;
Bryant vs. Fissell, 86 Atl. (N. J.) 458;
Zabriskie vs. Erie R. Co., 88 Atl. (N. J.) 824;
Newcomb vs. Allertson, 89 Atl. (N. J.) 928;
Terlecki vs. Straus, 89 Atl. (N. J.) 1023;
Clem vs. Chalmers Motor Co., 144 N. W. (Mich.) 848;
Raynor vs. Sligh, 146 N. W. (Mich.) 665.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Medical and Hospital Services.

EMPLOYER ONLY REQUIRED TO FURNISH SURGICAL, MEDICAL AND HOSPITAL SERVICES DURING FIRST TWO WEEKS, BUT IN NO EVENT IN EXCESS OF $100.00.

February 2, 1915.

DR. H. E. PFEIFFER,
Security Savings Bank Bldg., Cedar Rapids, Iowa.

DEAR SIR: Replying to your letter of January 28th addressed to Attorney General Cosson will say that the employer is required, under Section 2477-m9-b, Supplement to the Code 1913, to furnish reasonable surgical, medical and hospital services and supplies not exceeding $100.00 during the first two weeks of incapacity. It is my understanding that these two provisions are limitations and that the employer is not required to furnish medical services which would cost in excess of $100.00 or to furnish same after the expiration of the two weeks following the necessity for such medical attention, so that if the medical services were of such a character that the reasonable fee therefor during the first ten days following the injury was $100.00, then that would be the extent of the employer's liability, or in the event the medical services were of such a character that a reasonable fee for the same during the first two weeks following the injury would only amount to $75.00 then that amount would be the extent of the liability of the employer.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Surviving Spouse as Dependent.

SURVIVING SPOUSE CONCLUSIVELY PRESUMED TO BE A DEPENDENT OF THE INJURED EMPLOYE—CONDITIONS UNDER WHICH SURVIVING SPOUSE IS NOT ENTITLED TO COMPENSATION.

December 29, 1914.

HON. WARREN GARST, Industrial Commissioner.

DEAR SIR: You ask to be advised whether or not the surviving spouse is wholly dependent upon a deceased employe within the meaning of the Iowa workmen's compensation act.

For answer to your inquiry permit me to refer you to Section 2477-m16-c1, Supplement to the Code, 1913, which provides, in part, as follows:

"The following shall be conclusively presumed to be wholly dependent upon a deceased employe:

"(1) The surviving spouse unless it be shown that the survivor willfully deserted deceased without fault upon the part of the deceased, and if it be shown that the survivor deserted without fault upon the part of deceased, the survivor shall not be regarded as a dependent in any degree. No surviving spouse shall be entitled to the benefits of this act unless she shall have been married to the deceased at the time of the injury."

You will observe from the foregoing provision of the statute that the surviving spouse is not entitled to compensation if it is shown that—

(a) She was not married to the deceased at the time of the injury.

(b) That she wilfully deserted deceased without fault upon the part of the deceased.

Under the provisions of the Iowa act, it is immaterial that the surviving spouse was a wage earner and helping to support herself at the time of the injury.

Therefore, it is my opinion that the surviving spouse of a deceased employe killed from an injury arising out of and in the course of his employment is entitled to a weekly payment equal to 50% of the average weekly wages of the deceased at the time of his injury, not to exceed $10.00 per week, for a period of 300 weeks, provided said surviving spouse was married to the deceased at the time of the injury and had not deserted deceased without fault on the part of said deceased.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Injury Due to Third Party.

EMPLOYE CAN PROCEED AGAINST EITHER THE EMPLOYER FOR COMPENSATION OR THE THIRD PARTY CAUSING SUCH INJURY FOR DAMAGES—EXTENT OF RECOVERY—SUBROGATION.

April 1, 1915.

E. H. CROCKER, Attorney,
Cedar Rapids, Iowa.

DEAR SIR: Your letter of March 30th, addressed to Hon. Warren Garst, has been handed to me for attention.

You ask for an interpretation of Section 2477-m6, Supplement to the Code, 1913.

For answer to your first inquiry permit me to say that as I understand said Section 2477-m6, the injured employe may proceed against both the employer for his compensation and against the third person who caused the injury to recover damages, and that the amount of damages which he may recover from such third person is not limited by the amount of compensation to which he is entitled under the Iowa workmen's compensation act. The employe gets the excess of damage, if any, over the amount of compensation to which he is entitled.

Answering your second question will say that it is my understanding that if an injured employe recovers compensation from his employer under the provisions of the Iowa workmen's compensation act, and if the injury was caused under circumstances creating a legal liability in some third person, that then the employer is subrogated to the rights of the employe and can institute an action against such third party to recover any and all sums which he had paid his injured employe on account of such personal injuries. The law does not seem to contemplate permitting the employer to recover from said third party any amount in excess of the compensation to such injured employe. If the amount of damage sustained by the injured employe is in excess of the compensation paid, the injured employe may sue said third party for such amount even though he has already recovered full compensation in accordance with the provisions of the Iowa workmen's compensation act.

The foregoing appeals to me as a fair interpretation of Section 2477-m6, but I am unable to cite any authorities expressly in point upon the specific questions submitted in your letter. In view of the great variance in the language of the statutes of the several states and because of their recent enactment it is difficult to find authorities which are directly in point upon these propositions. Should I discover any cases within the next few days that would be of particular value to you I will send you the authorities.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Subrogation.

EMPLOYER WHO HAS PAID COMPENSATION CAN RECOVER FROM THE PARTY CAUSING THE INJURY FOR AMOUNT PAID OUT FOR DOCTER BILLS.

March 27, 1915.

LESTER M. CALDWELL, Adjuster,
City National Bank Bldg., Omaha, Nebraska.

DEAR SIR: Replying to your letter, No. 3071—Andrew Johnson re Sam Amos, addressed to Hon. Warren Garst, will say that in my opinion the "compensation" referred to in line 3 of paragraph "a," Section 2477-m6, Supplement to the Code, 1913, is broad enough to include not only the compensation paid out by the employer under Section 2477-m9, paragraphs d, e, f, g, h, i and j, but also any payments made under paragraphs b and c of said Section 2477-m9 on account of injuries to one of his employes.

Conceding that the foregoing is a fair interpretation of the statutory provisions of the workmen's compensation act, then your company is relieved under said Section 2477-m6 from paying the doctor bill for statutory medical aid rendered Mr. Sam Amos by Dr. Whitaker, provided the total sum of the said doctor bill and the compensation to which the said Amos was entitled to under the law after the second week was less than the amount of damages recovered by Mr. Amos from the Chicago Northwestern Ry., which as I recall was compromised and settled for $200.00.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Compensation Payable Weekly.

COMPENSATION MUST BE PAID WEEKLY, EXCEPT IN CASES OF LUMP SUM SETTLEMENT.

May 15, 1914.

HON. WARREN GARST, Iowa Industrial Commissioner.

DEAR SIR: You ask to be advised whether or not the provisions of Chapter 8-A, Title XII, Supplement to the Code, 1913, require all employers to make the payments required under such act weekly, or whether they could be made semi-monthly, monthly, annually, or at the end of the period for which payment is to be made.

Section 2477-m-a of said chapter expressly provides that the employer shall pay the compensation according to the terms, conditions and provisions of the act.

Section 2477-m9d provides that in case of death the employer shall pay a "*weekly* payment."

Section 2477-m9e makes use of the language, "the weekly compensation to be paid as aforesaid," also "when weekly payments have been made."

Section 2477-m9j provides a schedule of compensation based upon daily wages to be paid for a stipulated number of weeks.

I know of no other provisions of the act which refer to the time of payment. It is true that section 15 provides for lump settlements in cases where the district judge is satisfied that it would be better than " future monthly or weekly payments, as the case may be," but this provision was written at a time when the act provided for both weekly and monthly payments, but in later drafts of the bill the provision for monthly payments was stricken out and hence the reference in this section of the act has no real bearing upon the question submitted.

Section 2477-m49 permits an employer to satisfy the insurance department and the Iowa industrial commissioner of his solvency and financial ability to pay the compensation in the amount and at the time required by this act. This provision does not, however, give anyone the authority to fix the time when payments required under this act shall be paid,—that having been determined by the statute itself.

It is therefore my opinion that there is no provision in the Iowa workmen's compensation act which permits employers to make

the payments required thereunder except *weekly*, unless an arrangement is made for the payment in a lump sum, in accordance with the special provisions found in Section 2477-m14.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Employer Primarily Liable.

EMPLOYER PRIMARILY LIABLE TO INJURED EMPLOYE, EVEN WHERE CARRYING COMPENSATION INSURANCE.

August 4, 1914.

RUHL & MITTLEBUSCHER,
Davenport, Iowa.

GENTLEMEN: Your letter of the 23d ultimo addressed to the attorney general was placed on my desk and awaited my return to the city. In answer to same will say that it is my personal judgment that under the Iowa compensation act an employer is primarily liable to the injured employe for the compensation provided by said act, regardless of any arrangement made with a third party (insurance company) to carry this risk, and that if for any reason said insurance company becomes insolvent and fails to pay the compensation required under the act, the employer would still be liable for all compensation legally due and owing such injured employe.

The thought underlying this statute is the protection of the dependents of employes injured in our industrial activities, and the law not only places the duty upon the employer to pay the compensation but also requires such employer who is not financially able to carry such risk and is not relieved from so doing, to insure his liability under the act in some company, association or organization which has been approved by the commissioner of insurance.

Yours very truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Wilful Intent to Injure Himself.

MEANING OF THE LANGUAGE "WILFUL INTENTION TO INJURE HIMSELF" INCLUDES MORE THAN MERE NEGLIGENCE.

September 12, 1914.

HON. WARREN GARST, Iowa Industrial Commissioner.

DEAR SIR: You ask for an interpretation of Section 2477-m1, Supplement to the Code, 1913, and particularly as to the meaning of the words "wilful intention to injure himself" found in said section.

Answering your inquiry will say that in my judgment this language means much more than mere negligence or even gross or culpable negligence. It involves conduct which is of a quasi-criminal nature—the intentional doing of something either with the knowledge that it will result in serious injury or with a wanton disregard of its probable consequences.

An employe might act through thoughtlessness or inattention. His acts may be clearly imprudent or even negligent. He may go about the performance of his duties in a way contrary to the rules or instructions of the employer. He may even violate an order of the employer not to work about machinery until the same has been stopped, but, in my judgment, none of these acts of the employe constitute wilful intention to injure himself as that language is used in this statute.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

Compensation Insurance Required.

EMPLOYE INJURED PRIOR TO JULY 1, 1914, CANNOT RECOVER COMPENSATION—EMPLOYER REFUSING TO PROVIDE COMPENSATION INSURANCE LIABLE TO INJURED EMPLOYE IN SAME MANNER AS THOUGH HE REJECTED THE ACT.

September 28, 1914.

HON. WARREN GARST, Iowa Industrial Commissioner.

DEAR SIR: Your letter of September 11th, together with letter received by you from the M. & St. L. R. R. Co., has been referred to me for reply.

Your question briefly stated is whether or not the M. & St. L. is entitled to arbitration in the case of J. E. Nash, and whether or not you should call for the formation of a committee of arbitration in accordance with the provisions of Section 2477-m26 of the Iowa workmen's compensation act to pass upon this case.

The facts of this case stated chronologically are as follows:

July 4, 1913, parts 2 and 3 of the Iowa workmen's compensation act became effective.

July 1, 1914, part 1 of said act became effective.

July 7, 1914, J. E. Nash, an employe of the M. & St. L. R. R. Co., was injured.

July 15, 1914, J. E. Nash died as the result of said injury.

July 21, 1914, application made by the M. & St. L. R. R. Co. to carry its own insurance as provided by Sec. 2477-m49, Supp. to Code, 1913.

July 21, 1914, M. & St. L. R. R. Co. released from the necessity of complying with the provisions of Section 2477-m41, said release expressly providing that it is good for the term of one year *from July 21, 1914,* unless sooner revoked.

September 8, 1914, request of M. & St. L. R. R. Co., for the appointment of arbitration committee.

The further facts should be stated that J. E. Nash has not made application to you for arbitration, and has not even made demand upon the said railroad company for compensation, and does not claim any compensation whatever but on the other hand affirmatively states that he does not desire compensation. It would therefore seem that there was nothing to arbitrate between the parties and that there is no necessity for the appointment of a board of arbitration.

Insurance by the employer of his liability under the compensation act is a necessary and fundamental principle of the law not only for the purpose of insuring prompt and certain payment of compensation but for the further purpose of distributing the compensation to injured employes in such a manner that it is paid by the consumers—by society for whom these injured employes are laboring. Therefore the act expressly provides in Section 2477-m41 that "every employer subject to the provisions of this act, *shall insure his liability thereunder* in some corporation, association or organization approved by the state department of insurance. * * *"

So essential is the providing of this insurance that the act seeks to compel every employer to provide same by penalizing them for failure so to do, hence it expressly provides that, "if such employer refuses *or neglects to comply with this section* he shall be liable in case of injury to any workman in his employ under part 1 of this act."

To correctly understand the intention of the legislature in using this language it should be said that this sentence was taken bodily from Section 32 of the bill proposed by the Missouri commission, which act was divided into several parts, Part 1 of which was devoted exclusively to employer's liability. The legislature, therefore, intended, following the Missouri plan, to penalize every employer who neglected to provide insurance by fixing his liability as under the common law modified by Sections 2477-m(c)1, 2, 3, and 4, Supplement to the Code, 1913. To give this language any other interpretation would take out every element of penalty and nullify an essential feature of this act.

This provision making those employers who fail to provide insurance liable to their injured employes under common law as modified by said Section 2477-m(c) is one of the provisions referred to at the beginning of Section 2477-m(a) in the language "except as by this act otherwise provided."

It is true that an employer may be relieved under Section 2477-m49 from the necessity of complying with Section 2477-m41 thereof if he makes application to and is relieved by the Iowa industrial commissioner and the insurance department of Iowa from the necessity of complying with said Section 2477-m41.

Neither the language in Section 2477-m41, nor any other language of the act gives the employer thirty days from the 1st day of July, 1914, in which to be relieved from providing such insurance as contemplated in said Section 2477-m49. Part I became effective on the 1st day of July, 1914, and every employer in Iowa from and after that date had a definite liability under said act and unless that liability was covered by insurance from and after the 1st day of July, 1914, or unless such employer had complied with Section 2477-m49 he had not complied with the express provisions of the act and was therefore in default from and after the 1st day of July, 1914, and subject to the penalty provided for such default as set forth in the last sentence of said Section 2477-m41.

As you have stated the facts, the M. & St. L. R. R. Co. was, in my opinion, in default from the 1st day of July, 1914, until the 21st day of July, 1914, when they were released from the necessity of complying with Section 2477-m41 requiring insurance. It was therefore in default on the 7th day of July, 1914, the date of the injury, and on the 15th day of July, 1914, the date of the death of the injured employe, and hence their liability for this injury would be fixed by the provisions of the common law as modified by said Sections 2477-m(c)1, 2, 3 and 4. They are not in a position to claim the advantages of compensation for the reason that at the time of the injury they were without insurance and had not at that time been relieved from the necessity of providing same.

In view of the foregoing I give it as my opinion that the case of J. E Nash is not one which comes under the compensation features of the act, that it is not one which can be arbitrated under Section 2477-m26, that there is nothing to be arbitrated since the injured employe is making no demand for compensation, that you as the Iowa Industrial Commissioner have no jurisdiction over this case, and that therefore you may legally deny the request of the M. & St. L. R. R. Co. for the formation of a committee of arbitration to consider the same of the said J. E. Nash. The facts of this case may bring it within the provisions of the Federal employer's liability act.

Section 2477-m2a provides that "the rights and remedies provided in this act for an employe on account of an injury shall be exclusive of all other rights and remedies of such employe, his personal or legal representatives, dependents or next of kin, * * *" and should the M. & St. L. R. R. Co. be correct in its contention it can plead this provision in defense to any suit hereafter brought by the legal representatives of J. E. Nash at common law on account of the injuries received on July 7, 1914, and their rights will be fully protected by the court.

Yours truly,

HENRY E. SAMPSON,
Assistant Attorney General.

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