

## Workers' Compensation & Loaned Employees

Are you sharing an employee with another school district? Do you know who is responsible if a work injury occurs?

Most districts are under the impression that Wisconsin Statute Section 66.0301 relates to an intergovernmental agreement for shared services; however, the terms of an intergovernmental agreement sharing an employee does not explain which district will be considered an employer in the event the shared employee is injured.

Most districts mistakenly believe the district acting as the fiscal agent and loaning the employee would be responsible for workers' compensation regardless of which district the injury occurred at. To determine where the employer and employee relationship exists and which district is responsible for providing workers' compensation benefits for the loaned employee, you must consider the Loaned Employee Doctrine:

1. Did the injured worker actually or impliedly consent to work for the borrowing employer?
2. Whose work was the injured worker performing at the time of the injury?
3. Which employer had the right to control the details of the work being performed?
4. For whose primary benefit was the work being done?

The Loaned Employee Doctrine is a four-part test developed by the Supreme Court when they ruled on *the Seaman Body Corporation v. Industrial Commission* case in 1931. In this case, *Seaman Body Corporation* loaned an employee to Charles Abresch & Company to help complete an order Abresch was working on for Seaman. While working for Abresch, the employee was injured. The court found Abresch legally responsible for the worker's compensation benefits after applying the four-part test to the case. The Supreme Court found, "the burden to compensate is placed upon the special employer whose work is being performed and upon the industry in which the employee is engaged and which is being primarily promoted."

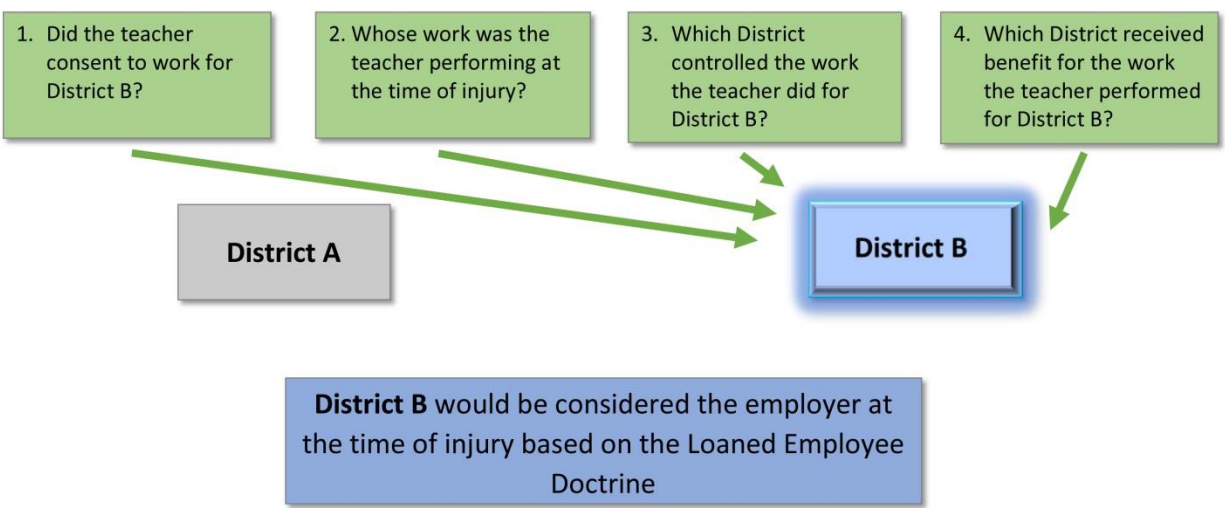
"The rationale of the Loaned Employee Doctrine is supported by the intent and purpose of the Wisconsin Workers' Compensation Act, which is to burden the industry for which work is being done with the liability of a work injury," according to Attorney Jennifer Barwinski (Kasdorf, Lewis & Swietlik). "The Loaned Employee Doctrine is also supported by the joint/dual employment theory. Under this theory, dual employment occurs when employees are separately controlled by each employer, especially as defined by a specific contract. Again, the employer for which work is being done at the time of injury is liable for workers' compensation benefits." The illustration below is a typical example of how school districts share an employee and how the Loaned Employee Doctrine comes into play:

**School District A**

- Agreed to share a teacher with neighboring District B
- Teacher agreed to work for borrowing District B
- Teacher worked 50% of the time for District A
- Agreed to remain the fiscal agent and accept reimbursement from District B for 50% of the teachers wages
- District A performs their own individual review of teachers performance

**School District B**

- Agreed to borrow teacher from District A
- Teacher worked 50% of the time for District B
- Reimbursed District A for 50% of the teachers wages
- District B performs their own individual review of teachers performance
- District B has control and primary benefit over the work the teacher performs for District B



Being considered a loaned employee prevents the teacher from bringing any tort action against District B. Exclusive Remedy would apply instead, since District B is considered the employer at the time of injury. If the Loaned Employee Doctrine did not apply, then District B would be vulnerable to any tort action brought on by the injured teacher.

While you may be sharing an employee, you are not sharing workers' compensation insurance. In addition to worker's compensation, Districts should also be aware of Joint Employer issues under the Fair Labor Standards Act and the Patient Protection and Affordable Care Act.

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