CHAPTER 5

Insurance and Self‑Insurance

**SECTION 42‑5‑10.** Employer shall secure payment of compensation; extent of liability.

 Every employer who accepts the compensation provisions of this title shall secure the payment of compensation to his employees in the manner provided in this chapter. While such security remains in force he or those conducting his business shall only be liable to any employee who elects to come under this title for personal injury or death by accident to the extent and in the manner specified in this title.

HISTORY: 1962 Code Section 72‑401; 1952 Code Section 72‑401; 1942 Code Section 7035‑10; 1936 (39) 1231.

CROSS REFERENCES

Standards for licensing in‑home care providers, see S.C. Code of Regulations R. 61‑122.

Library References

Workers’ Compensation 1062, 1065.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 779 to 781, 783 to 785, 796 to 799.

RESEARCH REFERENCES

ALR Library

13 ALR 5th 289 , Breach of Assumed Duty to Inspect Property as Ground for Liability to Third Party.

Treatises and Practice Aids

Couch on Insurance Section 133:7, Compulsory and Elective Statutes.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Workmen’s Compensation. 30 S.C. L. Rev. 177.

NOTES OF DECISIONS

In general 1

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1. In general

A contractor’s employee who participated in the removal of obsolete equipment to make room for new equipment in a paper mill, and who was injured while engaged in the removal, was a statutory employee of the mill under the provisions of Section 42‑1‑400, where the removal operation was part of the trade, business or occupation of the mill. Furthermore, the employee’s exclusive remedy was under the provisions of Sections 42‑1‑540 and 42‑5‑10. Wright v. Westvaco Corp. (D.C.S.C. 1981) 522 F.Supp. 775. Workers’ Compensation 288; Workers’ Compensation 2164

A hospital that provided medical services to an injured worker, allegedly in reliance on representations made by the workers’ compensation insurance carrier, did not have standing to seek redress before the Workers’ Compensation Commission. Baker Hosp. v. Firemans Fund Ins. Co. (S.C. 1994) 314 S.C. 98, 441 S.E.2d 822. Workers’ Compensation 1191

The Workers’ Compensation Act did not bar an action against a workers’ compensation insurance carrier brought by a hospital to recover for medical services provided to an injured worker on the basis of representations allegedly made by the carrier, since the allegations of the complaint indicated that the carrier “guaranteed” payment of the worker’s hospital expenses, and the complaint contained sufficient facts to establish contract claims regardless of any other party’s claims under workers’ compensation law. Baker Hosp. v. Firemans Fund Ins. Co. (S.C. 1994) 314 S.C. 98, 441 S.E.2d 822.

The protection of Section 42‑5‑10 does not extend to independent contractors performing work pursuant to their contract with the employer of the injured person. King v. Daniel Intern. Corp. (S.C. 1982) 278 S.C. 350, 296 S.E.2d 335.

Trip to and from eating establishment, as well as taking meals themselves, while on out of town business trip are within course and scope of employment unless circumstances attending taking of meal constitutes deviation. Merritt v. Smith (S.C. 1977) 269 S.C. 301, 237 S.E.2d 366. Workers’ Compensation 714

Benefits provided by the Workmen’s Compensation Act are the exclusive remedy of an injured employee against his employer or those conducting his business. Boykin v. Prioleau (S.C. 1971) 255 S.C. 437, 179 S.E.2d 599.

2. Immunity of co‑employee

The language “those conducting his business” should be construed to include any person who, as an employee of a covered employer, is performing any work incident to the employer’s business, regardless of whether employed in a menial, supervisory or managerial capacity. Nolan v Daley (1952) 222 SC 407, 73 SE2d 449, commented on in 5 SCLQ 473 (1953). Williams v Bebbington (1966) 247 SC 260, 146 SE2d 853.

An employee, subject with his employer to the provisions of the Workmen’s Compensation Act of this State, whose injury arises out of, and in the course of, his employment cannot maintain an action at common law against his co‑employee, whose negligence caused the injury. Nolan v Daley (1952) 222 SC 407, 73 SE2d 449. Burns v Carolina Power & Light Co. (1951, CA4 SC) 193 F2d 525. Powers v Powers (1962) 239 SC 423, 123 SE2d 646.

Employee injured by actions of coemployee conducting employer’s business is barred by Workers’ Compensation Act from proceeding in tort against coemployee. Neese v. Michelin Tire Corp. (S.C.App. 1996) 324 S.C. 465, 478 S.E.2d 91, certiorari denied. Workers’ Compensation 2084; Workers’ Compensation 2168.1(2)

The exclusivity provisions of Sections 42‑1‑540 and 42‑5‑10 do not extend immunity to a subcontractor sued for negligence by the employee of the business owner, even though under Section 42‑1‑400 the subcontractor becomes a “statutory employee” of the owner for the purposes of workers’ compensation liability, and thus negligence and loss of consortium claims by the employee and her spouse against the subcontractor were not barred. Boone v. Huntington and Guerry Elec. Co. (S.C. 1993) 311 S.C. 550, 430 S.E.2d 507, rehearing denied.

A plaintiff’s claim for slander was not barred by the exclusive remedy provisions of the Workers’ Compensation Act where the plaintiff’s manager, in front of other employees and customers and over the public address system, made statements implying that the plaintiff was having an adulterous affair with another employee and was carrying his child, since the harm flowing from an act of slander is not a “personal injury” within the Act. Dockins v. Ingles Markets, Inc. (S.C. 1991) 306 S.C. 287, 411 S.E.2d 437.

A workers’ compensation insurance carrier enjoys the employer’s immunity under the Workers’ Compensation Act except when the carrier stands in the position of a third party unrelated to its function as a compensation carrier. For example, carriers may perform safety inspections to assess risk and reduce on‑the‑job injuries in order to minimize benefit payments and premium increases; in such a case, safety inspections would be integral to the function of a workers’ compensation carrier. On the other hand, a carrier may contract with an employer as an independent provider of safety inspections undertaking the employer’s legal duty to provide a reasonably safe workplace; in this situation, the carrier would be performing as a third party and would not be immune from liability. Evidence of such an agreement could include specific contractual language or payment of additional fees for these services. Ancrum v. U.S. Fidelity & Guar. Co. (S.C. 1989) 301 S.C. 32, 389 S.E.2d 645.

In a wrongful death and survival action that arose when decedent was killed while being driven home from work by a fellow employee, the trial court improperly granted defendants’ motion for summary judgment, ruling as a matter of law that both the deceased and the driver were acting in the course of their employment at the time of the accident and that plaintiff’s exclusive remedy was therefore under the Workman’s Compensation Act; whether the driver and deceased were in the scope and course of their employment at the time of the accident was an issue to be determined at trial. Fernander v. Thigpen (S.C. 1979) 273 S.C. 28, 253 S.E.2d 512.

Equipment lessor held not immune under Section 44‑5‑10 for act of employee, crane operator who set load of plywood on building roof, causing roof to collapse and kill employee of roofing contractor, where equipment lessor was not conducting contractor’s business but rather, advancing his own, in leasing crane to contractor, and where, at time of accident, crane operator was not under control of contractor so as to be immune from suit as co‑employee of deceased. Parker v. Williams & Madjanik, Inc. (S.C. 1977) 269 S.C. 662, 239 S.E.2d 487.

To be immune from suit under Section 42‑5‑10 as co‑employee of deceased, operator employed by equipment leasing company and loaned to deceased’s employer to operate crane, must have been engaged in course of conduct at time of delict that would have rendered deceased’s employer liable at common law under doctrine respondeat superior. Parker v. Williams & Madjanik, Inc. (S.C. 1977) 269 S.C. 662, 239 S.E.2d 487.

Crane operator sent by lessor of construction equipment to operate crane leased by roofing contractor was not acting as employee of contractor, so as to create co‑employee immunity under Section 42‑5‑10, where (1) contractor owned no cranes of its own and expected crane to be handled by lessor’s employee according to employee’s own judgment, (2) instructions given by contractor to operator were not commands but merely hand signals that relayed information, and (3) lessor could have withdrawn operator at any time during day and substituted another. Parker v. Williams & Madjanik, Inc. (S.C. 1977) 269 S.C. 662, 239 S.E.2d 487.

Trip to restaurant was not such deviation as to remove appellant’s testate or respondent from course and scope of employment so as to deprive respondent of co‑employee immunity under workmen’s compensation statute where fatal accident occurred while respondent was driving company car and both respondent and testate were returning to motel after out of town company meeting. Merritt v. Smith (S.C. 1977) 269 S.C. 301, 237 S.E.2d 366.

Under this section [Code 1962 Section 72‑401] a fellow employee is not exempt from common‑law liability unless at the time of the delict, the employee was performing work incident to the employer’s business under circumstances which, in the absence of an applicable common‑law defense, would have rendered the employer liable at common law, for the acts of the employee under the doctrine of respondeat superior. Boykin v. Prioleau (S.C. 1971) 255 S.C. 437, 179 S.E.2d 599.

Fellow employees are not exempt from common‑law liability when they are not required to perform or are not performing any work incident to the employer’s business at the time of the accident. Williams v. Bebbington (S.C. 1966) 247 S.C. 260, 146 S.E.2d 853.

3. Agreement not to sue

Public policy did not preclude enforcement of agreement whereby employer, which had opted out of workers’ compensation coverage, agreed to pay medical bills and lost wages for employees who become injured, in exchange for employees’ agreement not to sue employer; agreement mirrored Workers’ Compensation trade‑off. Wilson v. Builders Transport, Inc. (S.C.App. 1998) 330 S.C. 287, 498 S.E.2d 674, rehearing denied. Workers’ Compensation 1141

**SECTION 42‑5‑20.** Insurance or proof of financial ability to pay required.

 Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or mutual insurance association formed by a group of employers so authorized or shall furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title. The commission may, under such rules and regulations as it may prescribe, permit two or more employers in businesses of a similar nature to enter into agreements to pool their liabilities under the Workers’ Compensation Law for the purpose of qualifying as self‑insurers. In the case of self‑insurers the commission shall require the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred. The Workers’ Compensation Commission shall have exclusive jurisdiction of group self‑insurers under this section, and such group self‑insurers shall not be deemed to be insurance companies and shall not be regulated by the Department of Insurance. Provided, further, that if any provision is made for the recognition of reinsurance of the self‑insured fund, such provision shall expressly provide that the reinsurance agreement or treaty must recognize the right of the claimant to recover directly from the reinsurer and that such agreement shall provide for privity between the reinsurer and the workers’ compensation claimant.

 In lieu of submitting audited financial statements when an employer makes an application to self‑insure with the commission, the commission shall accept the sworn statement or affidavit of an independent auditor verifying the financial condition of the employer according to the required financial ratios and guidelines established by regulation of the commission. The independent auditor must be a certified public accountant using generally acceptable accounting principles in the preparation of the financial statements of the employer.

HISTORY: 1962 Code Section 72‑402; 1952 Code Section 72‑402; 1942 Code Section 7035‑70; 1936 (39) 1231; 1974 (58) 2214; 1994 Act No. 459, Section 2, eff June 16, 1994.

Library References

Workers’ Compensation 1058, 1061.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 765 to 767, 800 to 806.

NOTES OF DECISIONS

In general 1

1. In general

Statutory employer’s alleged umbrella insurance policy did not transform it into a self‑insured employer for workers’ compensation purposes, and because statutory employer procured the requisite insurance policy and was not self‑insured, the insurance carrier bore the responsibility of filing proof of insurance coverage. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 1058

Partnership who hired management company to oversee plantation could not claim statutory employer immunity under exclusivity remedy provision of Workers’ Compensation Act for management company employee’s injuries, where partnership did not provide any form of workers’ compensation insurance to employee. Harrell v. Pineland Plantation, Ltd. (S.C.App. 1997) 329 S.C. 185, 494 S.E.2d 123, rehearing denied, certiorari granted, affirmed 337 S.C. 313, 523 S.E.2d 766. Workers’ Compensation 212

**SECTION 42‑5‑25.** Temporary workers’ compensation coverage for applicant to approved self‑insurance fund.

 (A) An approved self‑insurance fund may provide temporary coverage for an applicant if he:

 (1) submits to the self‑insurance division the required completed and signed forms, including, but not limited to, an application form with the same fee required for permanent membership in a self‑insurance fund;

 (2) qualifies for membership in the fund;

 (3) qualifies under the by‑laws of the fund;

 (4) operates a business similar in nature to the businesses in the fund;

 (5) is financially sound and meets or exceeds the minimum net worth requirements established for permanent membership in a self‑insurance fund;

 (6) notifies the division in writing on or before the coverage date.

 (B) Upon receipt and review of the documents described in subsection (A), the division shall notify the fund within two business days whether temporary membership is granted. If the division does not notify the fund of its decision within two business days, temporary membership is deemed granted.

 (C) Temporary coverage expires when the full commission approves the applicant or thirty days after the full commission rejects the applicant. The effective date on the certificate for self‑insurance must show the original, temporary, coverage date.

HISTORY: 1992 Act No. 460, Section 1, eff June 15, 1992.

Library References

Workers’ Compensation 1064, 1072.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 768, 780 to 785, 787, 789 to 799.

**SECTION 42‑5‑30.** Employer shall file evidence of compliance with Title.

 Every employer accepting the compensation provisions of this title shall file with the commission, in form prescribed by it, annually or as often as may be necessary evidence of his compliance with the provisions of Section 42‑5‑20 and all others relating thereto. In the event an employer shall insure his liability under this title with an insurance carrier, the insurance carrier shall be required to make the necessary filings.

HISTORY: 1962 Code Section 72‑403; 1952 Code Section 72‑403; 1942 Code Section 7035‑71; 1936 (39) 1231; 1980 Act No. 318, Section 6.

Library References

Workers’ Compensation 1061.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 765 to 767.

NOTES OF DECISIONS

In general 1

1. In general

Evidence that notice was filed with South Carolina Industrial Commission that employer, a foreign corporation, had procured standard workmen’s compensation and employers’ liability policy indorsed and written so as to be applicable in South Carolina, that employer received, but did not reply to, form letter from commission acknowledging receipt of proof of insurance, assigning code numbers to employer and insurer, and instructing with respect to report of accidents, and that employer allocated salary and wages of employees in South Carolina to such state for computation of workmen’s compensation insurance premiums, sufficiently established employer’s election to accept the South Carolina Compensation Act to give commission jurisdiction of compensation claim of South Carolina employee. Yeomans v. Anheuser‑Busch, Inc. (S.C. 1941) 198 S.C. 65, 15 S.E.2d 833, 136 A.L.R. 894.

**SECTION 42‑5‑40.** Penalty for failure to secure payment of compensation.

 Any employer required to secure the payment of compensation under this title who refuses or neglects to secure such compensation shall be punished by a fine of one dollar for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than one hundred dollars for each day of such refusal or neglect, and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this title or at law in an action instituted by the employee or his personal representative against such employer to recover damages for personal injury or death by accident and in any such action such employer shall not be permitted to defend upon any of the grounds mentioned in Section 42‑1‑510.

 The fine provided in this section may be assessed by the commission in an open hearing with the right of review and appeal as in other cases. All fines collected pursuant to this section must be submitted to the general fund.

HISTORY: 1962 Code Section 72‑404; 1952 Code Section 72‑404; 1942 Code Section 7035‑71; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 15, eff July 1, 2007, applicable to injuries that occur on or after that date.

Library References

Workers’ Compensation 1042.17.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1616 to 1618.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 102:5, Noncomplying Employers.

Attorney General’s Opinions

Employee [claimant] should not be barred by doctrines of res judicata and collateral estoppel from litigating issue of whether employer is subject to Workers’ Compensation Act even if this issue has been decided in favor of employer in compliance proceeding brought by Coverage and Compliance Division of Industrial Commission pursuant to Section 42‑5‑40. 1985 Op.Atty.Gen., No. 85‑46, p 142, 1985 WL 166016.

NOTES OF DECISIONS

In general 1

1. In general

An employee may file a common‑law tort action against an employer claiming such employer was within the terms of, but had not complied with, the Workmen’s Compensation Law, without first securing a ruling from the Commission as to his employer’s compliance or noncompliance with the law. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

This section [Code 1962 Section 72‑404] does not require, as a preliminary to an action at law, a finding by the Commission as to the refusal or neglect of the employer to comply with the Act. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

Only the Commission has the power under Code 1962 Section 72‑70 to assess and enforce the collection of the fine under this section [Code 1962 Section 72‑404]. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

If the matter to be decided is the imposition of a fine by way of punishment, only the Commission can make the preliminary determination as to whether or not the employer has complied with the Act. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

If an employer is exempted from the Workmen’s Compensation Act by Code 1962 Section 72‑107 as a county fair association, it is not precluded from making the ordinary common‑law defenses in a suit at common law. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

Partnership who hired management company to oversee plantation could not claim statutory employer immunity under exclusivity remedy provision of Workers’ Compensation Act for management company employee’s injuries, where partnership did not provide any form of workers’ compensation insurance to employee. Harrell v. Pineland Plantation, Ltd. (S.C.App. 1997) 329 S.C. 185, 494 S.E.2d 123, rehearing denied, certiorari granted, affirmed 337 S.C. 313, 523 S.E.2d 766. Workers’ Compensation 212

**SECTION 42‑5‑45.** Penalty for failure of employer to secure payment of compensation.

 Any employer required to secure payment of compensation under this title who wilfully refuses to secure such compensation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not less than thirty days nor more than six months, or both, in the discretion of the court.

HISTORY: 1980 Act No. 318, Section 2.

Library References

Workers’ Compensation 1042.19.

Westlaw Topic No. 413.

**SECTION 42‑5‑50.** Certificate of compliance.

 Whenever an employer has complied with the provisions of Section 42‑5‑20 relating to self‑insurance, the commission shall issue to such employer a certificate, which shall remain in force for a period fixed by the commission. But the commission may, upon at least sixty days’ notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the commission may grant a new certificate to the employer upon his petition.

HISTORY: 1962 Code Section 72‑405; 1952 Code Section 72‑405; 1942 Code Section 7035‑72; 1936 (39) 1231.

Library References

Workers’ Compensation 1075.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 769 to 770.

**SECTION 42‑5‑60.** Insurance deemed subject to title; approval of forms.

 Every policy for the insurance of the compensation provided in this title or against liability therefor shall be deemed to be made subject to provisions of this title. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Director of the Department of Insurance.

HISTORY: 1962 Code Section 72‑406; 1952 Code Section 72‑406; 1942 Code Section 7035‑75; 1936 (39) 1231; 1960 (51) 1646.

Library References

Workers’ Compensation 1062.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 779.

NOTES OF DECISIONS

In general 1

1. In general

Lack of standard coefficients for how loss sensitive rating plan (LSRP) endorsement was to be calculated after end of policy term, and blank LSRP endorsements schedule, did not render premium on LSRP endorsement in workers’ compensation insurance policy in South Carolina inapplicable, or contract “ambiguous” to reasonable person cognizant of assigned risk insurance market, since policy was replete with references to applicability of LSRP endorsement, and certain terms appended to policy provided that plan would be adjusted based upon losses incurred. In re Georgetown Steel Co., LLC (Bkrtcy.D.S.C. 2004) 318 B.R. 313. Workers’ Compensation 1063

The Compensation Law expressly incorporates its terms into all employment agreements and insurance contracts entered into thereunder. Tedars v. Savannah River Veneer Co. (S.C. 1943) 202 S.C. 363, 25 S.E.2d 235, 147 A.L.R. 914.

**SECTION 42‑5‑70.** Clauses required in insurance contracts.

 All policies insuring the payment of compensation under this title must contain a clause to the effect that, as between the employer and the insurer, the notice to or acknowledgment of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer, that jurisdiction of the insured for the purpose of this title shall be jurisdiction of the insurer, that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured employer and that insolvency or bankruptcy of the employer or discharge therein shall not relieve the insurer from the payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

HISTORY: 1962 Code Section 72‑407; 1952 Code Section 72‑407; 1942 Code Section 7035‑73; 1936 (39) 1231.

Library References

Workers’ Compensation 1062, 1071.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 779, 783 to 785, 787, 789 to 799.

**SECTION 42‑5‑80.** Liability of insurer.

 (A) No policy of insurance against liability arising under this title may be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled thereto all benefits conferred by this title, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured or by any default in giving notice required by such policy or otherwise.

 (B) Such agreement must be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

 (C) Any insurer who issues a policy of compensation insurance to an employer not subject to this title may not plead as a defense that the employer is not subject to this title and is estopped to deny coverage.

HISTORY: 1962 Code Section 72‑408; 1952 Code Section 72‑408; 1942 Code Section 7035‑74; 1936 (39) 1231; 1988 Act No. 411, Section 2, eff March 28, 1988.

Library References

Workers’ Compensation 1062.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 779.

NOTES OF DECISIONS

In general 1

1. In general

A workers’ compensation insurance carrier was not estopped from denying coverage to the surviving spouse of a truck driver, who was killed while hauling timber pursuant to a subcontract with the logging company covered by the carrier, where the evidence failed to show that the carrier had charged a premium to cover the driver’s activities. Smith v. Squires Timber Co. (S.C.App. 1992) 308 S.C. 102, 417 S.E.2d 101, rehearing denied, certiorari granted in part, reversed 311 S.C. 321, 428 S.E.2d 878.

Policy as contract between insurer and person entitled to benefits. A workmen’s compensation insurance policy by virtue of this section [Code 1962 Section 72‑408] is, in effect, made a contract or agreement between the insurer and the person or persons entitled to compensation benefits. Carter v. Boyd Const. Co. (S.C. 1971) 255 S.C. 274, 178 S.E.2d 536.

**SECTION 42‑5‑130.** Procedure upon withdrawal of carrier from State.

 Upon the withdrawal of any insurance carrier that has any outstanding liability under this title from doing business in this State the Director of the Department of Insurance shall immediately notify the commission and thereupon the commission shall issue an award against such insurance carrier and commute the installments due any injured employee and immediately have such award docketed in the court of common pleas of the county in which the claimant resides and the commission shall then cause suit to be brought on such judgment in the state of the residence of any such insurance carrier and the proceeds from such judgment, after deducting costs, if any, of the proceeding, shall be turned over to the injured employee, taking from such employee a proper receipt in satisfaction of his claim.

HISTORY: 1962 Code Section 72‑413; 1952 Code Section 72‑413; 1942 Code Section 7035‑76; 1936 (39) 1231; 1937 (40) 613; 1960 (51) 1646.

Library References

Workers’ Compensation 1075.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 769 to 770.

**SECTION 42‑5‑190.** Tax on self‑insurers.

 Every employer carrying his own risk under the provisions of Section 42‑5‑20 shall report under oath to the commission the employer’s actual cost incurred under the provisions of this title. The report must be made in the form prescribed by the commission by the fifteenth day of the third month following the close of the self‑insurer’s fiscal year. The commission shall assess against the actual cost incurred a maintenance tax computed by taking two and one‑half percent of the actual cost of operating under the provisions of this title as determined by the commission. The assessments must be paid to the commission which shall retain in every fiscal year the greater of fifty percent or two million two hundred thousand dollars of the maintenance tax revenues and use these funds to pay the salaries and expenses of the commission. The balance of the maintenance tax revenues must be remitted to the State Treasurer for the credit of the general fund of the State. In the event of failure to pay the tax within fifteen days of the date set forth in this section, the commission may assess against the self‑insurer a penalty of five percent of the unpaid tax. If the self‑insurer fails to pay the tax and penalty within fifteen days of notice by the commission, interest must be added to the amount of the deficiency at the rate of five percent for each month or fraction of a month from the date the tax was due originally until the date the deficiency is paid and the commission may initiate proceedings to withdraw the privilege of self‑insuring in this State. The total maximum interest to be charged may not exceed twenty‑five percent. The penalty under this section is payable to the commission. Fifty percent of the interest must be retained by the commission and used by it as retained maintenance tax revenues are used and the balance of the interest must be remitted to the State Treasurer for the credit of the general fund of the State.

HISTORY: 1962 Code Section 72‑419; 1952 Code Section 72‑419; 1942 Code Section 7035‑76; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 112; 1960 (51) 1646; 1977 Act No. 16; 1989 Act No. 100, Section 2, eff May 22, 1989; 1989 Act No. 153, Section 1, eff June 8, 1989; 2013 Act No. 95, Section 1, eff July 1, 2013.

Editor’s Note

2013 Act No. 95, Section 2, as amended by 2017 Act No. 68, Section 1, provides as follows:

“SECTION 2. This act takes effect July 1, 2017, and must be terminated five years after the effective date of the act unless otherwise authorized by the General Assembly. Beginning on July 1, 2014, and on each July first thereafter, the South Carolina Workers’ Compensation Commission must report to the Chairman of House Ways and Means Committee, the Chairman of Senate Finance Committee, and the Governor the amount of money the agency has received in the previous fiscal year pursuant to this act.”

CROSS REFERENCES

Allocation of collections under this section to State Workmen’s Compensation Insolvency Fund, see Section 42‑7‑200.

Library References

Workers’ Compensation 1075.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 769 to 770.

**SECTION 42‑5‑200.** Employee shall not pay any portion of insurance, self‑insurance fund, or other things required by title.

 No agreement by an employee to pay any portion of any premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this title shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this title shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars.

HISTORY: 1962 Code Section 72‑421; 1952 Code Section 72‑421; 1942 Code Section 7035‑24; 1936 (39) 1231.

Library References

Workers’ Compensation 1071, 2080.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 783 to 785, 787, 789 to 799, 1711 to 1715.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 204:1, Agreements to Pay Compensation Costs.

NOTES OF DECISIONS

In general 1

1. In general

An agreement between an employee and employer for the employee to pay any portion of premiums for benefits required by the Workers’ Compensation Act is invalid. Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co. (S.C.App. 2006) 371 S.C. 365, 638 S.E.2d 109, rehearing denied, certiorari granted, reversed 382 S.C. 295, 676 S.E.2d 700, certiorari denied, certiorari denied 130 S.Ct. 741, 558 U.S. 1048, 175 L.Ed.2d 515. Workers’ Compensation 1822

**SECTION 42‑5‑210.** Insurance carrier subrogated to rights of employer.

 When any employer is insured against liability for compensation with any insurance carrier and such insurance carrier shall have paid any compensation for which the employer is liable or shall have assumed the liability of the employer therefor, it shall be subrogated to all the rights and duties of the employer and may enforce any such rights in its own name or in the name of the injured employee or his personal representative; provided, however, that nothing in this section shall be construed as conferring upon insurance carriers any other or further rights than those existing in the employer at the time of the injury to his employee, anything in the policy of insurance to the contrary notwithstanding.

HISTORY: 1962 Code Section 72‑422; 1952 Code Section 72‑422; 1942 Code Section 7035‑11; 1936 (39) 1231.

CROSS REFERENCES

Construction when proceedings are taken against owner or contractor, see Section 42‑1‑430.

Definition of “injury” and “personal injury”, see Section 42‑1‑160.

Indemnity of principal from subcontractor, see Section 42‑1‑440.

Liability of contractor to workmen of subcontractor, see Section 42‑1‑410.

Liability of owner to workmen of subcontractor, see Section 42‑1‑400.

Liability of subcontractor to workmen of sub‑subcontractor, see Section 42‑1‑420.

Library References

Workers’ Compensation 2188 to 2204.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1801 to 1802, 1808 to 1818, 1820 to 1821, 1825.

NOTES OF DECISIONS

In general 1

1. In general

Contributory negligence of employer constitutes no defense to action brought by his insurance carrier against third party to recover compensation paid. Indemnity Ins. Co. v Odom (1960) 237 SC 167, 116 SE2d 22. American Casualty Co. v South Carolina Gas Co. (1954, DC SC) 124 F Supp 30.

It was the intention of the Act to give the insurance carrier a means of recouping from the third party, the author of the employee’s injuries, the amount paid by it to the injured employee, and was not intended as a shield for the wrongdoer or to penalize the injured party, even though it does have the wholesome effect of preventing an injured employee from obtaining two compensations for the same injury. McLain v. Carolina Power & Light Co., 1959, 172 F.Supp. 273.

Upon payment of award, entire cause of action for alleged wrongful death of employee is assigned to insurance carrier, and the representative of his estate retains no right of action for further damages. Indemnity Ins. Co. of North America v. Odom (S.C. 1960) 237 S.C. 167, 116 S.E.2d 22.

The right given the employer or his insurance carrier under the Act is by statutory assignment rather than strict subrogation and, therefore, does not depend upon equitable principles. Indemnity Ins. Co. of North America v. Odom (S.C. 1960) 237 S.C. 167, 116 S.E.2d 22.

If the employer’s or the insurance carrier’s statutory right of subrogation is destroyed by the act of the employee, the latter’s right to compensation is thereby barred. Taylor v. Mount Vernon‑Woodberry Mills (S.C. 1947) 211 S.C. 414, 45 S.E.2d 809.

**SECTION 42‑5‑220.** Compromises by carrier must be approved.

 No compromise settlement shall be made by the insurance carrier in the exercise of its right of subrogation without the approval of the commission being first had and obtained.

HISTORY: 1962 Code Section 72‑423; 1952 Code Section 72‑423; 1942 Code Section 7035‑11; 1936 (39) 1231.

CROSS REFERENCES

Construction when proceedings are taken against owner or contractor, see Section 42‑1‑430.

Definition of “injury” and “personal injury”, see Section 42‑1‑160.

Indemnity of principal from subcontractor, see Section 42‑1‑440.

Liability of contractor to workmen of subcontractor, see Section 42‑1‑410.

Liability of owner to workmen of subcontractor, see Section 42‑1‑400.

Liability of subcontractor to workmen of sub‑subcontractor, see Section 42‑1‑420.

Library References

Workers’ Compensation 1122.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 876 to 877.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 204:10, Settlement Approval.

**SECTION 42‑5‑230.** Manner in which notice to insurance carrier given.

 Whenever by this chapter or the terms of any policy contract any officer is required to give any notice to an insurance carrier, such notice may be given by delivery or by mailing, by registered letter properly addressed and stamped, to the principal office or general agent of such insurance carrier within this State or to its home office or to the secretary, general agent or chief officer thereof in the United States or the Director of the Department of Insurance.

HISTORY: 1962 Code Section 72‑424; 1952 Code Section 72‑424; 1942 Code Section 7035‑76; 1936 (39) 1231; 1937 (40) 613; 1960 (51) 1646.

Library References

Workers’ Compensation 1045.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 734 to 742.

**SECTION 42‑5‑240.** Penalties.

 Any person who shall act or assume to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of Sections 42‑5‑110, 42‑5‑120, 42‑5‑140 and 42‑5‑150 obligatory upon such person or who shall wilfully make a false or fraudulent statement of the business or conditions of any such insurance carrier or a false or fraudulent return shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment in the discretion of the court.

HISTORY: 1962 Code Section 72‑425; 1952 Code Section 72‑425; 1942 Code Section 7035‑76; 1936 (39) 1231; 1937 (40) 613.

Library References

Workers’ Compensation 2080.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1711 to 1715.

**SECTION 42‑5‑250.** Title not applicable to insurance for single catastrophe hazards.

 This title shall not apply to policies of insurance against loss from explosion of boilers or flywheels or other similar single catastrophe hazards. But nothing contained in this section shall be construed to relieve the employer from liability for injury or death of an employee as a result of such explosion or catastrophe.

HISTORY: 1962 Code Section 72‑426; 1952 Code Section 72‑426; 1942 Code Section 7035‑75; 1936 (39) 1231.

Library References

Workers’ Compensation 1064.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 768, 780 to 785, 796 to 799.

NOTES OF DECISIONS

In general 1

1. In general

Workers’ compensation statute ensuring that catastrophic loss insurance policies are not transmuted into liability policies neither excepts catastrophic explosions from the scope of a workers’ compensation liability policy, nor does it relieve employers of the duty to insure against this hazard. Cason v. Duke Energy Corp. (S.C. 2002) 348 S.C. 544, 560 S.E.2d 891. Workers’ Compensation 1045