

# Understanding Workers' Compensation Jurisdictional Issues in North Carolina

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Jurisdictional issues can play a major role in workers' compensation claims cases, especially when locations of the accident, the employer and the claimant are different. For example, the claimant lives in North Carolina and the employer has an office in North Carolina, but the accident took place outside of North Carolina. Does the North Carolina Industrial Commission have jurisdiction? Not necessarily.

If the accident took place outside North Carolina, ask these three questions before considering accepting the claim:

1. Was the claimant's contract of employment made in North Carolina?
2. Is the employer's principal place of business in North Carolina?
3. Is the claimant's principal place of business within North Carolina?

Only one of these questions needs to be answered in the affirmative for jurisdiction to be established, but make sure to give complex scenarios a closer look. Here, we will consider some of the more common situations arising in jurisdictional disputes.

## Contract of Employment

To determine whether the claimant's contract of employment was made in North Carolina, our courts ask whether the final act necessary to make a binding obligation of employment occurred in North Carolina. This is commonly referred to as the "last act" test. *Murray v. Ahlstrom Indus. Holdings, Inc.*, 131 N.C. App. 294, 506 S.E.2d 724 (1998). An easy example occurs when the claimant accepts the employer's job offer via telephone while physically present in North Carolina.

But what happens when the claimant is required to travel out of state to take and pass certain tests? First, check the employer's job-offer letter for any conditional job-offer language. Does the letter specify that employment is contingent on taking and passing certain tests, such as a driving test or physical examination? If the answer is "no" or there is no job-offer letter, then talk to the employer to determine whether any job offer was made contingent on the claimant successfully passing certain tests.

Where the claimant is required to travel out of state to complete employment paperwork, more likely than not the paperwork is simply a consummation of the employment relationship as opposed to the last act for a binding employment obligation. See *Murray*, 131 N.C. App. at 297, 506 S.E.2d at 726-27.

One question arising with greater frequency is whether a corporate merger absolves the claimant's prior job acceptance? In *Burley v. US Foods*, the Full Commission considered this exact question. *Id.*, I.C. No. X52202, 2013 N.C. Wrk. Comp. LEXIS 189 (Full Commission, June 28, 2013). In their fact-specific analysis, the Commission noted that although the claimant's contract of employment was modified during the merger, modifications of existing contracts are not the same as a contract of employment being "made" in North Carolina. As such, the key inquiry is whether the claimant is offered an entirely new employment contract as a result of the merger as opposed to mere modification of a pre-existing contract.

Please note this decision is on appeal to the Court of Appeals for final adjudication.

### **Employer's Principal Place of Business**

Under North Carolina law, each employer has only one principal place of business and that is where their corporate headquarters are located. Confused about what office constitutes the employer's headquarters? Just find out where the employer's executives are housed (CEO, CFO, COO, etc.) and you've hit the mark. See *Scott v. Amlease Corporation*, I.C. No. 444693, 1995 N.C. Wrk. Comp. LEXIS 5929 (Full Commission, December 15, 1995).

### **Employee's Principal Place of Business**

This final inquiry often arises in the context of long-distance truck drivers or multi-state sales consultants. The test is whether any state "standing alone, has more significant contacts to [the claimant's] employment than the state of North Carolina." *Davis v. Great Coastal Exp.*, 169 N.C. App. 607, 610, 610 S.E.2d 276, 279 (2005). The Commission considers a myriad of factors in determining which state is the "most important, consequential, or influential" to the claimant's employment, including the claimant's route and/or delivery locations, the claimant's dispatch location, the percentage of stops in various states and where the claimant receives their paycheck. See *Perkins v. Arkansas Trucking Services, Inc.*, 351 N.C. 634, 528 S.E.2d 902 (2000).

As with the first inquiry, this question is normally very fact specific. If the claimant lives in North Carolina and spends the same amount of time in North Carolina as in other states, the Commission often stretches to establish jurisdiction. See *Perkins*, at 493.

Jurisdiction can be tricky if you are not clearly apprised of all the facts. Next time a claimant's accident occurs outside North Carolina, talk to the employer to evaluate whether the North Carolina Industrial Commission has proper jurisdiction. A little work at the onset can prevent a lot headache on the back end.

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