

Good example of employment law essay

[Environment](#), [Disaster](#)



PART B: SHORT ANSWER QUESTION (20%)

11. (a) What have employees given up for their rights under the present injury compensation system (Workers Compensation Legislation)?

Answer: The NB Workers Compensation Act is made to benefit the employees in workplace injury. In the case of workplace injury, the provisions under the compensation act, entitles an injured, on duty employee, to get compensation from his/her company. The compensation scheme benefits the employee in one way, and on the other way, seizes their right to take legal actions against their company. For such an occurrence of the mishap, with a third party company, the employees company will bear the expenses on behalf of the employee, including the fees charged by the lawyers and administration.

(b) Do you think they have benefitted from the trade? Why or why not?

Answer: Yes, the workers are benefitted. The provisions of compensations under the NB Workers Compensation Act are an economic relief for the employees and benefits of the compensation scheme reaches to an injured worker faster than the lengthy process of legal battles. So, to meet the economic need during their treatment or absence from work, the act is more effective for the injured workers. In the workplace NB act, the adjustors are legally responsible to take necessary steps in these cases.

27. Frances Martin was employed by Chemical-Cosmetic Distributors to sell its products in a defined territory on a commission basis. Martin was not subject to strict hours of work, but signed a devotion-to-business agreement with Chemical Cosmetic Distributors whereby she agreed devote her time to the sale of their products, subject to her right to sell other non-competing

lines of goods, provided that they did not interfere with her promotion of those Chemical-Cosmetic Distributors. Under the terms of the agreement, she was required to visit each retail outlet in her territory at least once a month and report the sales of each establishment to Chemical-Cosmetic Distributors.

One day Martin was travelling along a country road in her automobile en route to a retail customer of Chemical- Cosmetic Distributors when a young man on a bicycle suddenly appeared in front of her car. She attempted to brake the car, but could not do so in time to avoid a collision. The young man was seriously injured as a result of the accident and, sometime later, brought an action for damages against Martin and Chemical-Cosmetic Distributors. Evidence of the police officer, who investigated the accident, indicated that the accident was largely the fault of Martin.

Discuss the nature of relationship between Martin and Chemical-Cosmetic and advise Chemical Cosmetic Distributors of their liability (if any) in this case and indicate how the matter may be decided by the court.

Answer: Martin was an existing employee of Chemical-Cosmetic Distributors at the time of an accident. As per the terms of an agreement between Martin and Chemical-Cosmetic Distributors; she was required to visit the retail outlets every month as part of her duty. Martin was on her way to retail outlet, when the accident took place. So, according to the rule she was an on duty employee of her organization, during an accident.

In this case, vicarious liability will be charged on the employer. By definition, the rule fixes the responsibility on the organization / supervisors to act on behalf of their employees. Vicarious liability is a strict rule under the

common law rules and regulation category. The court will consider the employment factors and the employee / employer relationship and on the basis of agreement papers signed between Martin and Chemical-Cosmetic Distributors the court will fix the charges of vicarious liability on the employer. There are several various tests, applied to determine the employment relationship between employee and employers and are discussed as follows:

- 1) Control test: This test was developed for the employers to have the authority to select an individual for employment, the right to discipline an employee.
- 2) Fourfold test: This test takes into account the ownership of tools, for example, the test will examine the existence of employee-employer relationship in case of the risk of loss.
- 3) Organization test: This test will examine the existence of economic dependency in an employment relationship.
- 4) Permanency test: This test focuses more, on the permanency of the relationship between employee and employer.