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Pennsylvania Supreme Court Reaffirms Statutory Employer Immunity for General Contractors

WRITTEN BY

Patrick Zancolli | Antonino L. Grillo | Jamey B. Collidge

Introduction

On October 23, the Pennsylvania Supreme Court decided *Yoder v. McCarthy Const. Inc.*,[1] addressing statutory employer immunity in the context of a construction project under the Pennsylvania Workers' Compensation Act.[2] The court's decision reaffirmed longstanding precedent that general contractors may claim statutory employer immunity against tort claims initiated by a subcontractor employee, irrespective of whether they actually pay workers' compensation benefits to an injured subcontractor employee.

Case Background

McCarthy Construction, the general contractor, contracted with the Borough of Norwood to remove and replace the Norwood Public Library's roof. McCarthy subcontracted the roofing work to RRR Contractors, Inc. During construction, the plaintiff, an employee of RRR Contractors, Inc., suffered severe injuries after falling through an uncovered hole while working on the roof. The plaintiff subsequently filed a negligence lawsuit against McCarthy, seeking $5 million in damages.

McCarthy defended against the lawsuit by invoking statutory employer immunity. The trial court rejected McCarthy's defense, finding that the plaintiff was an independent contractor and not an employee of RRR Contractors, Inc. under the test established in *McDonald v. Levinson Steel Co.*[3] As independent contractors are categorically exempt from statutory employer immunity, McCarthy's defense necessarily failed. The Pennsylvania Superior Court vacated the trial court's judgment, concluding that McCarthy was the plaintiff's statutory employer and thus immune from tort liability, and remanded to the trial court to enter judgment in McCarthy's favor.

The plaintiff appealed to the Pennsylvania Supreme Court, challenging the applicability of statutory employer immunity and the longstanding precedents established by the Pennsylvania Supreme Court in *Fonner v. Shandon, Inc*.,[4] *LeFlar v. Gulf Creek Indus. Park #2*,[5] and *McDonald.*

Holding and Legal Analysis

The Supreme Court rejected the plaintiff's many arguments and reaffirmed longstanding precedent regarding the application of statutory employer immunity as established in *Fonner*, *LeFlar*, and *McDonald*. The court recognized the well-traveled policy debate in Pennsylvania regarding statutory employer immunity, but declined to intervene,

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recognizing that any changes must be addressed by the appropriate policy-making branch, *i.e.*, the General Assembly. The Supreme Court's analysis of the plaintiff's arguments is briefly set forth below.

1. Fonner and LeFlar

In addressing *Fonner* and *LeFlar*, the court reaffirmed that (i) a general contractor's statutory employer immunity under the act does not turn on whether the contractor actually paid workers' compensation benefits to the injured worker, and (ii) statutory employers do not waive their immunity under the act for failing to timely plead it because the act deprives the court of jurisdiction, which can be raised at any time.

The plaintiff's arguments, largely couched in fairness principles and allegations of an historical misapplication of the act, asserted that the court must overturn well-settled law. Relying on principles of *stare decisis*, the court found the plaintiff did not provide any "substantial justification" warranting overturning the court's prior decisions in *Fonner* and *LeFlar*. Further, beliefs that the act reflects poor public policy are best expressed to the legislature, not the court.

2. McDonald

Before the trial court, the plaintiff challenged McCarthy's ability to satisfy the first, second, and fourth elements of the *McDonald* test. The court addressed whether the Superior Court's determination that McCarthy established that it qualified as a statutory employer entitled to immunity under the act, and directing the trial court to enter judgment in favor of McCarthy, was appropriate. On this point, the court reversed, holding that the Superior Court lacked a record from which it could conclude that McCarthy satisfied the *McDonald* test. Thus, the court remanded to the trial court to consider whether McCarthy satisfied all five elements of the *McDonald* test such that it was protected under the act.

Conclusion

The Supreme Court of Pennsylvania's decision in *Yoder* reaffirmed decades-old precedent concerning the application of the act and statutory employer immunity. The adherence to the status quo afforded by the *Yoder* decision provides construction project stakeholders with certainty regarding their potential liability in the event of injuries on the job, assuming they satisfy the *McDonald* requirements.

Yoder further highlights the Supreme Court of Pennsylvania's apparent reluctance to allow public policy considerations that are best left to the legislature to influence judicial decision-making.

Troutman Pepper Locke attorneys are well positioned to advise clients navigating construction project disputes between general contractors, subcontractors, and subcontractor employees, and, should the need arise, represent you in such disputes that result in litigation and/or arbitration.

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[1] *Yoder v. McCarthy Const., Inc.*, No. 43 EAP 2024, 2025 WL 2981889 (Pa. Oct. 23, 2025).

[2] Act of June 2, 1915, P.L. 736, *as amended* 77 P.S. §§ 1-041.4, 2501-2710.

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[3] *McDonald v. Levinson Steel Co.*, 153 A. 424 (Pa. 1930). The Court established a five-part test to determine statutory employer status:

1. The general contractor must be under contract with an owner or one in the position of an owner.
2. The general contractor must occupy or control the premises.
3. The general contractor must have contracted with a subcontractor.
4. The work contracted must be a regular or recurrent part of the general contractor's business.
5. The injured worker must be an employee of the subcontractor.

[4] *Fonner v. Shandon, Inc.*, 724 A.2d 903 (Pa. 1999) (holding that the 1974 amendments to the act had not altered the statutory employer doctrine, thereby maintaining the immunity of general contractors from common law negligence suits, even when subcontractors provide workers' compensation insurance and benefits).

[5] *LeFlar v. Gulf Creek Indus. Park #2*, 515 A.2d 875 (Pa. 1986) (holding that the statutory employer defense under Section 203 of the act is unwaivable because it involves the court's subject matter jurisdiction) (emphasis added).

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