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Workmens' Compensation—"In Employment" Under Disability Benefits Law

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to permit harassing and inconsistent actions resulting in unnecessary and prolonged litigation and possibly multiple recoveries."[13]

"IN EMPLOYMENT" UNDER DISABILITY BENEFITS LAW

The New York Disability Benefits Law provides that "employees *in employment* of a covered employer for four or more consecutive weeks . . . shall be eligible for disability benefits. . . . . Every such employee *shall continue to be eligible during such employment*" (emphasis added).[14] Thus, while the Workmen's Compensation Law provides benefits for occupationally-incurred disabilities and the Unemployment Insurance Law for persons, who, though available for work, are unable to continue at work, this law is aimed at bridging the gap between the first two by providing non-occupational disability benefits.[15]

In *Flo v. General Electric Company*,[16] the claimant, a married woman, had been an employee of the General Electric Company for six years when she went on compulsory maternity leave of absence under company rules which required an eight week interval following the birth of the child before the employee could return to work. During the eight week period the claimant was operated upon for causes unrelated to the pregnancy and as a result was disabled for several months.

Claimant applied to the Workmen's Compensation Board, which awarded disability benefits on the ground that the compulsory maternity leave of absence did not constitute a termination of the employment relationship. Upon appeal the Appellate Division dismissed the claim,[17] the majority there taking the view that the employer's liability to pay disability benefits was not dependant on the existence of the employer-employee relationship but, rather upon the ground that the claimant was "in active wage-earning employment at the time."[18]

The Court of Appeals reversed, holding that although the woman was not actually serving her employer during the leave when the disability occurred, the employment relationship had not been severed thereby, and she was entitled to benefits for a disability which, though unrelated to her pregnancy, occurred during her maternity leave.

In each case where the Court has previously construed the meaning of the phrase "in employment" as set forth in Section 203 of the Disability Benefits Law, the interpretation has to a large extent depended on the particular facts. So in *Kriete v. Todd Shipyards*,[19] where an employee had been working

13. Supra note 1 at 230-31, 203 N.Y.S.2d 848 (1960).
14. N.Y. Workmen's Comp. Law, § 203.
15. N.Y. Workmen's Comp. Law § 200.
16. 7 N.Y.2d 96, 195 N.Y.S.2d 652 (1959).
17. 3 A.D.2d 357, 160 N.Y.S.2d 917 (3d Dep't 1957).
18. Id. at 360, 160 N.Y.S.2d 920.
19. 285 App. Div. 36, 135 N.Y.S.2d 471 (3d Dep't 1954), aff'd 308 N.Y. 1027, 127 N.E.2d 866 (1955).

for eleven years under the "shape-up" system and had in the past worked several times for periods of four or more consecutive weeks as Section 203 requires, the Court held that the employment relationship existed under the terms of the statute even though the disability occurred less than two weeks following the employee's return to the job after a leave of absense.

Also relied upon by the Court was *Decker v. Dunkler*,[20] in which the Court previously denied appeal from a decision of the Workmen's Compensation Board awarding disability benefits to an employee whose disability occurred during the period the employee was disabled by reason of an accident covered by the Workmen's Compensation Law. The Board found that the employment relationship was not terminated by the period of "on the job" disability. In relying on this decision the Court here reaffirms the principle laid down in that case, that "the statute should be applied in light of the existing employer-employee relationship."[21]

Viewed in the light of existing cases interpreting the meaning of "in employment" and the employment relationship, it is clear that the Court here construed the leave to be a continuance of the claimant's employment for the purpose of disability benefits and that these terms do not have a fixed, literal meaning for all purposes. Rather, these terms require an interpretation within the context in which they are used. It would seem that in order to find that the statute applies, the Court will require but two factors to be present: that the employee have worked at some time during his employment (by the employer against whom he presently brings his claim) for a period of four or more consecutive weeks,[22] and that the employee be in contemplation of returning to work for his employer.[23]

In construing a statute, a court need not be confined to the literal meaning of the words and the intention is to be gathered from the purpose and underlying policies of the enactment.[24] Thus, this Court's liberal interpretation of the Disability Benefits Law seems to be warranted.

Requirements for Subrogation Under Section 29 of the Workmen's Compensation Law

The New York Workmen's Compensation Law provides that an employee who is injured in the course of his employment by the negligence of a third party is not required to make an election in advance between taking a compensation award or bringing an action against the third party tortfeasor. However, if he chooses to take a compensation award and later decides to pursue his common-law action against the wrongdoer, the action must be commenced not later than six months after the *awarding* of compensation or,

20. 8 A.D.2d 891, 186 N.Y.S.2d 823 (3d Dep't 1959), appeal denied 7 N.Y.2d 705, 193 N.Y.S.2d 1025 (1959).
21. Supra note 16 at 101, 195 N.Y.S.2d 656 (1959).
22. Supra note 19.
23. Supra notes 19 and 20.
24. New York Post Corp. v. Leibowtiz, 2 N.Y.2d 677, 163 N.Y.S.2d 409 (1957).