

# North Carolina Workers' Compensation Update (7)

November 8, 2021

## Media Contact

Powers Tanis

Director of Strategic Marketing and  
Communications 803.221.4907

email@mgclaw.com

## §97-19, Statutory Employment and How Your Subcontractor's Problem Could Become YOUR Problem

In North Carolina, the existence of an employment relationship is the "threshold jurisdictional requirement." In many cases, the existence of this an employer relationship is given little or no thought. However, even if a worker is injured in an otherwise compensable claim, the Industrial Commission cannot award benefits unless the claimant establishes that they were, in fact, an employee. Ostensibly, operating your business as a principal or intermediate contractor *should* create a layer of insulation from liability for work-related injuries sustained by a subcontractor's employees. When an injury occurs on a job site, many contractors (justifiably) believe the worker's direct employer (the subcontractor) bears responsibility for the resulting worker's compensation claim.

Unfortunately, North Carolina's statutory framework is not so straightforward. [N.C. Gen. Stat. § 97-19](#) creates potential liability for a principal/intermediate contractor when a subcontractor's employee is injured.[1] The cases addressing § 97-19 all touch on the idea that the statute creates a "vertical line of liability" beginning at the injured employee and working its way up the line of contracting parties until it reaches a subcontractor/intermediate contractor/principal contractor with workers' compensation coverage. Under §97-19, the principal/intermediate contractor may be treated as the injured worker's "statutory employer," and may be required to provide worker's compensation benefits as if the worker was their direct employee.

Fortunately, §97-19 contains an exclusion that can significantly reduce or even eliminate liability for contractors. In most situations[2], contractors can avoid liability by obtaining a valid certificate of insurance from the subcontractor (confirming that the sub has worker's compensation coverage), or by obtaining a certificate of compliance from the Dept. of Insurance (confirming that the subcontractor is self-insured under N.C. Gen. Stat. §97-93). Typically, the subcontractor's insurance agent prepares the certificate of insurance. Notably, the principal/intermediate contractor must obtain the certificate *at the time of subletting the contract* for work to subcontractor. In practice, this means that contractors need to obtain a valid certificate from their subs *before* allowing the subcontractor to begin working at their job site. Another important caveat is that even when a contractor obtains a valid certificate, they may still be held liable if they are put on notice of a lapse in coverage or policy cancellation prior to the injured worker's date of incident. If that occurs, they should not allow the subcontractor to continue work until the subcontractor secures valid workers' compensation insurance.

One of the more philosophical mediators that I work with once described §97-19's liability framework as "a game of hot potato" where the first party in line who obtained worker's compensation coverage "wins" responsibility for the injury. In order to avoid *winning*, I always encourage contractors to reach out to their insurance carrier or to an experienced worker's compensation attorney to confirm their compliance with §97-19 before allowing a subcontractor to begin working.

#### ABOUT THE AUTHOR

[Chris Bell](#) joined MGC's Wilmington office in July of 2019. His practice focuses on the representation of employers and insurance carriers in workers' compensation cases. Chris has practiced law for nearly a decade, and strives to provide his clients with all of the information and tools that they need in order to make sound legal decisions. He can be contacted by [email](#) or 910.726.1607.

*This legal update is published as a service to our clients and friends. It is intended to provide general information and does not constitute legal advice regarding any specific situation. Past success does not indicate likelihood of success in any future legal representation.*

[1] In relevant part §97-19 notes that, "*Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without obtaining from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with [G.S. 97-93](#) hereof, shall be liable... to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract.*"

[2] For a notable exception, see §97-19.1: *Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor*