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# Recent Developments: Livering v. Richardson's Restaurant: An off Duty Employee Is Entitled to Workers' Compensation Benefits if Injury Is Sustained on Employer's Premises and the Reason for the Employee's Visit Benefits the Employer

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## *Livering v. Richardson's Restaurant:*

### **An Off Duty Employee Is Entitled to Workers' Compensation Benefits if Injury Is Sustained on Employer's Premises and the Reason for the Employee's Visit Benefits the Employer**

By: Cendoria Yvonne Dean

The Court of Appeals of Maryland held an off duty employee is entitled to workers' compensation benefits if the injury is sustained on the employer's premises and the reason for the employee's visit benefits the employer. *Livering v. Richardson's Rest.*, 374 Md. 566, 823 A.2d 687 (2003). The court based its holding on the Maryland Workers' Compensation Act, which is designed to protect employees and provide benefits for injuries sustained while performing work-related duties during the course of employment. *Id.*

Linda Livering ("Livering") was employed by Richardson's Restaurant ("Richardson's") as a salad preparer. Richardson's posted new employee work schedules on the Sunday preceding the Thursday start day. Richardson's had a tendency of changing schedules after posting and, on one occasion, such a change caused Livering to be five hours late for work. Livering did not have a telephone to call and check her schedule. Therefore, on her day off she stopped by the restaurant. As she exited the restaurant she fell on the outside ramp, dislocating and breaking her wrist.

Livering filed a claim with the Maryland Workers' Compensation

Commission, which ruled in favor of the employer. On judicial review, the Circuit Court for Washington County affirmed the Commission's decision. Livering appealed to the Court of Special Appeals of Maryland. However, the Court of Appeals of Maryland granted certiorari on its own motion to determine whether the employee's accidental injury arose out of and during the course of employment in accordance with the Labor and Employment Article of the Annotated Code of Maryland § 9-101(b)(1).

The court commenced its analysis by explaining the purpose of the Maryland Workers' Compensation Act. The Act is a remedial measure protecting workers injured on the job and their families from diversity and is construed in favor of an injured worker. *Id.* at 574, 823 A.2d at 691.

The court next discussed Section 9-101(b)(1). An injured worker's accidental injury must arise out of and occur in the course of employment to qualify for benefits under the statute. *Id.* "Arise out of" refers to the causal connection between the employment and the injury." *Id.*, 823 A.2d at 692. The injury must occur while performing work-related duties or

as an incident to employment to arise out of employment. *Id.* at 574, 823 A.2d at 692. Maryland uses the positional risk test to determine whether an injured worker qualifies for benefits. *Id.* at 575, 823 A.2d at 692. The positional risk test is a "but for" test, based on the contention that employment requirements placed an employee in the position where the injury occurred. *Id.*

The court of appeals cited two cases illustrating the "but for" test. In *Mulready v. Univ. Research Corp.*, an employee fell in a hotel bathtub and was injured while on a business trip. *Id.* at 574, 823 A.2d at 692 (citing *Mulready*, 360 Md. 51, 756 A.2d 575 (2000)). The court concluded, "but for" the employer's travel requirement she would not have been in the hotel. *Id.* In *Montgomery County v. Wade*, a police officer was injured while traveling in a patrol car on personal errands. *Id.* at 576, 823 A.2d at 693 (citing *Wade*, 345 Md. 1, 690 A.2d 990 (1997)). The court concluded, "but for" the department offering a special program where officers could use patrol cars in this manner the officer would not have been injured. *Id.*

The court next determined

whether an injury occurred in the course of employment. *Id.* This requirement refers to where and when the injury occurred and whether the activity was a normal incident of the employment relationship. *Id.* at 577, 823 A.2d at 693. To analyze the “in the course of” test, the court deferred to Maryland law, which recognizes workers injured on an employer’s premises while receiving wages or gathering tools may be eligible for workers’ compensation benefits. *Id.*

The court noted *Consolidated Engr. Co. v. Feikin*, 188 Md. 420, 52 A.2d 913 (1947) and *Nails v. Mkt. Tire Co.*, 29 Md.App. 154, 347 A.2d 564 (1975), to illustrate the application of the “in the course of” test. In *Feikin*, the employee was injured while collecting day wages and the court held an employment contract may continue until wages are actually paid. *Id.* at 578, 823 A.2d at 694. Similarly, in *Nails*, a terminated employee was injured when he returned to the employer’s premises to collect his tools; the court held the injury occurred in the course of employment. *Id.* at 579, 823 A.2d at 694. The court’s position was activities in *Feikin* and *Nails* were “incidents of employment because they comprise part of the employment contract.” *Id.*

The court of appeals then applied these tests to determine whether Livering’s injury arose out of and occurred in the course of employment. Richardson’s constantly changed work schedules,

requiring employees to note the changes. *Id.* at 580, 823 A.2d at 695. Richardson’s did not require employees to go to the restaurant to check work schedules. *Id.* However, Richardson’s was aware that it happened and the practice was not prohibited. *Id.* at 580, 823 A.2d at 695. Therefore, Livering had a duty to check her work schedule, which was incident to her employment and satisfied the positional risk test. *Id.* The court concluded “but for” Livering fulfilling her duty to check her schedule she would not have been injured. *Id.*

Finally, the court of appeals addressed the employer benefit component. Livering was late on one occasion because of a schedule change and was questioned about her tardiness. *Id.* at 571, 823 A.2d at 690. The court concluded Livering checking her schedule was an employment duty to make certain she reported to work on time. *Id.* at 580, 823 A.2d at 695. Therefore, fulfilling this duty benefitted Richardson’s, demonstrating there was “a clear nexus between her work and the injury.” *Id.* at 580, 823 A.2d at 695.

The *Livering* holding will impact Maryland workers’ compensation claims and Maryland employers. The “arise out of and in the course of employment” statutory requirements are not narrowly applied. The circumstances of an accidental injury must be analyzed broadly. Any showing that an employer benefited from employee actions when the employee was injured will most likely result in a

compensable claim for the employee. Employers cannot leave room for implications or assumptions about work schedules or, on a broader note, any aspect of employment or post-employment.