

## OREGON SUPREME COURT

### Gadalean v. SAIF Corp. (In re Comp. of Gadalean)

439 P.3d 965 (Or. 2019) · Decided April 18, 2019

#### SUMMARY

The Oregon Supreme Court held that a commercial truck driver injured during an unpaid preemployment driving test was not a covered worker under Oregon's Workers' Compensation Law. The court concluded that ORS 656.005(30) requires the claimant to have engaged to furnish services with a reasonable expectation of remuneration, and that minimum wage law did not independently establish worker status. The court reversed the Court of Appeals and affirmed the Workers' Compensation Board's denial of coverage.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                       |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Oregon Supreme Court                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Nelson, J.                                                                                                                                                                                                            |
| JURISDICTION          | Oregon                                                                                                                                                                                                                |
| DECIDED               | April 18, 2019                                                                                                                                                                                                        |
| DISPOSITION           | reversed                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | SAIF petitioned the Oregon Supreme Court for review of the Court of Appeals' reversal of the Workers' Compensation Board's denial of claimant's injury claim.                                                         |
| STANDARD OF REVIEW    | The Board's factual findings were binding because neither party challenged them. The court reviewed the legal question whether claimant was a worker under ORS 656.005(30) for errors of law under ORS 183.482(8)(a). |
| PRECEDENTIAL VALUE    | Published Oregon Supreme Court opinion; binding precedent in Oregon.                                                                                                                                                  |
| PARTIES               | Gadalean v. SAIF Corp.                                                                                                                                                                                                |

#### TOPICS

workers compensation

statutory interpretation

administrative law

judicial review of agency action

employment law

## PRACTICE AREAS

workers compensation

employment law

administrative law

## QUESTIONS PRESENTED

1. Whether a claimant injured during an unpaid preemployment driving test qualifies as a worker under ORS 656.005(30).
2. Whether minimum-wage law can supply or imply the remuneration element of the workers' compensation definition of worker.
3. Whether the phrase 'engages to furnish services for a remuneration' requires a reasonable expectation of remuneration.

## HOLDINGS

1. A person qualifies as a worker under ORS 656.005(30) only if the person undertakes an obligation to furnish services with a reasonable expectation of remuneration.
2. Minimum-wage law does not, by itself, convert a person into a worker under ORS 656.005(30) or supply the required reasonable expectation of remuneration.
3. Claimant was not a worker under ORS 656.005(30) because the Board found that he had been told the driving test was unpaid and therefore had no reasonable expectation of remuneration.

## KEY QUOTATIONS

*“a worker is one who satisfies both components of the definition by demonstrating that (1) he or she undertook an obligation to furnish services; and (2) that he or she did so for—with the expected result of—remuneration.”* (at 970)

*“Because the expectation of remuneration arises out of the circumstances of the claimant's relationship with an alleged employer, we also conclude that the claimant's expectation of remuneration must be reasonable in light of the circumstances.”* (at 970)

*“A contract implied in law, whether by function of the minimum wage law or otherwise, is insufficient, standing alone, to fulfill the statutory requirement that a claimant engaged to furnish services 'for a remuneration.'”* (at 970-971)

## FACTUAL BACKGROUND

Claimant applied for a commercial truck-driver position and was required to complete a supervised preemployment driving test. During the test, claimant drove the employer's truck on an actual delivery route and was injured while disconnecting trailer hoses. The employer had not hired claimant, had told him the test was unpaid, and had not given him a written offer or employment tax forms. The Board found that claimant understood the test was unpaid and that employment depended on passing it.

## PROCEDURAL HISTORY

SAIF denied compensability because claimant was not a subject worker when injured during an unpaid preemployment driving test. An administrative law judge affirmed the denial, and the Workers' Compensation Board affirmed on review and reconsideration. The Court of Appeals reversed, holding that claimant was a worker because minimum-wage law entitled him to remuneration for the delivery. The Oregon Supreme Court allowed review, reversed the Court of Appeals, and affirmed the Board.

## DISPOSITION

reversed

## CASES CITED

- Gadalean v. SAIF, 286 Or. App. 227, 398 P.3d 503 (2017)
- Multnomah County Sheriff's Office v. Edwards, 361 Or. 761, 776, 399 P.3d 969 (2017)
- PGE v. Bureau of Labor & Industries, 317 Or. 606, 610-12, 859 P.2d 1143 (1993)
- State v. Gaines, 346 Or. 160, 171-73, 206 P.3d 1042 (2009)
- State v. Dickerson, 356 Or. 822, 829, 345 P.3d 447 (2015)
- State v. Guzek, 322 Or. 245, 265, 906 P.2d 272 (1995)
- State v. Keeney, 323 Or. 309, 316, 918 P.2d 419 (1996)
- Jordan v. SAIF, 343 Or. 208, 217, 167 P.3d 451 (2007)
- Amos v. SAIF, 72 Or. App. 145, 694 P.2d 998 (1985)
- Derenco v. Benj. Franklin Fed. Sav. & Loan Ass'n, 281 Or. 533, 557, 577 P.2d 477 (1978)
- Larisa's Home Care, LLC v. Nichols-Shields, 362 Or. 115, 129 n. 5, 404 P.3d 912 (2017)
- Owen v. Bradley, 231 Or. 94, 103, 371 P.2d 966 (1962)
- Eads v. Borman, 351 Or. 729, 738, 277 P.3d 503 (2012)
- Schaff v. Ray's Land & Sea Food Co., Inc., 334 Or. 94, 99-100, 45 P.3d 936 (2002)
- Smothers v. Gresham Transfer, Inc., 332 Or. 83, 125-26, 23 P.3d 333 (2001)
- Horton v. Oregon Health & Science University, 359 Or. 168, 376 P.3d 998 (2016)
- Clarke v. Oregon Health Sciences University, 343 Or. 581, 616-17, 175 P.3d 418 (2007)