Workers' Compensation: The Hazard of Adopting the Increased-Risk Doctrine When Interpreting "Arising out of"

Paige Haughton*

Introduction

The workers' compensation system was designed to allow employees to recover for employment-related injuries regardless of fault.[1] An employee need not prove an employer was negligent or otherwise contributed to the injury to receive benefits, and in return, the employer pays reduced benefits.[2] This compromise provides efficient compensation to employees while reducing employer liability.[3]

In a typical case reflecting this no-fault system, employees injured at work during working hours receive compensation if they establish a causal connection between the injury and employment, such as an injury occurring while performing work duties.[4] Recently, however, states are increasingly requiring injured employees to prove either that the employer was negligent or responsible for putting the employee at an increased risk.[5] In *Dykhoff v. Xcel Energy*,[6] for example, an employee fell and injured her knee while walking to a required work meeting in company headquarters.[7] The court held the employee could not receive workers' compensation because she could not prove the employer did anything to increase her risk of injury at work.[8] This outcome is not consistent with the purpose and history of the workers' compensation system.

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* University of Minnesota Law School, class of 2017; B.S., North Dakota State University, Political Science, 2014. The author would like to thank Professor Stephen F. Befort, Professor Laura J. Cooper, and the members of the *ABA Journal of Labor & Employment Law* for their help in writing this note, and her mom for inspiring her to write about workers' compensation.

1. 1 Lex K. Larson et al., Larson's Workers' Compensation Law § 1.02 (2016).
2. *Id.* § 1.03(4).
3. *Id.*
4. *See, e.g.*, Circle K Store No. 1131 v. Indus. Comm'n, 796 P.2d 893 (Ariz. 1990).
5. *See, e.g.*, Fetzer v. N.D. Workforce Safety & Ins., 815 N.W.2d 539 (N.D. 2012); Dykhoff v. Xcel Energy, 840 N.W.2d 821 (Minn. 2013).
6. 840 N.W.2d 821 (Minn. 2013).
7. *Id.* at 821, 823–24.
8. *Id.* at 828.

This new trend creates serious problems for employees injured at work. The increased-risk doctrine could preclude many deserving employees from recovering workers' compensation.[9] This Note encourages states to adopt the positional-risk doctrine to determine fault in workers' compensation claims. Part I explores the history and purpose of workers' compensation and describes the approach most states use to determine fault. Part II explains how the increased-risk doctrine undermines the purpose of workers' compensation and leads to unfair outcomes. Part III argues that states should adopt the positional-risk doctrine instead. The Note's appendix provides a comparative chart of states' current approaches to fault determination in workers' compensation cases.

I. Background

A. *History of Workers' Compensation*

1. Pre-Workers' Compensation: Common Law Tort

To fully appreciate the purpose and legal issues surrounding today's workers' compensation system, it is necessary to understand the previous legal framework in the United States. Before workers' compensation statutes were adopted, courts determined liability for work injuries under traditional tort law.[10] The employee was required to show employer negligence.[11] The three main employer defenses were the "fellow-servant" exception, "assumption of risk," and "contributory negligence."[12]

Priestley v Fowler,[13] an 1837 English case, illustrates the fellow-servant defense. In *Priestley*, an employee injured another employee by overloading a van.[14] The court held the master (employer) should not be liable for the servant's (employee's) negligence after referring to "alarming" examples in which a master could be liable for "domestic mishaps due to the negligence of the chambermaid, the coachman, and the cook."[15] Five years later, in *Farwell v. Boston & Worcester Railroad Corp.*,[16] a U.S. court relied on *Priestley* in holding a railroad not liable when its switchman injured another employee.[17] *Farwell* held that if an employer took precautions in hiring and did not contribute to the

9. *See e.g.*, *id.*

10. *See* LARSON ET AL., *supra* note 1, § 2.05 (overview of historical relationship between workplace injuries and tort law).

11. *See id.* § 2.02–2.05 (illustrating early notions of vicarious liability and employers' defenses to employees' negligence claims).

12. *Id.* § 2.03.

13. (1837) 150 Eng. Rep. 1030, 1032–33; 3 M. & W. 1, 5–7.

14. *See id.* at 1030, 3 M. & W. at 1.

15. LARSON ET AL., *supra* note 1, § 2.03.

16. 45 Mass. 49 (4 Met. 49) (1842).

17. *Id.* at 54–62.

injury, the employer would not be liable for its employee's actions because it acted with due diligence.[18]

Farwell also relied in part on the assumption of risk defense, holding the employer not liable for the switchman's behavior because "[t]he plaintiff . . . assumed the risks of the service which he undertook to perform; and one of those risks was his liability to injury from the carelessness of others who were employed by the defendants in the same service."[19] The rationale for the assumption of risk defense is that, if employees were free to work as they pleased, they were also free to refuse dangerous work; employees, by performing dangerous work, thus forfeit any legal claim if an injury occurs.[20]

The third common law employer defense was contributory negligence.[21] This allowed employers to escape liability if the employee contributed to the injury, even if by only a small degree.[22] Because an employer could assert these three defenses, pre-workers' compensation employers were not liable for the majority of workplace injuries.[23] A commission in Illinois, for example, investigated 5,000 industrial accidents and found that "of 614 death cases, the families received nothing in 214 cases . . . and the other cases settled for small sums averaging a few hundred dollars."[24] In many of the settled cases, workers' families were left with almost nothing after attorneys' fees and funeral expenses were deducted.[25]

Employers also struggled under the common law system because when they were found liable, the award size drastically varied.[26] A 1910 New York commission report stated that employers usually paid nothing, but when found liable, they were required to pay up to $5,000.[27] The strength of common law defenses and employers' inability to predict their liability demonstrated the need for a new type of protection for workplace injuries.[28]

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18. *Id.* at 49.

19. *Id.* at 54. *See also* LARSON ET AL., *supra* note 1, § 2.03 (*Priestley* found the employer not liable for the employee's injury because "the servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself . . . ." (quoting Priestley v. Fowler (1837) 150 Eng. Rep. 1030, 1032–33; 3 M. & W. 1, 6)).

20. LARSON *supra* note 1, § 2.03.

21. *Id.*

22. Butterfield v. Forrester (1809) 103 Eng. Rep. 926; 11 EAST, 60; LARSON ET AL., *supra* note 1, § 2.03.

23. LARSON ET AL., *supra* note 1, § 2.05.

24. *Id.*

25. *Id.*

26. *Progressive Ideas*, U.S. DEP'T OF LABOR, https://www.dol.gov/dol/aboutdol/history/mono-regsafepart06.htm (last visited Apr. 10, 2017).

27. LARSON ET AL., *supra* note 1, § 2.05.

28. *See* Gregory P. Guyton, *A Brief History of Workers' Compensation*, 19 IOWA ORTHOPAEDIC J. 106, 106 (1999) (These three defenses "were generally so restrictive they became known as the 'unholy trinity of defenses.'").

2. Transition from Common Law Tort to Workers' Compensation

Prussia was among the first countries to adopt a workers' compensation system.[29] In 1838, one year after *Priestley*, Prussian law made railroads liable to employees for all workplace injuries, except those caused by the employee's own negligence or acts of God.[30] In 1884, Germany adopted a workers' compensation system.[31] The German system included a Sickness Fund, composed of two-thirds of contributions from employees and one-third from employers; an Accident Fund, composed solely of employer contributions; and Disability Insurance, to which employers and employees made equal contributions.[32] The system was motivated by the beliefs that "[i]t is the duty of the state to provide for the sustenance and support of those of its citizens who [cannot] . . . procure subsistence themselves"[33] and that it should be a Christian concern to care for weaker members.[34] In 1897, England enacted the first British Compensation Act.[35]

Workers' compensation systems were not quickly adopted in the United States, despite a vocal movement protesting working conditions of industrial workers.[36] Although workplace injuries rose in number during the industrialization era, employers continued to escape liability through reliance on common law defenses.[37] A 1911 government report demonstrated that Americans realized change was necessary:

> The old methods of manufacture, and even many of the old industries, have become obsolete and have been superseded by rapid, complicated, and hazardous methods growing out of improvements directed towards the cheapening of products, and the ancient relation of employer and employ[ee], under which the employ[ee] generally worked beneath the eyes of the employer, has ceased to exist.
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> Notwithstanding the great changes in the character of the employment and in the hazards, there has been for years practically no

29. *Id.* at 107.

30. LARSON ET AL., *supra* note 1, § 2.06.

31. *Id.*

32. *Id*.

33. JOHN GRAHAM BROOKS, FOURTH SPECIAL REPORT OF THE COMMISSIONER OF LABOR: COMPULSORY INSURANCE IN GERMANY 26 (1893) (alteration in original).

34. JAMES HARRINGTON BOYD, A TREATISE ON THE LAW OF COMPENSATION FOR INJURIES TO WORKMEN UNDER MODERN INDUSTRIAL STATUTES 35 (1913).

35. LARSON ET AL., *supra* note 1, § 2.07.

36. *See* Guyton, *supra* note 28, at 107–08. In the early twentieth century, muckraker authors passionately described the horrors facing industrial workers. *The Jungle*, a novel about the horrors facing the industrial workers and workers in the stockyards, is a famous example. It contains graphic descriptions of the work environment, including the following passage: "[The fertilizer workers'] particular trouble was that they fell into the vats; and when they were fished out, there was never enough of them to be worth exhibiting . . . all but the bones of them had gone out to the world as Durham's Pure Leaf Lard!" (emphasis omitted). SINCLAIR LEWIS, THE JUNGLE (1906).

37. *See* Guyton, *supra* note 28, at 107–08.

> change in the law governing the relation; so that thoughtful persons are almost unanimously of the opinion that the law now governing employer and employ[ee], with respect to injuries done to the latter, in hazardous industrial occupations, is unjust to both employer and employ[ee] and a source of unfair oppression to the employer and a cause of unmerited hardship to the employ[ee].[38]

After analyzing a published account of Germany's workers' compensation system[39] and relying on a U.S. Department of Labor (DOL) report, Congress enacted a compensation statute covering some federal employees in hazardous positions in 1908.[40] States followed suit. In 1910, New York compelled coverage for injuries to employees in hazardous occupations.[41] After a New York state court held compulsory coverage was an unconstitutional taking,[42] New York amended its Constitution in 1913 to allow a compulsory law and enacted another workers' compensation statute.[43] The U.S. Supreme Court upheld the constitutionality of New York's law,[44] and by 1920, forty-two states had adopted a compensation act.[45]

B. The Core Principles of Today's Workers' Compensation System

Understanding workers' compensation litigation requires background covering the system's main principles:

> (a) the basic operating principle is that an employee is automatically entitled to certain benefits whenever the employee suffers a "personal injury by accident arising out of and in the course of employment" . . . (b) negligence and fault are largely immaterial . . . (c) coverage is limited to . . . employee[s] . . . (d) benefits . . . include cash-wage benefits, usually around one-half to two-thirds of . . . weekly wage, and hospital, medical and rehabilitation expenses . . . (e) . . . in exchange for these modest but assured benefits, [employees] give up their common-law right to sue the employer for damages for any injury covered by the

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38. BOYD, *supra* note 34, at 9–10 (alteration in original).

39. Guyton, *supra* note 28, at 108.

40. Act of May 30, 1908, Pub. L. No. 176, 35 Stat. 556 (1908). Under this statute, a variety of specified employees, or others "in hazardous employment . . . injured in the course of such employment . . . shall be entitled to receive for one year . . . the same pay as if [they] continued to be employed . . . [unless] the injury is due to the negligence or misconduct of the employee injured . . . ." *Id.*

41. LARSON ET AL., *supra* note 1, § 2.07.

42. Ives v. S. Buffalo Ry. Co., 94 N.E. 431, 441 (N.Y. 1911) ("[I]n its basic and vital features the right given to the employ[ee] by this statute does not preserve to the employer the 'due process' of law guaranteed by the Constitutions, for it authorizes the taking of the employer's property without his consent and without his fault.").

43. N.Y. Cent. R.R. Co. v. White, 243 U.S. 188, 195–96 (1917). The New York law "require[d] every employer . . . [to] provide compensation . . . for the disability or death of his employee resulting from an accidental personal injury arising out of and in the course of the employment, without regard to fault as a cause . . . ." *Id.* at 192 (alteration in original).

44. *Id.* at 208.

45. LARSON ET AL., *supra* note 1, § 2.08.

> act . . . (h) the employer is required to secure its liability through private insurance, state-fund insurance in some states, or "self-insurance"; thus the burden of compensation liability does not remain upon the employer but passes to the consumer since compensation premiums, as part of the cost of production, will be reflected in the price of the product.[46]

Under this "great compromise," "benefits would be provided to injured workers without regard to fault and, in return, employers would face limited liability."[47] In exchange for assurance of coverage,[48] employee workers' compensation became the exclusive remedy.[49] While workers would not be made whole, they would receive limited damages for their injuries.[50] An employee who qualifies for workers' compensation cannot recover compensatory or punitive damages as one could in a tort action,[51] but instead can obtain only the costs of medical care[52] and a portion of previous income.[53] "The ultimate social philosophy behind compensation liability is belief in the wisdom of providing, in the most efficient . . . and most certain form, financial and medical benefits for the victims of work-connected injuries . . . and of allocating the burden of these payments to . . . the consumer of the product."[54] Thus,

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46. *Id.* § 1.01 (alteration in original).

47. Ann Clayton, *Workers' Compensation: A Background for Social Security Professionals*, 65 SOC. SEC. BULL. 7, 7 (2005).

48. *Id.* at 8–9 (growing delays, difficulties, and unpredictability of injured workers having to prove employer negligence led powerful labor unions to support radical changes).

49. *See, e.g.*, ARIZ. REV. STAT. ANN. § 23-1022 (2016) ("The right to recover compensation pursuant to this chapter for injuries sustained by an employee or for the death of an employee is the *exclusive remedy* against the employer or any co-employee acting in the scope of his employment . . . .") (emphasis added); IND. CODE § 22-3-2-6 (2016) ("The rights and remedies granted to an employee subject to IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident *shall exclude all other rights and remedies* of such employee . . . .") (emphasis added); N.D. CENT. CODE § 65-05-06 (2016) ("The payment of compensation or other benefits by the organization to an injured employee, or to the injured employee's dependents in case death has ensued, *are in lieu of any and all claims for relief whatsoever against the employer* of the injured or deceased employee.") (emphasis added).

50. *See, e.g.*, IND. CODE § 22-3-3-8 (2016) ("With respect to injuries occurring on and after July 1, 1976, causing temporary total disability or total permanent disability for work, there shall be paid to the injured employee . . . compensation equal to sixty-six and two-thirds percent (66⅔%) of his average weekly wages . . . not to exceed five hundred (500) weeks."); MINN. STAT. § 176.101(a) (2016) ("For injury producing temporary total disability, the compensation is 66⅔ percent of the weekly wage at the time of injury.").

51. LARSON ET AL., *supra* note 1, § 1.03(4) (only those injuries that produce disability and affect earning power are compensable and damages in other cases that would result in thousands of dollars are not awarded in workers' compensation cases).

52. *See, e.g.*, N.Y. WORKERS' COMP. LAW § 13-g (McKinney 2015) ("Within forty-five days after a bill has been rendered to the employer by the hospital, physician or self-employed physical or occupational therapist who has rendered treatment pursuant to a referral from the injured employee's authorized physician . . . such employer must pay the bill . . . .").

53. *See supra* note 50.

54. LARSON ET AL., *supra* note 1, § 1.03(2).

workers' compensation is both a win-win system (employers pay limited damages, and employees do not have to prove fault) and a lose-lose system (employers pay even if not negligent, and employees are not made whole).

C. How Courts Determine Whether an Injury Is Compensable

Although each state has its own workers' compensation statute, the main principle behind each law is that "benefits would be provided to injured workers without regard to fault and, in return, employers would face limited liability."[55] To obtain workers' compensation coverage, an employee typically must prove that the injury (1) occurred in the course of employment and (2) arose out of employment.[56] Typically, "in the course of employment . . . refers to the time, place, and circumstances of the incident causing the injury."[57] The "arising out of" requirement is more complicated. States differ in how they apply the "arising out of" requirement, but the three major interpretations of the phrase "arising out of" include the positional-risk, increased-risk, and actual-risk doctrines.[58]

1. Positional-Risk Doctrine

Some states rely on the positional-risk doctrine,[59] which states "[a]n injury arises out of the employment if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where he or she was injured."[60] This doctrine requires compensation even if the employee was injured by a neutral force and the only connection between the employment and the injury is that employment obligations placed the employee in the particular place and time.[61] In *Circle K Store No. 1131 v. Industrial Commission of Arizona*,[62] an employee fell and became injured while throwing away the employer's trash.[63] The employee's job responsibilities included throwing out the trash after each shift.[64] Thus, the court held the employee "would not have been at the place of injury *but for* the duties of her employment."[65] Consequently, the court found that her injuries "arose out of" her employment.[66]

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55. Clayton, *supra* note 47, at 7.
56. LARSON ET AL., *supra* note 1, § 3.01.
57. Dykhoff v. Xcel Energy, 840 N.W.2d 821, 826 (Minn. 2013).
58. LARSON ET AL., *supra* note 1, § 3.01.
59. *See infra* Appendix.
60. LARSON ET AL., *supra* note 1, § 3.05.
61. *Id.*
62. 796 P.2d 893 (Ariz. 1990).
63. *Id.* at 894.
64. *Id.* at 898.
65. *Id.*
66. *Id.*

2. Increased-Risk Doctrine

Other states rely on the increased-risk doctrine, under which an employee must show the injury was caused by an increased risk connected to employment.[67] If an employee was hit by lightning while working on a light pole, this doctrine would find the injury compensable because employment placed the employee at a greater height with close contact to metal, increasing the risk of injury.[68] The Minnesota Supreme Court relied on the increased-risk doctrine in *Dykhoff*, holding the employee did not meet the "arising out of" requirement.[69] In *Dykhoff*, an employee fell and dislocated her left patella while walking to a required training session at her employer's general office.[70] The court found that Dykhoff clearly satisfied the "in the course of" requirement "because her injury occurred within the time and space boundaries of her employment."[71] The court focused on whether the employee's injury met the "arising out of" requirement.[72] There was nothing particularly hazardous about the floor on which she fell; the court found it was "very clean, dry, and flat."[73] The court noted:

> "[T]he phrase 'arising out of' means that there must be some causal connection between the injury and the employment." This causal connection "is supplied if the employment exposes the employee to a hazard which originates on the premises as a part of the working environment, or . . . peculiarly exposes the employee to an external hazard whereby he is subjected to a different and a greater risk than if he had been pursuing his ordinary personal affairs."[74]

The court denied workers' compensation coverage and found the employee did not prove the workplace exposed her to a risk of injury beyond what she would have faced in her everyday life.[75]

3. Actual-Risk Doctrine

The third approach, the actual-risk doctrine, is concerned with whether the risk was specific to that particular job; it does not consider whether the employee could also have been exposed to that risk outside of employment.[76] In *Branco v. Leviton Manufacturing Co.*,[77] for example, a Rhode Island court held an injury compensable when an employee was hit by an automobile while crossing a busy

67. LARSON ET AL., *supra* note 1, § 3.03.
68. *Id.*
69. Dykhoff v. Xcel Energy, 840 N.W.2d 821, 828 (Minn. 2013).
70. *Id.* at 823–24.
71. *Id.* at 826.
72. *Id.*
73. *Id.* at 827.
74. *Id.* at 826.
75. *Id.* at 831.
76. LARSON ET AL., *supra* note 1, § 3.04.
77. 518 A.2d 621 (R.I. 1986).

road between the employee parking lot and the employer's facility.[78] The court reasoned "because [the] employer placed [the employee] in the position of having to negotiate [a busy road] each work day in order to reach his post, the risk entailed in crossing the highway must be considered a condition incident to his employment."[79]

In contrast, an employee stung by a bee at work is an example of an injury found not to be compensable under the actual-risk doctrine.[80] In *Dawson v. A & H Manufacturing Co.*,[81] the court held that the risk of getting stung was not a risk of a stock boy's employment.[82] To be compensable under the actual-risk doctrine, the injury must be a "natural or necessary consequence or incident of the employment or of the conditions under which it is carried on."[83]

D. Most States Use Increased-Risk Doctrine

States disagree about which of the three approaches is best for determining whether an injury "arises out of" employment.[84] Although many courts have adopted the positional-risk doctrine,[85] other courts recently explicitly rejected positional-risk in favor of the increased-risk doctrine.[86] The court in *Dykhoff* illustrates this shift.[87] Before *Dykhoff*, Minnesota workers' compensation cases relied on a test similar to the positional-risk doctrine when determining fault.[88] In *Dykhoff*, however, the Minnesota Supreme Court adopted instead the increased-risk doctrine, holding an employee must show the employer exposed the employee to a condition that increased the risk of injury beyond that created by the employee's non-work life.[89]

Today, most states apply the increased-risk doctrine to determine compensability.[90] Twenty-two states use the increased-risk doctrine, seventeen follow the positional-risk doctrine, seven states use the

78. *Id.* at 623.
79. *Id.* (alteration in original).
80. Dawson v. A & H Mfg. Co., 463 A.2d 519, 520 (R.I. 1983).
81. *Id*.
82. *Id.* at 521–22.
83. Nowicki v. Byrne, 54 A.2d 7, 9 (R.I. 1947) (rejecting compensation to employee hit by stray bullet at work, finding it was not a natural consequence of employment).
84. *See infra* Appendix.
85. *See, e.g.*, Circle K Store No. 1131 v. Indus. Comm'n, 796 P.2d 893, 898 (Ariz. 1990); Milledge v. Oaks, 784 N.E.2d 926, 932–34 (Ind. 2003).
86. *See, e.g.*, Dykhoff v. Xcel Energy, 840 N.W.2d 821, 828 (Minn. 2013).
87. *Id.* at 830.
88. *See, e.g.*, Locke v. Steele Cty., 27 N.W.2d 285, 288 (Minn. 1947) (true test in determining whether injury was compensable was the employee's presence at a place where, and during the time when, her services were required to be performed); Bookman v. Lyle Culvert & Rd. Equip. Co., 190 N.W. 984, 984 (Minn. 1922) (injury arising from presence on street to perform a work duty, even though general public would be exposed to the same risk, was compensable).
89. *Dykhoff*, 840 N.W.2d at 831.
90. LARSON ET AL., *supra* note 1, § 3.03.

actual-risk doctrine, and five states do not explicitly rely on any of the three common doctrines.[91]

II. Problems with the Increased-Risk Doctrine

By applying the increased-risk doctrine, states undermine workers' compensation's purpose and deny employees fair outcomes.

A. *The Increased-Risk Doctrine Is Inconsistent with the History and Purpose of Workers' Compensation*

1. The Increased-Risk Doctrine Requires Courts to Analyze Fault

The increased-risk doctrine is inconsistent with the purpose and history of workers' compensation because it requires courts to analyze fault. Workers' compensation seeks to create an easily administered solution for workplace injuries, in part by eliminating common law defenses that could be available in tort.[92] "It is important to observe that all legislation prior to the workers' compensation acts accepted the basic common law idea that the employer was liable to the employee only for the negligence or fault of the employer . . . ."[93] In a regime in which employees were required to prove fault, few injured employees received compensation. Employers escaped liability for most injuries by relying heavily on common law defenses.[94]

Workers' compensation sought a dramatic departure from common law negligence structures to compensate employees for more workplace injuries.[95] In 1910, around the time workers' compensation started to develop in the United States, a Conference of Commissioners on Compensation for Industrial Accidents was held in Chicago for the federal government and various states to discuss the main features of a new compensation system.[96] One of the main issues was whether "all injuries [should] be covered, irrespective of negligence."[97] The conference decided that 50% of lost wages should be paid without regard to fault or negligence.[98] As states created their own systems, they emphasized repeatedly that compensation would occur regardless of fault to ensure that employers could not rely on common law tort defenses to avoid liability.[99] The proposed systems were essentially

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91. *See infra* Appendix. Washington has eliminated the "arising out of" requirement entirely and instead requires only that an injury or accident be "in the course of" employment. *See* Dennis v. Dep't of Labor & Indus., 745 P.2d 1295, 1302 (Wash. 1987). The appendix includes the District of Columbia.

92. LARSON ET AL., *supra* note 1, § 1.01.

93. *Id.* § 2.05.

94. See *supra* text accompanying notes 23–25.

95. *See* BOYD, *supra* note 34, at 21.

96. *Id.* at 17–18. Illinois, Massachusetts, Minnesota, Montana, New Jersey, New York, Ohio, Washington, Wisconsin, and Connecticut participated in the conference. *Id.*

97. *Id.* at 20.

98. *Id.* at 21.

99. *Id.* at 22; LARSON ET AL., *supra* note 1, § 1.03.

regarded like accident insurance, another cost employers should bear.[100]

Today, however, some courts are starting to accept traditional tort defenses under the increased-risk doctrine. In *Dykhoff*, for example, the court denied compensation based in part because the employer properly maintained its floors.[101] The court noted that the employer's floor met safety standards for slipperiness and concluded the employee did not meet her burden to show the employer failed to maintain a safe work environment.[102] The majority opinion also referenced the administrative judge's determination that "the shoes Dykhoff chose to wear were an equally plausible explanation for Dykhoff's fall."[103] In effect, the court held the employer was not liable because it maintained a safe work environment and the employee's shoes may have contributed to the injury.[104] This is exactly the kind of analysis workers' compensation systems designed to eliminate.

A similar analysis appeared in Illinois in *Brady v. Louis Ruffolo & Sons Construction Co.*[105] In *Brady*, an employee was injured when a truck drove through his office wall while he was sitting at his desk.[106] The issue was whether the employer's office walls were so thin as to put the front employee at risk from oncoming traffic.[107] The court denied compensation saying, "[c]laimant did not present any evidence that another type of structure could reasonably have protected him from the occurrence."[108] Because the employee did not prove the employer's fault or negligence, he could not recover for injuries that would not have occurred had he not been at his work desk. These cases show how the increased-risk doctrine allows courts to consider employer negligence when making workers' compensation determinations. In such cases, common law tort defenses return, contravening workers' compensation fundamental goal of eliminating such defenses.

2. The Increased-Risk Doctrine Precludes Prompt Relief

The increased-risk doctrine also interferes with the objective of providing injured employees an easily administered remedy[109] by requiring courts to engage in a highly fact-intensive inquiry. For exam-

100. BOYD, *supra* note 34, at 10–11.
101. Dykhoff v. Xcel Energy, 840 N.W.2d 821, 827–28 (Minn. 2013).
102. *Id.* at 828.
103. *Id.* at 827–28.
104. *Id.*
105. 578 N.E.2d 921 (Ill. 1991).
106. *Id.* at 922.
107. *Id.* at 923–25.
108. *Id.* at 925.
109. *See* BOYD, *supra* note 34, at 10–11 ("[T]he law should insure [*sic*] to the employ[ee] quick, practically immediate relief by way of support and medical attendance . . . .") (alteration in original).

ple, the compensation judge hearing Dykhoff's claim initially compared her testimony claiming the floor was hard, shiny, and slippery with the employer's claim that the floor was "very clean, dry, and flat."[110] This need for detailed, factually intense testimony only increases the costs of program administration and precludes prompt relief.[111]

The doctrine also requires an employee to show that "he was exposed [to a risk] to a greater degree than the general public."[112] The increased risk can be shown quantitatively or qualitatively.[113] This requires courts to identify the existence of and level of risks to the general public.[114] In *Village of Villa Park v. Illinois Workers' Compensation Commission*, the court held that, in most situations, ascending and descending stairs is a neutral risk, meaning the general public is exposed to the risk to the same degree as an employee.[115] This reasoning would deny compensation for injuries sustained ascending and descending properly designed and maintained stairs.[116] The court, however, recognized that stair use by employees, if more frequent than such use by the general public, could result in an increased risk of injury.[117] Thus, here the court held an employee who climbed stairs six times daily should be compensated because he faced a greater risk of injury than the public.[118] How exactly the court reached that conclusion is unclear. What if an employee never climbs stairs outside of

110. Dykhoff v. Xcel Energy, 840 N.W.2d 821, 824 (Minn. 2013). Specifically, the court considered testimony that the flooring was made of marble and granite, and it was tested to show that the "coefficient of friction" was within safety specifications. *Id. See also, e.g.*, Brady v. Louis Ruffolo & Sons Constr. Co., 578 N.E.2d 921, 922–23 (Ill. 1991) ("The exterior walls of the building were made of corrugated metal about ⅛ inch thick, and the interior walls of claimant's office consisted of plywood affixed to wooden studs.").

111. *See, e.g.*, COLO. REV. STAT. § 8-40-102 (2016) (the intent of workers' compensation is "to assure the quick and efficient delivery of disability and medical benefits to injured workers . . . ."); MINN. STAT. § 176.001 (2016) ("It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers . . . .").

112. Jones v. Indus. Comm'n, 399 N.E.2d 1314, 1315 (Ill. 1980). *See also* Chaparral Boats, Inc. v. Heath, 606 S.E.2d 567, 568 (Ga. Ct. App. 2004) (employee hyperextended knee while walking quickly because she was late for work; court found this injury was not compensable because the employee would have been equally exposed to this risk apart from any condition of employment); Crites v. Ill. Workers' Comp. Comm'n, No. 5-10-0304WC, 2011 Ill. App. Unpub. LEXIS 618, at *3, *13–14 (Ill. App. Ct. Apr. 21, 2011) (employee twisted his body while exiting crane and injured back; court found injury was not compensable because the act of turning and stepping down was no greater than that to which the general public is exposed).

113. *See e.g.*, Vill. of Villa Park v. Ill. Workers' Comp. Comm'n, 3 N.E.3d 885, 890 (Ill. App. Ct. 2013) (quoting Ill. Consol. Tel. Co. v. Indus. Comm'n, 732 N.E.2d 49, 54 (Ill. App. Ct. 2000) (Rakowski, J., specially concurring)).

114. *See e.g.*, *id.*

115. *Id.*

116. *Id.*

117. *See, e.g., id.*

118. *Id.* at 890–91.

work, but was injured the one time she climbed stairs at work? The theory of the increased-risk doctrine is that employers should not be responsible for injuries workers would be exposed to outside of work,[119] but the "general public" test does not accurately measure employees' non-work risk exposure because employees have varying lifestyles.

In *Dykhoff*, for example, the court held the employee was not exposed to a greater risk of falling than the general public.[120] What if one of the reasons she fell was because she was rehearsing a presentation for an upcoming meeting? Tripping while walking is a risk to which the public may be similarly exposed, but would the court consider whether she fell because she was preoccupied with her upcoming presentation, a risk she would not face outside of her employment? Similarly, what if the employee was injured while walking by turning a corner too quickly while sending a work-related text? Would the court hold that average people regularly send text messages while walking, and therefore the employee's job exposed her to no greater risk than the general public? What if this was the first time she ever tried to send a text, but her job required her to multitask and text? Would the court compare her to a population not familiar with cell phones, or the majority of people in her state? These hypotheticals show that the increased-risk doctrine creates litigation issues that require courts to spend more time and resources to assess compensability. The increased-risk doctrine undermines the system's objective to be quick, efficient, and easily administered.

B. The Increased-Risk Doctrine Results in Unjust Outcomes for Employees

The increased-risk doctrine also results in unfair outcomes for claimants. Workers' compensation is referred to as "the great compromise"[121] because benefits are provided to injured workers without regard to fault, and in return, employers face limited liability.[122] Employers already benefit by paying less than full compensation, but applying the increased-risk doctrine would increase the circumstances in which they would pay nothing at all. Employees are supposed to benefit by receiving quick and efficient payments without proving fault. Under the increased-risk doctrine, however, employees must

119. *See, e.g.*, Brady v. Louis Ruffolo & Sons Constr. Co., 578 N.E.2d 921, 924 (Ill. 1991) ("If an industrial accident is caused by a risk unrelated to the nature of the employment . . . but results instead from a hazard to which the claimant would have been equally exposed apart from his work, the injury cannot be said to arise out of the employment.").

120. Dykhoff v. Xcel Energy, 840 N.W.2d 821, 827 (Minn. 2013).

121. *See supra* text accompanying notes 46–54.

122. Clayton, *supra* note 47, at 7.

prove that their occupation or employer placed them at an increased risk, requiring costly and lengthy litigation.[123] Under the increased-risk doctrine, employees still cannot recover full benefits, but now they have lost the benefit of the legislated bargain. What had been the employer's typical cost of doing business[124] now becomes a cost transferred to injured employees. Additionally, even those employees able to demonstrate a right to compensation under the increased-risk doctrine face recoveries significantly delayed by coverage disputes.[125] The increased-risk doctrine tips the scales of the bargain toward employers while giving nothing to employees in return.

III. States Should Adopt the Positional-Risk Test

Instead of following the increased-risk or actual-risk doctrines, states should use the positional-risk doctrine. The positional-risk doctrine considers whether the injury would not have occurred but for the fact that the conditions and obligations of employment placed the employee in the position where the injury occurred.[126]

A. The Positional-Risk Doctrine Is Superior to the Increased-Risk Doctrine

The positional-risk doctrine is superior to the increased-risk doctrine because it is more consistent with the purpose and history of workers' compensation.[127] As observed in *Dykhoff* and other increased-risk cases, determining whether an employee was at an increased risk compared to the general public requires time, costly experts and data, and generally creates more issues for litigation.[128] By comparison, the positional-risk doctrine is relatively easy to apply. It merely requires courts to determine whether an injury would not have occurred but for the conditions and obligations of employment placing the employee in the position where the injury occurred. This doctrine furthers the goal of ensuring that workers' compensation remains a quick, efficient, and easily administered system.

Some courts rejecting the positional-risk doctrine argue that it is inconsistent with the rules of statutory interpretation because it melds two different statutory requirements—"in the course of" and "arising out of"—into one requirement. In *Mitchell v. Clark County School Dis-*

123. *See generally* LARSON ET AL., *supra* note 1, § 3.03, and text accompanying notes 101–08.

124. *See* James B. Rasking, *Reviving the Democratic Vision of Labor Law Governing the Workplace: The Future of Labor and Employment Law*, 42 HASTINGS L.J. 1067 (1991).

125. *See, e.g.*, Brady v. Louis Ruffolo & Sons Constr. Co., 578 N.E.2d 921, 922 (Ill. 1991) (court assessed depth of office wall to determine whether injury was compensable).

126. *See, e.g.*, Livering v. Richardson's Rest., 823 A.2d 687, 692 (Md. 2003).

127. *See supra* text accompanying note 46–53.

128. *See supra* text accompanying notes 109–11.

trict,[129] the court noted that the Nevada workers' compensation statute requires the claimant to show that the injury arose out of and in the course of employment.[130] "Because the positional-risk test reduces the employee's burden and requires only a showing that the employee sustained an injury on the job, it directly contravenes the language [of the statute]."[131] Cases have shown, however, that causation analysis is still relevant in jurisdictions adopting the positional-risk test. In *Hampton v. Intech Contracting, LLC*,[132] an employee working on a bridge became hypoglycemic.[133] After becoming disoriented, he climbed on the bridge guardrail and jumped off.[134] The court found that, although the bridge was maintained properly, the bridge's condition was irrelevant.[135] Instead, the court looked at the causal connection between the employee's injury and his job, and held that, had the employee not been working on a bridge of that height, his injuries would not have been as serious.[136] This court properly used the positional-risk doctrine to find the employee's job contributed to the cause of his injuries.

B. The Positional-Risk Doctrine Is Superior to the Actual-Risk Doctrine

This positional-risk doctrine's but-for causation analysis also makes it superior to the actual-risk doctrine. In *Lipsey v. Case*,[137] an actual-risk case, a horse farm employee was viciously attacked by her co-worker's dog.[138] The employer allowed the dog to roam freely on the farm during working hours.[139] The court held the employee's injury did not arise out of her employment. The court determined that "[n]othing about the nature or character of her work, *i.e.*, the care and training of horses, reasonably could have exposed or subjected her to the danger of being bitten by a co-worker's pet dog."[140] Because the court concluded the bite was not a natural incident of farm work, the employee could not recover under Virginia's Workers' Compensation Act.[141] In the court's analysis, the injury was not a foreseeable risk of the employee's work, and thus no causal connection existed between

129. 111 P.3d 1104 (Nev. 2005).
130. *Id.* at 1106–07.
131. *Id.*
132. No. 2011-SC-000741-WC, 2013 WL 1188040 (Ky. Mar. 21, 2013).
133. *Id.* at *1.
134. *Id.* at *2.
135. *Id.* at *4.
136. *Id.*
137. 445 S.E.2d 105 (Va. 1994).
138. *Id.* at 106.
139. *Id.*
140. *Id.* at 107.
141. *Id.*

employment and the injury.[142] The employee's injury, however, did result from her employment. The employer allowed a dog to run freely at the workplace, creating the risk of the injury suffered.[143] The employee would not have been bitten but for her employer exposing her to those conditions. The positional-risk doctrine, unlike the actual-risk doctrine, allows compensation for injuries caused by the employer or the conditions of employment, regardless of whether the incident giving rise to the injury was foreseeable.

C. The Positional-Risk Doctrine Is Consistent with the Objective That Employers Bear the Cost of Workplace Injuries as a Cost of Doing Business

One could argue that a liberal causation standard will increase employers' workers' compensation premiums. Increased costs could result from "moral hazard," the concept that people will overuse insurance and alter behavior because they have the security of insurance.[144] However, moral hazard is already accounted for by limiting workers' compensation benefits.[145] Workers' compensation typically only pays two-thirds of an employee's lost wages and related medical costs.[146] Employees therefore already have no incentive to overuse or abuse the system.

An employer's workers' compensation premium could also increase because the positional-risk doctrine would compensate more injuries. It should be of no concern, however, that the positional-risk doctrine results in more compensable injuries. Workers' compensation was designed to put this risk on employers for the very purpose of covering more workers.[147] Workplace injuries are inevitable. When a workplace injury occurs, we first must consider: (1) Who can best bear the cost of a workplace injury? (2) Who can allocate the cost of that injury? (3) Who can better control the risk of an injury occurring? Employers are better situated both to bear the risk and allocate the risk because they can pass the extra cost to customers. This was understood in the early development of workers' compensation:

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142. *See id.* ("It simply is not apparent to a rational mind . . . that a causal connection exists between the conditions of [the] required work and [the employee's] injury.") (alteration in original).

143. *Id.* at 106.

144. FRANCESCO PARISI, THE LANGUAGE OF LAW AND ECONOMICS: A DICTIONARY 187–88 (2013).

145. PRICE V. FISHBACK & SHAWN EVERETT KANTOR, A PRELUDE TO THE WELFARE STATE: THE ORIGINS OF WORKERS' COMPENSATION 3 (2000) ("When introduced, the workers' compensation programs also worked to prevent moral hazard by limiting the payments to two-thirds and often much less of lost earnings.").

146. *See, e.g.*, IND. CODE § 22-3-3-8 (2016) (compensation equal to two-thirds of average weekly wage); MINN. STAT. § 176.101(1)(a) (2016) (compensation is two-thirds of weekly wage at time of injury).

147. LARSON ET AL., *supra* note 1, § 1.01.

> [I]t seems fitting that some device spreading this burden throughout the whole industry shall be created, and the employer protected from oppression by law suits and prolonged litigation, and the employ[ee] relieved from the necessity of seeking redress in the courts for loss of ability to earn a livelihood, of which he has been deprived by accident. . . . [I]t seems more feasible to impose the whole burden upon industry because, like all the other losses growing out of depreciation in machinery and in the plant and other expenses, this added charge will be taken care of in the prices obtained by the employer for the products of the industry.[148]

Additionally, employers can better control risks than employees. In *Brady*, a case determining causation under the increased-risk doctrine, an employee needed permanent life support for injuries caused by a truck that barreled through his office wall.[149] This injury was found non-compensable because the public was at equal risk of being hit by a truck driving off the street.[150] The employee "was required to work eight hours a day, five days a week, in a thin-walled sheet metal structure that was situated less than 50 feet from a heavily traveled highway."[151] The employer could control this risk, while the employee could not. The employer chose its business location, its desks, and each employee's location within the workplace.[152] Employers are better able to bear, allocate, and control the risk of workplace injuries.

Some argue that certain risks, such as idiopathic falls, truly are not in employers' control, so employers should not have to compensate employees for such injuries.[153] But if employers do not compensate injured employees, who should bear the cost? How can a person be self-supporting after a disabling workplace injury? Should public welfare benefits support these employees? Should employers have no responsibility for life-altering injuries? Workers' compensation contemplated this question and determined that a system of social insurance funded by employer contributions was the best response.[154] "[T]he right to benefits and amount of benefits are based largely on a social theory of providing support and preventing destitution, rather than settling accounts . . . [based on] blame."[155] Workers' compensation is designed to care for employees injured at work. The positional-risk doctrine allows workers' compensation to do just that.

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148. BOYD, *supra* note 34, at 10–11.

149. Brady v. Louis Ruffolo & Sons Constr. Co., 578 N.E.2d 921, 922–24 (Ill. 1991).

150. *Id.* at 925.

151. *Id.* at 924.

152. The employee did most of his work at a drafting table attached to an office wall. *Id.* at 922. "On the day of the injury, the force of the truck crashing through the building caused the drafting table to puncture [the employee's] abdomen." *Id.* (alteration in original).

153. *See* Matt Hlinak, *In Defense of the Increased-Risk Doctrine in Workers' Compensation*, 7 J. BUS. & ECON. RES. 57, 64–65 (2009).

154. *See* LARSON ET AL., *supra* note 1, § 1.02.

155. *Id.*

Of the three major doctrines used by courts, the positional-risk doctrine is most consistent with workers' compensation's objectives. The positional-risk doctrine properly analyzes causation by examining how the employment setting contributed to the injury and aligns with the values of providing support and preventing destitution of injured employees.

Conclusion

Workers' compensation was designed to be a faultless and efficient system to provide remedies for workplace injuries. The increased-risk doctrine is inconsistent with this purpose because it requires courts to consider fault and increases the need for litigation. The actual-risk doctrine is also inadequate because it does not properly analyze causation of workplace injuries. The positional-risk doctrine is most aligned with the system's goals. It ensures more efficient compensation for workplace injuries. Employers retain their side of the "great compromise." Employees also maintain their benefit of the bargain. When determining whether an injury "arises out of employment," states should use the positional-risk doctrine because it best furthers the goals of the workers' compensation system.

Appendix*

Alabama	Increased-Risk	Ex parte Trinity Industries, Inc., 680 So. 2d 262 (Ala. 1996)
Alaska	Increased-Risk	Temple v. Denali Princess Lodge, 21 P.3d 813 (Alaska 2001)
Arizona	Positional-Risk	Circle K Store No. 1131 v. Industrial Commission, 796 P.2d 893 (Ariz. 1990)
Arkansas	Increased-Risk	Jivan v. Economy Inn & Suites, 260 S.W.3d 281 (Ark. 2007)
California	Increased-Risk	South Coast Framing, Inc. v. Workers' Compensation Appeal Board, 349 P.3d 141 (Cal. 2015)
Colorado	Positional-Risk	City of Brighton v. Rodriguez, 318 P.3d 496 (Colo. 2014)
Connecticut	Positional-Risk	Blakeslee v. Platt Brothers & Co., 902 A.2d 620 (Conn. 2006)
District of Columbia	Positional-Risk	McKinley v. D.C. Department of Employment Services, 696 A.2d 1377 (D.C. 1997)
Delaware	Increased-Risk	Rose v. Cadillac Fairview Shopping Center Properties (Delaware) Inc., 668 A.2d 782 (Del. Super. Ct. 1995), *aff'd sub nom.* Rose v. Sears, Roebuck & Co., 676 A.2d 906 (Del. 1996)
Florida	Positional-Risk	D.L. Cullifer & Son, Inc. v. Martinez, 572 So. 2d 1360 (Fla. 1990)
Georgia	Positional-Risk	Sturgess v. OA Logistics Services, Inc., 784 S. E.2d 432 (Ga. Ct. App. 2016)
Hawaii	Positional-Risk	Zemis v. SCI Contractors, Inc./E.E. Black, Inc., 911 P.2d 77 (Haw. 1996)
Idaho	Increased-Risk	O'Loughlin v. Circle A Construction, 739 P.2d 347 (Idaho 1987)
Illinois	Increased-Risk	Village of Villa Park v. Illinois Workers' Compensation Commission, 3 N.E.3d 885 (Ill. App. Ct. 2013)
Indiana	Positional-Risk	Milledge v. Oaks, 784 N.E.2d 926 (Ind. 2003); Burdette v. Perlman-Rocque Co., 954 N.E.2d 925 (Ind. Ct. App. 2011) (but personal-specific risks, such as pre-existing illnesses, are not covered under Indiana's positional-risk doctrine)

Iowa	Actual-Risk	Lakeside Casino v. Blue, 743 N.W.2d 169 (Iowa 2007)
Kansas	Increased-Risk	Hensley v. Glass, 597 P.2d 641 (Kan. 1979)
Kentucky	Positional-Risk	Hampton v. Intech Contracting, LLC, No. 2011-SC-000741-WC, 2013 WL 1188040 (Ky. Mar. 21, 2013)
Louisiana	Positional-Risk	Duncan on Behalf of Hahn v. South Central Bell Telephone Co., 554 So. 2d 214 (La. Ct. App. 1989)
Maine	Rejects reliance on any of the three common doctrines	Husvar v. Engineered Products, Inc., 755 A.2d 498 (Me. 2000)
Maryland	Positional-Risk	Livering v. Richardson's Restaurant, 823 A.2d 687 (Md. 2003)
Massachusetts	Actual-Risk	Hicks's Case, 820 N.E.2d 826 (Mass. App. Ct. 2005)
Michigan	Increased-Risk	Dean v. Chrysler Corp., 455 N.W.2d 699 (Mich. 1990)
Minnesota	Increased-Risk	Dykhoff v. Xcel Energy, 840 N.W.2d 821 (Minn. 2013)
Mississippi	Increased-Risk	White v. Mississippi Department of Corrections, 28 So. 3d 619 (Miss. Ct. App. 2009)
Missouri	Increased-Risk	Johme v. St. John's Mercy Healthcare, 366 S. W.3d 504 (Mo. 2012)
Montana	Increased-Risk	Montana State Fund v. Grande, 274 P.3d 728 (Mont. 2012); Richardson v. J. Neils Lumber Co., 341 P.2d 900 (Mont. 1959)
Nebraska	Increased-Risk	Maradiaga v. Specialty Finishing, 884 N.W.2d 153 (Neb. Ct. App. 2016)
Nevada	Increased-Risk	Rio All Suite Hotel & Casino v. Phillips, 240 P.3d 2 (Nev. 2010)
New Hampshire	Increased-Risk	*In re* Margeson, 27 A.3d 663 (N.H. 2011)
New Jersey	Positional-Risk	Shaudys v. IMO Industries, Inc., 667 A.2d 204 (N.J. Super. Ct. App. Div. 1995)
New Mexico	Actual-Risk	Smith v. City of Albuquerque, 729 P.2d 1379 (N.M. Ct. App. 1986)

New York	Positional-Risk	Cruz v. Karl Ehmer Inc., 724 N.Y.S.2d 777 (N.Y. App. Div. 2001)
North Carolina	Increased-Risk	Roberts v. Burlington Industries, Inc., 364 S. E.2d 417 (N.C. 1988)
North Dakota	Rejects Positional-Risk	Fetzer v. N.D. Workforce Safety & Insurance, 815 N.W.2d 539 (N.D. 2012)
Ohio	Increased-Risk	Waller v. Mayfield, 524 N.E.2d 458 (Ohio 1988)
Oklahoma	Increased-Risk	Flanner v. Tulsa Public School, 41 P.3d 972 (Okla. 2002); American Management Systems, Inc. v. Burns, 903 P.2d 288 (Okla. 1995)
Oregon	Actual-Risk	Panpat v. Owens-Brockway Glass Container, Inc., 49 P.3d 773 (Or. 2002) (en banc)
Pennsylvania	Rejects reliance on any of the three common doctrines, and instead looks at whether the employee was furthering employer's interest	Lewis v. Workers' Compensation Appeal Board (Andy Frain Servs., Inc.), 29 A.3d 851 (Pa. Commw. Ct. 2011)
Rhode Island	Actual-Risk	Ellis v. Verizon New England, Inc., 63 A.3d 510 (R.I. 2013)
South Carolina	Positional-Risk	Nicholson v. S.C. Department of Social Services, 769 S.E.2d 1 (S.C. 2015)
South Dakota	Positional-Risk	Lloyd v. Brands, 799 N.W.2d 727 (S.D. 2011)
Tennessee	Actual-Risk	Cunningham v. Shelton Security Service, Inc., 46 S.W.3d 131 (Tenn. 2001)
Texas	Increased-Risk	Bond v. Employees Retirement System, 825 S. W.2d 804 (Tex. App. 1992)
Utah	Increased-Risk	Fred Meyer v. Industrial Commission, 800 P.2d 825 (Utah Ct. App. 1990)
Vermont	Positional-Risk	Cyr v. McDermott's, Inc., 996 A.2d 709 (Vt. 2010)
Virginia	Combines increased-risk and actual-risk	Snyder City of Richmond Police Department, 748 S.E.2d 650 (Va. Ct. App. 2013)

Washington	Has only "in the course of employment" requirement	Dennis v. Department of Labor & Industries, 745 P.2d 1295 (Wash. 1987) (en banc)
West Virginia	Actual-Risk	Morton v. West Virginia Office of Insurance Commissioner, 749 S.E.2d 612 (W. Va. 2013) (analyzes "resulting from" instead of "arising out of")
Wisconsin	Positional-Risk	Cutler-Hammer, Inc. v. Industrial Commission, 92 N.W.2d 824 (Wis. 1958); National Presto Industries, Inc. v. Labor & Industry Review Commission, No. 89-1403, 1990 WL 100387 (Wis. Ct. App. May 15, 1990) (per curiam)
Wyoming	Increased-Risk	Gomez v. State (*In re* Worker's Compensation Claim of Gomez), 231 P.3d 902 (Wyo. 2010)

* Many of the above-listed cases do not explicitly state which doctrine the court relies on in interpreting "arising out of." Because of this, some determinations rely on the author's analysis of which doctrine most closely aligns with the court's reasoning.