

# Labor & Employment Law

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## Non-Subscriber Liable for Employee's Negligence

*LMC Complete Automotive, Inc. v. Burke*, No. 01-06-00694-CV,  
2007 Tex. App. LEXIS 4830 (Tex. App—Houston [1st Dist.] June 21, 2007).

**L**MC Complete Automotive, Inc. (LMC), a non-subscriber to workers' compensation, appealed a \$155,000 jury verdict in favor of its employee, Ronald Burke. Burke, a body repairman with LMC, sustained a back injury in April 2003 when, while working on a vehicle, he noticed another vehicle rolling out of the shop with the driver's door open and fellow employee Ramirez hanging onto the door, being dragged by the car. Burke ran in front of the vehicle and stopped it by hand. Burke told a manager about the incident and went home immediately thereafter due to severe pain in his back. He eventually sought medical treatment for the pain, including two back surgeries.

Prior to the event causing his injury, Burke witnessed Ramirez engaging in other negligent acts while working at LMC. On one occasion, Ramirez drove a vehicle into the shop too quickly and almost ran over another employee, and on another occasion, Ramirez placed an open can of gasoline near an employee who was welding. Burke also witnessed Ramirez using an electric buffer with the extension cord running through a pool of water. Burke admonished and reported Ramirez to the management at LMC after each of these incidents, but he never saw anyone talk to Ramirez. Additionally, LMC never held any organized safety meetings to address the issues.

Because LMC did not subscribe to workers' compensation, Burke was not required to satisfy the higher burden of gross negligence in order to recover against his employer; rather, Burke was only required to prove LMC acted negligently. In a negligence action against an employer who is a non-subscriber, the plaintiff must show negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment. In this case, Burke alleged LMC was negligent by not providing a safe workplace and not instructing its employees in the safe use and handling of products and equipment used on LMC's premises.

Burke alleged, and the jury found, LMC breached its duty to exercise ordinary care in providing a safe workplace. Ramirez was responsible for moving vehicles in and around LMC's premises, his actions on the day of the incident were within the course and scope of his employment, and because he was an employee acting in the course and scope of his employment, his negligence constituted a breach of LMC's duty to use ordinary care in providing a safe workplace. The court of appeals held sufficient evidence existed to support the jury's verdict and also found the jury's verdict was justified based on the evidence that LMC did not hold safety meetings, was aware of, yet did not remedy, Ramirez's prior incidents, and failed to warn employees of the hazards posed by moving vehicles. Because sufficient evidence supported the jury's verdict, the court of appeals affirmed the verdict against LMC.



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