

### 103.25 AGENCY - LENT EMPLOYEE<sup>1</sup> WITHOUT VEHICLE

A [principal] [employer] who lends or hires out an [agent] [employee] to another person remains responsible to third persons for the negligence of the [agent] [employee] unless, as to the work involved, [he] [she] [it] completely surrenders any control over the [agent] [employee].

The test in determining whether a lent [agent] [employee] becomes the agent of the person to whom the [agent] [employee] is loaned is whether [he] [she] [it] passes under the control of that person with regard not only to the work to be done, but also to the manner of performing it.<sup>2</sup>

### LENT EMPLOYEE WITH VEHICLE

Where a [principal] [employer] furnishes to another person a motor vehicle and driver, [principal] [employer] remains responsible for the negligent act(s) of the driver unless [he] [she] [it] so completely surrenders control over the driver as virtually to suspend, temporarily at least, the responsibility normally associated with control.

The test in determining whether a lent [agent] [employee] becomes the agent of the person to whom the [agent] [employee] is loaned is whether [he] [she] [it] passes under the control of that person with regard not only to the work to be done, but also to the manner of performing it.<sup>3</sup>

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1. The Lent Employee Doctrine was previously known in antiquated terms as the "Borrowed Servant Rule" or "Lending-Servant Doctrine" and was referred to as such in previous versions of these Pattern Jury Instructions.

2. See generally, *Lewis v. Barnhill*, 267 N.C. 457 (1966); *Weaver v. Bennett*, 259 N.C. 16 (1963); *Leonard v. Tatum & Dalton Transfer Co.*, 218 N.C. 667 (1940).

A continuance of the general employment is indicated if one rents a machine and operator to another, particularly if the instrumentality is of considerable value. The general

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employer normally expects the employee to protect the employer's interests. The fact that the general employer is in the business of renting automobiles with drivers is relevant, since in such cases there is more likely to be an intent to retain control. A person who is not in such business and who, gratuitously or not, as a matter not within his general business enterprise permits his employees and his automobile to assist another, is more apt to intend to surrender control. *Moody v. Kersey*, 270 N.C. 614 (1967) (concerning a crane) *Lewis v. Barnhill*, 267 N.C. 457 (1966) (same); *Weaver v. Bennett*, 259 N.C. 16 (1963) (concerning a unit backhoe); *Jones v. Douglas Aircraft Co.*, 251 N.C. 832 (1960) (concerning a crane); *Hodge v. McGuire*, 235 N.C. 132 (1952) (concerning a bulldozer).

3. See *supra* n.2.