

## **ACCIDENTS TO AND FROM WORK WHEN ARE THEY COVERED BY STATE WORKERS' COMPENSATION?**

To qualify for workers' compensation benefits under Louisiana's statute, an employee must be in the course and scope of employment at the time of the injury. As a general rule, an employee is not in the course and scope of employment while traveling to and from work, thereby excluding accidents to and from work from coverage. However, there are some exceptions of which employers must be aware.

### **Exceptions to the General Rule**

An employee who has been asked to perform a duty during the trip home would be in the course and scope of employment. This is the most common exception to the rule and occurs most often where transportation has been part of the employment contract either explicitly or impliedly.

If the employer furnishes the transportation as an incident to the employment, an accident occurring to and from work will be covered under the worker's compensation law. *Griffin v. Catherine Sugar Co., Inc.*, 54 So. 2d 121 (La. 1951). More specifically, these exceptions arise when the employer provided the automobile or reimbursed the employee for the travel.

Good examples of both of the above exceptions include salespersons or delivery personnel where transportation, either in company or personally-owned vehicles, is an integral part of the job.

However, the mere fact that the employee is riding in a company vehicle doesn't make the accident compensable. The more pertinent issue in determining compensability for those accidents is whether the transportation was an incident of the employment or an accommodation to the employee.

In *Seay v. Newman*, 569 So. 2d 227 (La. App. 1st Cir. 1990), the court found that the employee was not in the course and scope of employment in a motor vehicle accident traveling home. The plaintiff was riding in a company-owned vehicle being driven by his supervisor.

The court explained that if the prevailing practice is to transport employees back and forth and if the trips are infrequent, then the transportation is likely being made to accommodate or as a courtesy to the employee. However, if the employees are forbidden to use their vehicles, then the transportation would be considered an incident to the employment and place the employee in the course and scope of employment in accidents to and from work.

In sum, courts will look at whether the transportation was an accommodation to the employee or part of the employment contract in determining whether those accidents to and from work are within the course and scope of employment.

One key case regarding employee travel, *Yates v. Naylor Indus. Services, Inc.*, 569 So. 2d 616 (La. App. 2d Cir. 1990), summarizes situations where "course and scope" would apply

1. If the accident happened on the employer's premises
2. If the employee was deemed to be on a specific mission for the employer, such as making a trip in the interest of his employer's business or pursuant to his employer's order
3. If the employer had interested himself in the transportation of the employee as an incident to the employment agreement either by contractually providing transportation or reimbursing the employee for his travel expenses

4. If the employee was doing work for his employer under circumstances where the employer's consent could be fairly implied
5. If the employee was hurt while traveling to and from one work site to another
6. If the operation of a motor vehicle was the performance of one of the duties of the employment of the employee
7. If the employee was injured in an area immediately adjacent to his place of employment and that area contained a distinct travel risk to the employee, also known as the threshold doctrine.

### **The Threshold Doctrine**

This exception applies when the employer's premises are immediately adjacent to an unusually hazardous area. The doctrine refers to an unusual risk greater than that to which the general public is exposed at the threshold of the employer's premises.

The "rule" is certainly more problematic for employers because it has really been created by the courts on a case-by-case basis.

Here are actual cases and factors leading to the successful application of the threshold doctrine, thereby allowing recovery under the workers' compensation law:

1. An employee was killed while crossing railroad tracks next to the employer's premises. The employer's premises were next to an unusually hazardous area.
2. An employee was told by her employer to park in a parking lot where the employee tripped on stairs. Because the stairway was the only route to the parking lot, it was found to be within the threshold.
3. An attorney was abducted (and later killed) while walking from his office to a parking lot adjacent to his office building. The court found that the area was a high crime area. The employer had complained about criminal activity in the parking lot. His job required a car. A bus and train terminal and housing project were nearby creating a high crime area.
4. A security guard was mugged walking from his bus stop to his place of employment. The court found that the employee was at a greater risk than the general public because he was dressed in a uniform, did not have a gun, was walking alone and was obviously not from the area.

### **Conclusion**

Although the workers' comp act doesn't cover accidents occurring while traveling to and from work, expansive exceptions to the general rule are judicially created and moreover don't necessarily fall into distinct categories from which iron clad rules can be followed.

Even though the courts will determine each case individually, the main issue is whether the transportation was for the good or convenience of the employer or the employee. The more "involved" an employer is in the transportation and the more the employer stands to benefit from the transportation, the more likely the transportation will fall into an exception under the rule.

This involvement may include such common employer policies and practices as:

- Providing transportation or reimbursing employees for travel expenses to and from work.
- Requiring a certain method of transportation to and from work or forbidding use of personal vehicles to and from work.
- Having the employee run business errands on the ride to or from work.

Employers should weigh the benefits of having these types of policies against the risk to determine whether the exposure is worthwhile.