Going & Coming From Work: Exceptions Are the Rule

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One of the most frequent questions asked by our policyholders is whether an employee injured while going to or coming from work is entitled to workers' compensation benefits in Maryland. As we discuss in greater detail below, the answer to that question will turn on the particular facts.

Generally speaking, injuries an employee incurs while going to or coming from work are not compensable under the Maryland Workers' Compensation Act. This rule of law is known as the "Going and Coming Rule." There are several reasons for this rule. First, going to or from work generally is considered to be the employee's own responsibility. Second, the employer's interests ordinarily are not advanced during these times. Third, the hazards encountered by an employee while commuting to work are typically common to all workers, no matter what their job, and thus such risks cannot be attributable to a person's particular employment. Finally, workers' compensation insurance does not insure workers against the common perils of life. For all these reasons, the general rule is that injuries sustained by an employee while going to or coming from work are not considered to arise out of or in the course of the employment, and are therefore not covered under workers' compensation.

Over the past fifty years, however, the courts have carved out several exceptions to this rule. As you will see, these exceptions have eroded the general rule to the point that the Going and Coming Rule is more the exception rather than the rule.

The Premises Exception

FACTS: The employer provides parking for its employees on its property. An employee who has parked there, on his way to work, is injured while walking to the employee entrance.

Is that injury compensable? The answer is yes. Once an employee has arrived on the employer's property, presumably for the purposes of reporting to work, an injury will be deemed compensable, even if the employee has not yet begun to work.1 Likewise, the employee will also be covered after completing the work shift and returning to the lot to drive off, up until the car has left the employer's property. This exception has often been referred to by the courts as "The Premises Exception."

The Proximity Exception

FACTS: An employee who parks off site, in a lot next to the employer's premises, is injured when she slips on ice in the parking lot while walking from her car to work.

Compensable? You would think not since the Premises Exception does not apply. However, there is another exception that may apply - the Proximity Exception- that will require us to obtain more facts.

The Proximity Rule has two elements: there is a special hazard at the off premises site where the injury occurs and there is a close association of the access route to the premises. 2

In the scenario above, if the parking lot is controlled by the employer or the employer directs its employees to park there, the employee's injury, although incurred off site and not during work hours, will be found compensable.

Here is another illustration:

An employee is released early from work, punches out and begins walking to a parking lot maintained by the employer for the use of its employees. The employee, while walking along the tracks of a railroad line that is a shortcut to the parking lot, is struck by a train. The shortcut is customarily taken by employees going between the lot and the premises. The employer knows of, or acquiesces in its employees' use of the shortcut. Because the railroad line presents a special hazard and the shortcut is associated with access between parking and work, the two elements of the proximity exception are met and the claim for injuries is compensable. 3

One scenario in which both the proximity and premises exceptions were rejected involved an employee who had decided to scale a fence surrounding a parking lot, where he customarily parked, rather than walk or take a shuttle to the main entrance. He was injured in the course of climbing the fence. The appellate court did not view the fence as a special hazard. Instead, the court reached the conclusion that the employee unnecessarily exposed himself to risks that were of his own making, and were neither known of, nor approved by his employer. 4

What if the off-site parking is not owned or controlled by the employer, and parking there is not sanctioned in any way by the employer? Given these facts, an employee who is injured while en route to or from such a location is subject to a peril which is common to the public at large and not contemplated by the employment arrangement. Therefore, an injury occurring at that location would not fall within the proximity exception and would not be compensable. 5

The Employer-Provided Transportation Exception

FACTS: An employer arranged with a bus company to transport its employees to and from work. Employees could use their own transportation, but if they chose to use the bus service, they were charged a daily fee. An employee riding the bus is injured when the bus hits a curb.

Compensable? Yes. When an employer agrees to provide transportation for its employee to travel to and from work, that travel is part of the employment, and the employer bears the responsibility for the risks encountered in connection with that transportation. 6

The Free Transportation Exception

A related exception is the Free Transportation Exception. Where an employee, as part of his contract of employment, is furnished free transportation to and from work, and an injury occurs during the period of transportation, the injury is deemed to have arisen out of and in the course of the employment and is compensable. 7 The free transportation exception applies whether the employee is provided with the transportation or is reimbursed for expenses incidental to the work-related travel. Thus, if the employer provides a company owned or controlled vehicle, travel in that free transportation will be deemed part of the employment. In a decision from the Court of Appeals nearly fifty years ago, an employee who was on call 24 hours a day, who was given the use of a company truck with no restrictions, and who was involved in an accident while driving home from the local tavern on a Sunday evening, was found to have sustained an accidental injury arising in and out of the employment. The court found that the accidental injury arose out and in the course of employment given that the arrangement between the employer and its employee for free use of the truck at all times was for the employer's convenience. The fact that the employee had stopped at a bar on the way home was immaterial. 8

If the employer reimburses the employee for the entire cost of traveling to and from work, such as paying for a monthly public transit pass, an obligation is created that effectively brings travel by such conveyance within the scope of employment. 9 However if contractually provided travel expenses bear no relationship to actual expenses, this exception may not apply. 10

The Own-Conveyance Exception

FACTS: An employee is injured while driving his own car to work. Compensable?

Ordinarily this would not be a compensable claim under the Going and Coming Rule. However, what if the employer requires the employee to drive his car to work and have it available during the workday?

The Court of Appeals greatly expanded employers' exposure under workers' compensation by establishing the "own conveyance exception" in a 1993 decision involving an employee who was required, as a condition of the employment, to bring with him his own vehicle for use during the working day. The court held that travel incidental to going to or coming from work under such a scenario constituted an extension of the employment. In that case, the employee was driving home from work in his own car when he was involved in a serious accident. While there was no employment purpose evident from the commute home, the court focused on the employer's requirement that the employee, an outside salesman, have his car available during the workday and reasoned that such a requirement encompassed his drive from home to work and back again. 11

The Special Errand Exception

Facts: An employee is injured while driving to the worksite on a scheduled day off. Is this injury compensable?

While this would appear to fall within the Going and Coming Rule, another exception -- the special errand exception -- could apply. We will need to obtain more facts.

Employees who find themselves traveling as a result of being "on-call" may come within this exception to the Going and Coming Rule. A frequent scenario is when an employer requests that its employee come in to the workplace outside of normal work hours, such as a custodian summonsed by his employer to respond to a police call that lights are on in a building at night.12 An injury that occurs while en route to or from the workplace for this purpose is viewed as a special errand or mission that would not have been undertaken except for the obligation of employment. In this case, the element of urgency may transform the trip from a regular commute into a special errand.

What if an employee is called in to work earlier than usual and is involved in an accident en route? The Court of Special Appeals did not apply the special errand exception in this scenario, reasoning that the employee, who was a salaried Contracts Administrator, and occasionally performed some tasks outside of regular work hours, was not subject to a special inconvenience or sense of urgency by virtue of the fact that she had to report to work one half hour early. 13

The Dual Purpose Exception

Facts: An employee is injured while driving home when books she has brought with her from work to review fall inside her car causing her to lose control.

Is this compensable? Perhaps. The question here is whether the employee was required as a part of her employment to take the books with her. If she was, there could be both a business and personal purpose to the commute, and thus the injury may be compensable.

An employee who is injured during the course of a trip to or from work that serves both a business and personal purpose is within the course of employment if the trip involves the performance of a service for the employer that would have caused the trip to be taken even if it had not coincided with the personal journey.14 For instance, the employer asks the employee to deliver an envelope filled with business documents to a particular location while en route home from work. An accident occurring at any point during the journey, even after completion of the requested task, may be compensable provided that there is no substantial deviation from the intended route.

Need more information? IWIF can help

As you can see, there are numerous exceptions to the Going and Coming Rule, and whether an injury occurring off site is compensable will depend in large part on the particular facts of the case. Timely and thorough investigation of the facts will enable your IWIF legal and claims professionals to determine whether any of the exceptions may apply. We stand ready to assist you in evaluating these scenarios as your questions arise.

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1 Saylor v. Black and Decker, 258 Md. 605 (1970)
2 Wiley Manufacturing Co. v. Wilson, 280 Md. 200 (1977)
3 Wiley supra
4 Henville v. Southwest Airlines, 142 Md. App. 79 (2002)
5 Board of County Commissioners v. Vache, 349 Md. 526 (1998)
6 Lee v. BSI Temporaries, Inc., 114 Md. App. 1 (1997)
7 Lee v. BSI, supra

8 Rumple v. Henry Meyer Co., 208 Md. 350 (1955)
9 Ryan v. Kasaskeris, 38 Md. App. 317 (1997)
10 Tavel v. Bechtel Corp., 242 Md. 299 (1966)
11 AlitaliaLinee Aeree Italiane v. Tornillo, 329 Md. 40 (1993)
12 Reisinger-Siehler Co. v. Perry, 165 Md. 191 (1993)
13 Fairchild Space Co. v. Baroffio, 77 Md. App. 494 (1989)
14 Stoskin v. Board of Education, 11 Md. App. 355 (1971)