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When Is An Employee "At Work?" Hint: Even When They Aren't, They May Be

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Many employers assume that an injury that occurs while an employee is "at work" is compensable. As discussed more in "Being Hurt 'At Work' ≠ A Compensable Claim," (see the following article) that is not always the case. But what happens when an employee is "working" but not at work? The answer turns on whether the injury occurred "in the course of" and "arising out of" the worker's employment. The injury must satisfy both of these elements in order for the worker to receive benefits.

The "in the course of" element refers to the time, place and circumstances of the injury. For an injury to occur in the course of employment, the worker must be performing a required duty in the service of the employer. The worker need not be actually performing work, but the injury must occur while the worker is engaged in an activity consistent with, and logically related to, the employer's business. Practically speaking, the inquiry usually does not turn on whether the injury occurred in the course of employment, but whether it arose out of the employment. In most cases, the worker will have been performing a required job duty or engaging in an activity logically related to the employment. When there is a dispute, it will normally center on the arising out of element of the "injury" definition. The arising out of element looks at whether there is a sufficient causal connection between the injury and the employment. Generally, the "coming-and-going" rule bars eligibility for workers'

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compensation benefits because an injury which occurs while traveling to or from a fixed place of employment is not considered to have arisen out of the employment because it lacks the requisite causal connection between the injury and the employment.

There are three basic factors used in determining whether an injury arose out of a worker's employment: 1) the proximity of the scene of the accident to the place of employment; 2) the degree of control the employer had over the scene of the accident; and 3) the benefit the employer received from the worker's presence at the scene of the accident. There are other factors which also may be considered because, historically, determining whether a particular injury is compensable requires a very fact specific analysis. Further, Ohio courts have not required that all of the factors be satisfied in order to find that an injury arose out of employment. The courts, led by the Ohio Supreme Court, have carved out three primary exceptions which qualify a worker for benefits even if any or all of the factors have not been met: the "zone of employment" exception, the "special hazard" exception and the "totality of the circumstances" exception.

The zone of employment has been defined as "the place of employment and the area thereabout … under the control of the employer." The zone of employment also has been extended to public areas which are the only points of access to the place of employment, i.e. a public street between an employer parking lot where employees must park and its facility where the employees work. A worker who is injured in the zone of employment may be entitled to workers' compensation benefits even though the employer had no control over the scene of the accident and received no benefit from the worker's presence at the accident site.

An injury also is deemed to arise out of employment if the employment creates a special hazard and the injury occurs as a result of that hazard. A special hazard is one that presents a risk which is distinctive in nature or quantitatively greater than a risk common to the general public. However, when there is a special hazard, injuries sustained while the employee is commuting to or from work may be compensable. For example, the Ohio Supreme Court has found that traveling long distances to temporary work sites presents a special hazard because although the risks associated with highway travel are not distinctive in nature from those faced by the general public in commuting to work, the risks are quantitatively greater due to increased exposure to the risks associated with a significantly longer commute. The Court found that injuries sustained in a motor vehicle accident in this circumstance were injuries that arose out of employment even though none of the factors were satisfied. Because of the nature of the special hazard exception, the outcome of coming-and-going rule cases is very fact specific.

An injury can also arise out of employment if the totality of the circumstances demonstrates that a sufficient causal connection exists between the injury and the employment. This exception tends to be the default exception many courts turn to when faced with complicated and fact intensive cases that involve zone of employment and special hazard issues. The following cases exemplify how different facts affect the analysis of these issues.

In *Phelps v. Dispatch Printing Company*, Phelps was injured when he slipped and fell on his employer's premises while solely there for the purpose of picking up his paycheck. He was not on the clock or performing any job duties. Although there was no perceived benefit to the employer of Phelps being on its premises to collect his paycheck, the court of appeals determined that, based on the totality of the circumstances, there was a sufficient causal connection between Phelps' injury and his employment to entitle him to benefits.

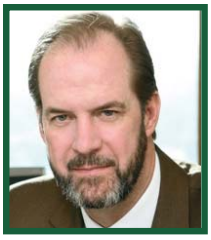
In *Sammetinger v. Bureau of Workers' Compensation*, although the employee was not on the employer's premises, a different court of appeals found that the employee was entitled to benefits when considering the totality of the circumstances. Sammetinger was injured in a motor vehicle accident during his commute home from a construction site 78 miles away while he was a passenger in a company truck driven by a fellow employee. While Sammetinger's employer may have received some benefit from his presence at the accident scene, the accident occurred a significant distance from the construction site where Sammetinger worked, and his employer had no control over the public highway where the accident occurred. However, he traveled to and from the construction site in a company truck carrying tools and equipment belonging to his employer, and every day he stopped on his way home to get gas that was needed for operation of tools on the construction site and to purchase ice for the following day for the workers under his supervision. He paid for the gas and ice with a

company credit card. There were also a number of work-related functions Sammetinger performed after he got home each day, as well as the fact that he received work-related phone calls on an employer-provided cell phone during his morning and evening commutes and while at home. For these reasons, the court of appeals determined that Sammetinger's injuries sustained in the motor vehicle accident arose out of his employment even though the first and second factors had not been met.

In *West v. Lukjan Metals Products, Inc.*, West was injured while on a one-week temporary assignment in North Carolina to assist in the training of Lukjan employees at its plant there. West was injured in a motor vehicle accident while traveling from the Lukjan plant to the rental house where he was staying. The rental house was selected and paid for by Lukjan. Therefore, the court of appeals concluded that West was entitled to benefits because he was in the zone of employment when the accident occurred, even though the accident occurred on a public street and not on Lukjan's property. The court determined that Lukjan had control over the scene of the accident because the accident involved a car rented by Lukjan and driven by a fellow Lukjan employee while traveling from a Lukjan plant to the rental house where West was required to stay. The court also determined that West had no other means of traveling between the Lukjan plant and the rental house because the company had denied his request to drive his own car to North Carolina. Accordingly, the court held that West's injury arose out of his employment because he was in the zone of employment.

However, in S*eese v. Bureau of Workers' Compensation*, a jury determined that Seese's injuries did not arise out of his employment. Seese was injured in a motorcycle accident while en route to his regular work site on a Saturday. He did not normally work Saturdays, but his supervisor called him to come in and repair paneling that was damaged by a windstorm the previous night and was allowing water to drip on machinery. The court of appeals upheld the jury's verdict finding that benefits were precluded by the coming-and-going rule and that the special hazard exception did not apply. Seese failed to show that the risk of traveling to work on a Saturday was distinctive in nature or quantitatively greater than the risk faced by the general public.

As all of these cases demonstrate, the determination of whether an injury occurred in the course of and arose out of employment requires a very fact specific analysis. An employer should never certify a claim or acquiesce in its allowance by the Bureau of Workers' Compensation before engaging in this analysis, and should consult legal counsel if necessary. Otherwise, a claim may be allowed for an injury which does not satisfy the statutory definition of "injury," resulting in increased payments or increased premiums for the employer.



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