



Commuting to Work: Are Employees Covered?

Generally, under the doctrine of the “going and coming” rule, an individual is barred from receiving workers’ compensation benefits if an injury occurs during their normal commute to or from a fixed place of employment, such as an office building. The rationale behind this rule, applicable nationwide, is that in most instances the employer has no control over how or in what manner the employee arrives at the office. Each employee, at his or her individual discretion, can choose among many different conveyances of travel or combinations thereof, including buses, subways, taxicabs, ferries, personal vehicles, or commuter trains. Furthermore, the rule recognizes that the employee is providing no benefit to the employer while the commute is in progress. Thus, any risk of injury associated with the commute must be borne by the individual, not his or her employer. However, the going and coming rule has numerous exceptions, and every injury involving an individual’s commute must be thoroughly analyzed to ensure that the rule is an appropriate bar to compensability.

One important exception occurs where the employer provides a company car as part of an individual’s overall compensation package. These individuals are covered by workers’ compensation from the time they enter the vehicle to when they arrive at the office (the same is true for their commute home), as long as they have not significantly deviated from a direct route between their home and office. Coverage is offered in these situations under the rationale that the company car is a fringe benefit offered to the employee to be utilized in the course of their employment. Thus, the employer has accepted the risks associated with the commute to and from work. In a very real sense, the company car is “an extension of the employer’s office.” As a general rule, if an accident occurs while traveling to and from work in a truck, van, car, or other vehicle *under the control of the employer*, any workers injured are within the course of employment. Thus, they would be eligible for workers’ compensation benefits.

Another exception to the rule is applicable whenever business errands are combined with the normal commute to or from a fixed place of employment. However, the errand must be a major factor in the journey and not simply incidental to it. Compensability for these types of trips is governed by the “dual purpose” doctrine, where a trip is considered business-related if the trip would have to be made even if the private purpose had been cancelled. For example, suppose a worker’s job at the end of each work day was to drop off the mail at a nearby post office while on their normal commute home. If an injury occurs during the commute home, the worker would be eligible for workers’ compensation benefits because even if the personal aspect of the trip had been cancelled (the commute home), someone at the office would still have had to take the mail to the post office at the end of the work day. (This scenario illustrates why the dual purpose doctrine is also called the “someone/sometime” rule: whenever the personal aspect of a dual purpose trip is cancelled, *someone* at *some time* still has to complete the business errand.)

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A.R.S. § 23-1021.01(A) also provides a statutory exception to the going and coming rule for police officers and firefighters. This statute mandates that when these types of employees sustain injuries “while traveling directly to or from work...” they are “considered in the course and scope of employment solely for the purposes of eligibility for workers’ compensation benefits, provided that the peace officer or firefighter is not engaged in criminal activity.” The rationale behind this statute is that police officers and firefighters would respond to any emergency situation encountered during their normal commute. Thus, during this activity they are serving their employer, so eligibility for workers’ compensation benefits should not be denied. Interestingly, A.R.S. § 23-1021.01(B) safeguards municipalities from any potential liability exposure by mandating that no civil liability is created for “damages occurring through the peace officer’s or firefighter’s negligent or intentional conduct while traveling to or from work as a peace officer.”

A thorough analysis of the facts must be performed in order to determine the compensability of any claim for injuries sustained while commuting to and from work. The basic going and coming rule is riddled with numerous exceptions. Therefore, only after a detailed investigation can a valid determination of the rule’s applicability, based upon each claim’s unique fact pattern, be made. Members with any questions regarding this or other workers’ compensation eligibility should contact Leslie Rich at (602) 368-6606 or lrch@berkleyrisk.com.

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