

**Thirteen Scenarios Which the Courts Have Held to be Covered by  
Workers' Compensation, Even Though the Injured Employee Was  
Not On-The-Job at the Time of His Accident**

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That statement that – in order to be covered by Workers' Compensation an employee must be injured "on the job" is not totally correct. A more accurate statement is that – in order for an injured employee to be covered by Workers' Compensation there must be "a close connection" between the employee's injury and his employment.

The "Going and Coming Rule" basically says that when an employee is traveling to work or traveling home from work and they are injured in a motor vehicle accident, they are not covered by Workers' Compensation. The reasoning behind this rule is that the employer derives no benefit from an employee's ordinary commute to and from work.

However, there are many exceptions to the "Going and Coming Rule" and those exceptions are based upon their being present a benefit to the employer. The benefit to the employer does not have to be substantial. Even incidental benefits to the employer can be sufficient to overcome the "Going and Coming Rule". See Labor Code Section 3600 (a) (2) which states: "Where at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment."

In this document we will be providing you with scenarios involving employees who although they were not on-the-job at the time of their injury the courts found their injury to be covered by Workers' Compensation because there was a "close connection" between their injury and their job.

**Scenario 1.**

Employee is injured on his way to work [or on the way home from work]. At the time that he was hired he was told by the employer that some of the work that he would do required that he use his personal automobile. This employee suffered an automobile accident that was his fault on the way to work. Had he made it to work that day he would have stayed all day at his employer's premises and would not have used his vehicle away from his employer's premises.

This employee's injury is covered by Workers' Compensation because having his personal vehicle available at work was made an "express condition of employment" by his employer. See Smith v. W.C.A.B. (1968) 69 C.2d 814, 73 Cal. Rptr. 253, 33 C.C.C. 771.

## **Scenario 2.**

Employee is injured on his way to work [or on his way home from work]. The employer has several jobsites. There is a history of this employee working at least once per week at two different jobsites on the same day. The jobsites are more than one-half mile apart from each other and the employer does not provide transportation between these jobsites when the employer moves from one jobsite to the other.

The employee's injury is covered by Workers' Compensation because having his personal vehicle at work is an "implied condition of employment". See Hinojosa v. W.C.A.B. (1972) 8 C.3d 150, 105 Cal. Rptr. 456, 37 C.C.C. 734.

## **Scenario 3.**

Employee is injured on his way to work [or on his way home from work]. Although there is no express or implied requirement that the employee use their own vehicle to run errands for the employer, a practice has developed where the employee does on a regular basis use his own vehicle in order to run those errands.

This employee's injury is covered by Workers' Compensation because using his personal vehicle has become an "accommodation" to the employer. See County of Tulare v. W.C.A.B.; Cairns (1985) 170 C.A.3d 1247, 216 Cal. Rptr. 885, 50 C.C.C. 435.

## **Scenario 4.**

Employee is a farm worker who is a passenger in a van and is being taken to work [or being brought home from work] by his foreman at the time the van is involved in an accident and the employee is injured. The foreman prior to the injury has told the farm workers who work in his crew that they must ride in his van and pay him \$5 per day for the ride. The foreman has also stated that anyone who refuses to pay the \$5 dollars per day will not be permitted to work in his crew.

This employee's injury is covered by Workers' Compensation because riding in the foreman's van is a "condition of employment". Although such action is illegal many foremen nevertheless engage in this practice. By having the power to hire and fire employees, such foremen are able to force employees to ride in their vans and coerce them into paying him for the ride.

## **Scenario 5.**

Employee is a farm worker who is injured in a motor vehicle accident while riding as a passenger in a van that is taking him to work [or home from work]. The foreman at the time that he hired this farm worker was aware that the farm worker did not have transportation to get to the worksite. Because of this the foreman, at the time her hired this employee, assigned this employee to ride to work with a particular individual who owned a van. The farm worker than pays the owner of the van \$5 dollars per day for being taken to the job site and back to his home at the end of the workday.

This employee's injury is covered by Workers' Compensation because the foreman has been directly involved in arranging the transportation of his employee to work. See Travertine Vineyard Association v. W.C.A.B. (1976) 41 Cal. Comp. 357 and Zenith Insurance Company v. W.C.A.B. (1984) 49 Cal. Comp. 584.

#### **Scenario 6.**

An employee is injured in the employer's parking lot after work while helping a co-worker with a dead battery to jump start their car.

This employee's injury is covered by Workers' Compensation because they are on the employer's premises [parking lot] at the time of the accident. See North American Rockwell Corp. v. W.C.A.B. (1970) 9 Cal.App.3d154, 87 Cal. Rptr. 774.

#### **Scenario 7.**

An employee is injured in a motor vehicle accident while traveling to work. At the time of the accident the employee is making a left-hand turn onto the employer's premises. The employee misjudges the speed of the vehicle approaching from the opposite direction and thus the employee is at fault for having caused the accident.

This employee's injury is covered by Workers' Compensation because he was making a left-hand turn onto the employer's property at the time of the accident and this involves a "special risk". See Greydanus v. I.A.C. (1965) 63 Cal. 2d 490, 47 Cal. Rptr.384, 30 C.C.C. 376.

#### **Scenario 8.**

Employee is a farm worker who is on his way to his foreman's house to pick up his paycheck when he is involved in an automobile accident. This employee is a member of a crew who usually works six days per week and is paid by the foreman at the jobsite on Saturdays. However, on Friday the foreman announces that the crew will not work this Saturday and tells the crew members to come to his house between 12 noon and 2 p.m. to pick up their paychecks.

This employee's injury is covered by Workers' Compensation because he is picking up his check as directed by his foreman. See Argonaut Ins. Co. v. I.A.C., 221 Cal. App. 2d 140, 34 Cal. Rptr. 206, 28 C.C.C.227.

#### **Scenario 9.**

Employee has suffered an industrial injury and has periodic appointments with his doctor who is following his progress. Employee is on his way to a doctor's appointment when he is involved in a motor vehicle accident and is injured.

This is a Workers' Compensation case because the employee was on his way to a doctor's appointment that is related to his previous industrial injury. See Laines v. W.C.A.B. (1975) 48 C.A.3d 872, 122 C.R. 139, 40 C.C.C. 365.

### **Scenario 10.**

An employee suffers an industrial injury and his doctor places him on disability. Employee recovers from his injury and is ready to go back to work. His employer, however, requires that he provide a note from his doctor releasing him to work before he is allowed to return to work. The employee is on the way to his employer's office to deliver the doctor's note which releases him to go to work when he is injured in a motor vehicle accident.

The employee has a Workers' Compensation case for the injuries suffered in the automobile accident because he was taking the doctor's note to his employer at the time he was involved in a motor vehicle accident. See Southern Calif. Rapid Transit Dist. V. W.C.A.B.; Weitzman (1979) 23 C.3d 158, 151 Cal.Rptr. 666 44 C.C.C. 107.

### **Scenario 11.**

Employee is injured in a motor vehicle accident while traveling to work or home from work. At the time of the accident the employee has in his vehicle equipment belonging to his employer which the employer requires him to take home each day and bring back to the worksite each day.

Although it is still subject to debate, the case of Wilson v. W.C.A.B. (1976) 16 Cal. 3d 181, 127 Cal. Rptr. 313 implies that the injuries suffered by the employee in this scenario are compensable under the Workers' Compensation laws because the employee was required to transport the employer's equipment.

### **Scenario 12.**

Employee slips in the bathtub of a motel in Bakersfield where he is staying and is injured. Although this individual usually works in Modesto where he lives, for the past two weeks he has been working for his employer at a jobsite in Bakersfield.

This is a Workers' Compensation case pursuant to the "Commercial Traveler Rule". The "Commercial Traveler Rule" states that an employee who is working away from home is covered for injuries that he sustains while away from home even if that injury has nothing to do with his work. See IBM Corp. v. W.C.A.B. (Korpela) (1978) 77 Cal. App. 3d 279, 142 Cal. Rptr. 543, 43 Cal. Comp. Cases 161.

### **Scenario 13.**

Employee slips in the bathtub of the house in which he is living and injures himself. The house in which he is living is provided by his employer. The employee pays no rent [or less than full market rent] for living in this house because of his employment with the owner of the house.

This injury is covered by Workers' Compensation because of the "Bunkhouse Rule". The "Bunkhouse Rule" states that if an employer provides an employee with a place to live, at no cost or at a substantial discount, as part of their employment, any injury suffered by the employment while making a reasonable use of the premises provided by the employer is covered

by Workers' Compensation. See Argonaut Ins. Co. v. W.C.A.B. (1967) 247 Cal.App.2d 669, 55 Cal. Rptr. 810, 32 C.C.C. 14.

While there are many more scenarios which are covered by Workers' Compensation the 13 scenarios discussed above constitute the most common scenarios in which Workers' Compensation coverage is present despite the fact that the employee was not on-the-job at the time of their injury.

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