

TRAVEL & GROUP TRANSPORTATION

June 11, 2021

Topic: Summer is approaching along with relaxed restrictions on travel for business or pleasure. How do BlofGA's most successful clients ensure employees arrive to work safely and timely? Answering this question and implementing the tips below should positively impact your bottom line.

Many employers are turning to transportation services for employees, given the potential increase in productivity and morale. The services offered are as diverse as our clients, ranging from 100% employer-funded private transportation to carpools, incentives for biking or walking to work, reimbursement or subsidization, and public transportation credits. Numerous studies have shown that even small investments into transit can increase employee satisfaction, productivity, help avoid absenteeism, reduce the environmental impact, and offer tax credits, but it is not without risk. Generally speaking, injuries sustained while traveling to or from employment are not compensable. However, most jurisdictions have carved out several exceptions to the general rule. Below, we highlight some of the most frequent scenarios you may encounter when dealing with injuries to traveling employees.

Exceptions to General Rule: (1) when the employer furnishes transportation; (2) when the employee is doing some act permitted or required by the employer and beneficial to the employer while en route to or from work; (3) going to and from parking facilities provided by the employer; and, (4) when an employee is on call and furnishes or is reimbursed for the employee's transportation costs. These exceptions and some examples are discussed in more detail below.

Transportation Furnished by Employer: when a worker is injured while being transported in a vehicle furnished by the employer as an incident of employment, the worker is generally thought to be within the course of the employment. Thus, any accidents that occur in this scenario may be compensable under most jurisdictions' workers' compensation laws.

Carpool financed by Employer: Likewise, where employees are members of a carpool funded by the employer, most jurisdictions will find accidents that occur on the way to or from the workplace to be within the scope of employment.

Carpool Financed by Employees: unlike the scenario above, if co-workers form "carpools" using personal vehicles, not reimbursed or endorsed by the employer, and while being paid only for time on the job site, your risk for a compensable claim is far lower.

Traveling to Doctor: injuries sustained by an employee while en route to see a workers' compensation physician are often deemed compensable, especially where it is found that the insurance carrier provided the transportation and/or required the employee to consult with the physician.

"Traveling Salesman": In recognition of the fact that traveling employees tend to be exposed to unique hazards, courts have long acknowledged that the scope of the employment of a traveling employee is broader than that of an ordinary employee. Particularly, if a job requires travel and/or lodging away from home, the majority of jurisdictions allow greater access to benefits. This rationale is based on the idea that "perils of the highways and

the hazards of hotels" expose employees to increased risk of injury over a longer timeframe, justifying an expansion of the traditional limits on the "course" and "scope" of employment. As a result, traveling employees are often said to be "continuously" in the course and scope of the employment on an interrupted basis (i.e., "24/7"). As you can imagine, the risk of injury increases significantly for traveling employees who are said to be in "continuous" employment. Accidents we see in this line of cases tend to involve motor vehicle collisions, 'slip and falls' in hotels, assaults by third-parties, and similar risks associated with travel. To help determine compensability, most jurisdictions have adopted a version of the following test: whether an employee while working away from his home is required to lodge and work within an area geographically limited by the necessity of being available for work on the employer's job site and is, in effect, in continuous employment.

Parking Lot Owned by Employer: When an employee is injured in or going to and from a parking lot owned or maintained by the employer, the incident is compensable in most jurisdictions. In addition, a reasonable period of "ingress or egress" from one's employment is typically covered by workers' compensation.

Take Away for Clients:

Employers should note potential liabilities created by transportation and the evolving definition of the "workplace." It is one thing to focus on safety when employment is limited to a well-defined location such as a restaurant or warehouse, but as "workplaces" continue to expand and evolve to remote locations, we need to recognize the challenges presented, including an increased risk for liability in novel locations or even while traveling to and from those locations. In the end, business necessities may require us to offer increasingly unorthodox work arrangements and transportation options, but the authors of this article suggest that any decision in that regard is best made after careful consideration of all potential risks and benefits.

Additionally, we wanted to leave you with some "pro tips" for your consideration. When assessing the compensability of a traveling employee's accident, confirming the time, place, and purpose of the travel is critical to determine if the employee's actions were reasonable and consistent with employment.

While the compensability of a work injury for a traveling employee is an inherently factual determination, there are certainly ways to reduce exposure in these scenarios. For example, consider specific and explicit limits on employees' activities while traveling or the receipt of wages and overnight expenses to working hours and weekdays.

If you are sending employees to an out-of-state job site, prepare a list of reliable doctors near the job site who can provide treatment - do not rely on the local emergency room alone - and notify your foreman/supervisors that light-duty work should be provided to keep employees working rather than returning home to collect a disability check. Implementing these strategies ahead of time will help you maintain control over claims and reduce exposure.

Disclaimer: BlotGA publications inform readers about general matters of interest and are not legal advice. Please contact your attorney for questions about specific cases in your jurisdiction.