

WC Injury: The 'Course And Scope' Rule

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Workers' compensation statutes differ among jurisdictions regarding the threshold for compulsory participation, benefit schedules, contractor/sub-contractor relationships and most other statutory specifics. But there is one workers' compensation concept on which every state agrees and to which **every** state subscribes; to be compensable, ***injury or illness must arise out of and in the course and scope of employment.***

Three Tests

"Arising out of..." indicates a causal connection between the furtherance of the employer's business and the injury. If the employer benefits in some way from the activity, then the injury or illness suffered in the pursuit of that activity is considered to "arise out of" the employment.

"In the course..." is a function of the timing and location of the injury or illness. The implication is that the injury must occur during operations for the employer, or "during employment," and at the employer's location or a location mandated or reasonably expected by the employer. New working conditions and relationships do not necessarily limit this to an on-site, 8-to-5 exposure.

"Scope of employment..." serves to more specifically define the first two tests by 1) analyzing the motivations of the employee; 2) analyzing the employer's direction and control over the actions of the employee; and 3) analyzing the employer's foreseeability of the activities of the employee. Employee actions which ultimately lead to an accident or injury must be motivated, in whole or in part, by the "desire" to further the interests of the employer. Motivation or desire can be out of fear that failure to perform will result in the loss of a job, or from a more altruistic desire to do well for the employer. The basis for the motivation or desire is irrelevant; it is the fact that the motivation exists that leads to compensability. Further, the actions must, to some extent, be at the presumed direction of the employer or potentially foreseen by the employer.

Injury may, in fact, arise out of employment and may even occur in the course of the employment but still be outside the scope of employment, negating compensability under workers compensation law. While he is entertaining clients, a company executive gets into an argument with a group sitting at another table because they are being too loud. A fight breaks out and the executive is severely injured. Such injury is not likely compensable under workers compensation. Yes, the injury arose out of and in the course of employment (entertaining clients to further the employer's business), but was outside the scope of employment. The employer's goals were not furthered by the fight (nor was that the motivation), and the employer likely never directed nor foresaw the need for the employee to be involved in a fist fight as a result of his employment.

Establishing an injury as work related is much simpler when employees work from a fixed place of employment on a fixed schedule and are injured while in the midst of their assigned duties. A production employee injured by a press (or whatever type of machinery) during her shift will meet all three tests with only minor question. Likewise, an office employee injured when a computer falls on him raises little doubt that the injury arose out of and in the course and scope of employment. There are few objections that could be raised in these situations upon which a denial of coverage could be based (beyond drug use).

Employees away from the employer's premises, involved in employer-sponsored recreational activities, who like to horseplay or pull practical jokes on their coworkers, who have personal issues that leak over into work or with pre-existing conditions or a predisposition to injury present particular problems when judging the compensability of an injury. Injury to any employee falling into one of these categories will require careful evaluation before coverage is assured. Some of these issues will be explored in the remainder of this post and in the next.

Have Briefcase/Tool Belt, Will Travel

Even with the jump in gas prices, many employees travel to conduct business on behalf of their employer. Injury suffered by an employee away from the premises for business purposes is generally considered to arise out of and in the course and scope of employment and is compensable. The proximate cause of the employee's injury is the furtherance of the employer's interest; that's the reason for such a broad extension of coverage for employees injured while travelling.

For example, a specialty electrical contractor is hired to install wiring at a plant several hundred miles away from the contractor's home office. The eight-man crew will be on site four days. Several hotel rooms are rented for the employees to stay in when the day's work is done. Every evening, the crew goes out to dinner. While walking to a restaurant next to the hotel, one employee steps in a hole, falls and breaks his arm. This is a compensable injury as he was still in the course and scope of his employment.

Under the application of "proximate cause," the employee would not have been walking through the parking lot to get dinner **but for** the fact that his employer sent him there to work. He is furthering the employer's business. Additionally, eating dinner is within the course and scope of the employment as the employer likely provided a stipend to pay for the meals, "directed" them to eat and could have reasonably foreseen them needing and wanting to eat.

After dinner, a member of the crew decides to drive over to visit some family and friends in the area. On his way back to the hotel he is badly injured in an at-fault automobile accident. Does the workers' compensation carrier have grounds to deny the compensability of the injury? Yes, payment for this injury will likely be denied. Visiting family and friends does not arise out of the employment and is not in the course and scope of the employment. The employer did not direct the employee to depart nor did he sanction the deviation from the approved path (job, hotel, dinner). This is considered **abandonment of employment**. The employee has undertaken a personal task/errand that neither benefits the employer, nor is approved by the employer.

Working From Home

Employees working from home-based offices are afforded the same workers compensation protection as those camped in an office building. Determining the compensability for an injury suffered at home requires meeting the same qualifications as one suffered on site; injury must arise out of and in the course and scope of employment.

Tennessee's Supreme Court ruled on such a case in November 2007. InsuranceJournal.com reported the Court's findings in [Wait v. Travelers Indemnity Co. of Illinois](#) on November 26, 2007.

Kristina Wait was taking a lunch break from her work for the American Cancer Society. A neighbor knocked on her door and Wait let him inside. After a brief conversation the neighbor left but returned a few minutes later claiming he forgot his keys. Upon re-entering the home, he brutally assaulted Wait.

Wait's claim for workers compensation benefits was ultimately denied by the Tennessee Supreme Court. The Court reasoned that while the kitchen was equivalent to an office-based lunch or break room and taking lunch was within normal course and scope of employment (expected and foreseen by the employer), the attack was outside the purview of workers compensation because it had nothing to do with Wait's role or the ACS. It was simply a personally motivated attack unrelated to the employment.

Another example of non-compensable injury might include a home-based employee taking a break to go attend to his children. He has abandoned his employment and is no longer pursuing the employer's interest, but his own. If he is injured while playing with the children, such injuries did not arise out of or in the course and scope of employment. If, however, a file cabinet topples over on him while searching for information, the injury is compensable.

Unique workers compensation exposures are created for employer's allowing employees to work from home; exposures that may not be present with office-based employees. These exposures could include greater exposure to road hazards, a change in the "coming and going" rule (to be discussed in a future post) and difficulty in meeting the requirement to provide a safe and healthy work environment.

For security and safety purposes or to provide a more professional appearance, employees with a home office may be directed or encouraged to set up a post office box or other mail box arrangements rather than utilizing their home address for business purposes. Having such a box requires the employee to check it periodically, unlike office-based employees whose mail is delivered to their desk. Travelling to and from the box is considered arising out of and in the course and scope of employment. Injury suffered in an auto accident may be a compensable injury.

Some employers allow certain employees to telecommute three or four days a week, only requiring them to report to the office once or twice a week for various reasons. Generally, workers compensation benefits do not apply to employees travelling to and from work (known as the coming and going rule). However, since the employee is leaving one per se office location to travel to another, the entire trip may be considered in the course and scope of employment making any injury compensable.

Additional consideration must be given to telecommuting employees' health and safety. Employers are charged with providing a safe and healthy work environment; the requirement extends to employees working in their homes. Employers assure that employee workspace in the office is ergonomically designed, but rarely is such precaution taken with home-based employees. Repetitive motion injuries (such as carpal tunnel syndrome), back injuries from incorrect desk set up and posture and eye strain are just as likely among telecommuting employees as they are among office-based staff. Employers are not on-site to risk manage and loss control the home office design, but workers compensation claims from the same sorts of office-based injuries can still present themselves.

Following

The next installment in this series will detail other work injury-related gray areas. The coming and going rule, work-related recreation and injury resulting from horseplay will be the focus of the next article.

This article does not intend to provide legal advice regarding the compensability of any workers compensation claim. This is intended for educational and discussion purposes only.