EMPLOYER LIABILITY: EMPLOYEES USE OF PERSONAL VEHICLE

In California, employers are generally liable for damage caused by an employee's accident when that employee uses their personal vehicle for business purposes. The "going and coming" rule excludes liability for the employer if the accident occurs when the employee is commuting to and from work. An employer may be liable, however, for accidents occurring during an employee's commute when the "vehicle use exception" applies. The "vehicle use exception" applies where (1) the possession and use of the vehicle is required by the employer, or (2) the possession and use of the vehicle provided a benefit to the employer. In either of these two scenarios, the employer compels the employee to submit to the risks inherent with motor travel and should thus share in the liability.

On June 18, 2018, the Court of Appeal in Newland v. County of Los Angeles effectively narrowed the application of the "vehicle use exception." The Newland court held that the County of Los Angeles could not be held vicariously liable for a motor vehicle accident that occurred when a deputy public defender (Prigo) was driving home from work. The employee attorney regularly needed to drive between various Los Angeles courthouses for hearings, and would frequently use his personal vehicle to visit crime scenes and meet with incarcerated clients. In spite of this, the court held that the two "vehicle use exception" requirements to the "going and coming" rule had not been met.

While the county did not require their deputy public defenders to obtain a personal vehicle to perform their jobs, they required attorneys to have a valid California Class C driver's license or the ability to use alternative transportation to commute to work. Prigo frequently had to attend hearings at branch courthouses throughout Los Angeles County. There is not a reasonable means of public transportation between the Norwalk Courthouse, where he worked, and the branch courthouses, so he would drive his personal vehicle. In February 2013, Prigo left to go home for the day and stopped at a nearby post office. When turning into the post office, he hit a car and injured the driver.

The trial court ruled that the central issue in the case was whether Prigo was required (either expressly or impliedly) to use his personal vehicle to perform the duties of his job for the county, and the jury found that he did, thus imputing liability to the county. The Court of Appeal reversed the trial court's decision, holding that there was not enough evidence that Prigo was driving his car within the course and scope of his employment when the accident occurred. As Prigo was commuting home from work when the accident occurred, the "going and coming" rule applied. To defeat that presumption, one of the two prongs of the "vehicle use exception" would have needed to apply: (1) the county required Prigo to use his car to drive to or from work, or (2) the county benefited from Prigo making his car available during the work day. Neither applied in this scenario.

The court ultimately held that even though Prigo used his car throughout the work day, there was no evidence that Prigo was required to drive a personal vehicle to perform his duties. Furthermore, Prigo was always made aware of the dates which he had hearings or meetings at other locations, and he did not need his car with him at all times for unexpected travel. On the date of the accident, he did not have any job duties scheduled for outside his office. Furthermore, there was no evidence that the county received any benefit from Prigo's use of his car or relied on Prigo's ownership and use of a car.

In its opinion, the Court of Appeal held that the doctrine of respondeat superior does not render an employer vicariously liable simply because it controls an employee's actions. Rather, liability attaches to the employer because the employer somehow creates "inevitable risks as a part of doing business." Given the court's decision that neither prong of the "vehicle use exceptions" applied, despite Prigo's heavy and frequent use of his vehicle for job-related duties, liability is less likely to be imputed to employers in the future for tortious conduct occurring during a work commute.

Lessons for Employers:

- Although the Newland case represents a victory for Los Angeles County, its facts are very specific and may not apply to other accidents.
- Employers should develop policies addressing work-related driving and ensure that they carry appropriate levels of liability insurance for employees who drive in the normal course of business.

Is Commute Time Compensable?

California employers often struggle with the distinction between travel time and commute time. When an employee

is required to travel for work, that time is treated as "hours worked" and must be paid. The time an employee spends commuting to work, however, is generally unpaid. But there are some exceptions to that rule, such as when the employer requires that an employee use a company vehicle to commute.

Is travel time spent in an employer-provided vehicle loaded with equipment and tools under an optional and voluntary Home Dispatch Program compensable? The California Court of Appeal finds it is not.

In a recently decided case *Isreal Hernandez, et al vs. Pacific Bell Telephone Company*, the Third Appellate District Court issued a decision on this

Plaintiffs brought a class action on behalf of Pacific Bell technicians, alleging the class was not paid for the time they were under Pacific Bell's control, because they were not paid for the time they were transporting equipment and tools in a company vehicle to and from the first and last jobs, and for the time required to safeguard the equipment and tools. The Complaint alleged failure to pay minimum wage, failure to pay wages timely, and unfair business practices. The parties filed cross motions for summary judgment. The trial court granted Pacific Bell's motion for summary judgment and denied Plaintiffs' motion.

The Court of Appeal stated the Industrial Welfare Commission ("IWC") defined "hours worked" to mean "the time during which an employee is subject to control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." The two phrases of the definition "time during which an employee is subject to control of an employer" and "time the employee is suffered or permitted to work" establish two independent factors that define "hours worked." The time that an employee is "suffered or permitted to work" includes time the employee is working but not under the employer's control, such as unauthorized overtime, provided the employer has knowledge of it.

Regarding the "control test," the Court of Appeal found that commute time in an employer-provided vehicle is not compensable when the employee is not required to use that transportation. Employers do not risk paying employees for their travel time merely by providing them transportation. When requiring employees to take certain transportation to a work site, employers subject those employees to employer control by determining when, where, and how they are to travel. Travel time is compensable under these circumstances.

Here, the Court found that the standard of "suffered or permitted to work" is met when an employee is engaged in certain tasks or exertion that a manager would recognize as work. Mere transportation of tools, which does not add time or exertion to a commute, does not meet this standard. The Court of Appeal affirmed the trial court judgment granting summary judgment to Pacific Bell, and finding that commute time under the voluntary HDP is not compensable as "hours worked" under the "suffer or permit to work" test.

Consult with legal counsel anytime an employee is involved in an accident that causes injuries or damage to third parties, even if that accident occurs during an employee's commute.

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