

Summary Parking Lot Cases

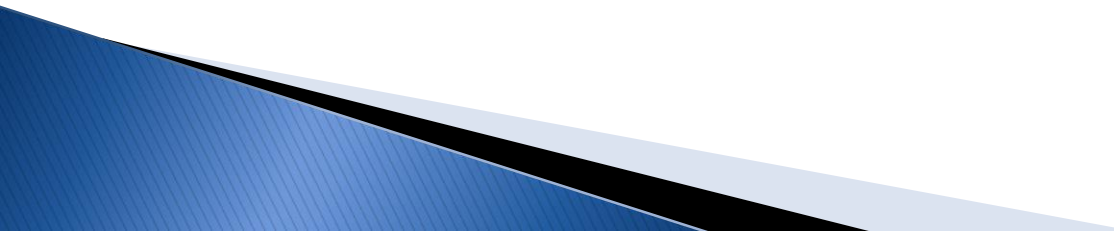
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Two Prongs For Compensable Claim

- In the course of employment.
- Arising out of employment.

In the Course of Employment

- Time, place, and circumstances of the injury.
 - Engaged in required duty or activity consistent with the contract for hire and logically related to the employer's business.
 - Need not be doing actual work, but merely logically related work.
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Arising Out of Employment

- A causal connection between the employment and the injury.

The Coming and Going Rule

- For a fixed situs employee, the requisite causal connection is absent when an injury occurs while traveling to and from the workplace.
- Easy way to remember:
 - The employment duties begin when the employee reaches the workplace.
 - For a non-fixed situs employee, look for causal connection.

Exceptions to the Coming and Going Rule

- The Zone of Employment Exception.
- The Special Hazard Exception.
- The Totality of the Circumstances Exception.

The Zone of Employment Exception

- Injuries that take place at the place of employment and the area thereabout, including means of ingress under the control of the employer will be compensable.

The Zone of Employment Exception cont'd.

- Considerations:
 - Parking area (are the spaces assigned).
 - Landlord/employer control over the area.
 - Exclusivity of parking area.
 - Direction on where to enter/exit.

The Special Hazard Exception

- But for the employment, the employee would not have been at the location where the injury occurred.
- The risk is distinctive in nature and quantitatively greater than the risk to the public.

The Totality of Circumstances Exception

- The proximity of the scene of the accident to the place of employment.
- The degree of control the employer had over the scene of the accident.
- The benefit that the employer received from the injured workers' presence at the scene of the accident.
 - None of these factors are dispositive!

Application in the Courts

- The only certainty is that nothing is certain.

Tamarkin v. Wheeler (9th District Court of Appeals)

- Claimant parks in a lot used by both employees and patrons.
- Clocks in and begins his normal work activities as a baker's apprentice.
- Finds out his Jeep was vandalized.
- Doesn't clock out or tell supervisors.
- Cuts his hand inspecting the broken mirror.

Injury is Non-Compensable

- Court applied the totality of the circumstances test.
- Proximity to workplace does not equal the parking lot.
- The employer had minimal control over the Jeep.
- No benefit from the claimant repairing the car.
- The court did acknowledge that walking to and from the car was necessary for employment.

Taylor v. Meijer (2nd District Court of Appeals

- Cashier finishes shift, clocks out, and does some personal shopping.
- Slips and falls on ice in the parking lot.
- Employer argues that the act of shopping removed the claimant from the course and scope.

Taylor v. Meijer (2nd District Court of Appeals)

- Court finds claimant was within the zone of employment.
- Would have had to return to her car eventually regardless of whether she shopped.
- Also only ten minutes removed from work, so still within the course and scope (diversion limited in time, space, and purpose).

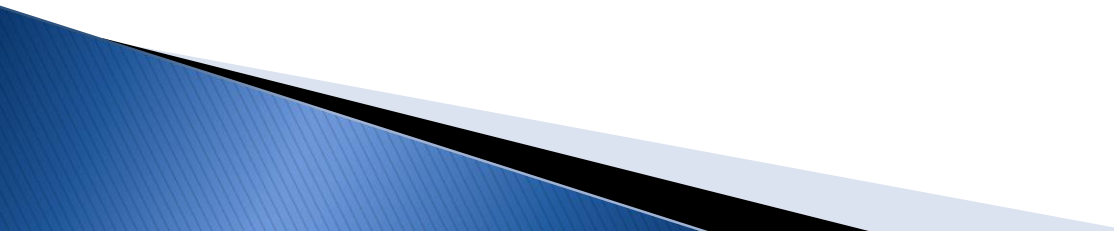
Other Interesting Decisions

- Employer leases a lot from a church, directs employees to use one of two lots and where to walk in between was compensable (8th District).
- Telling an employee where to park deemed control of who uses the spaces (11th District).
- Home healthcare worker (non-fixed situs employee) has to go to the office and turn in paperwork and pick up checks.

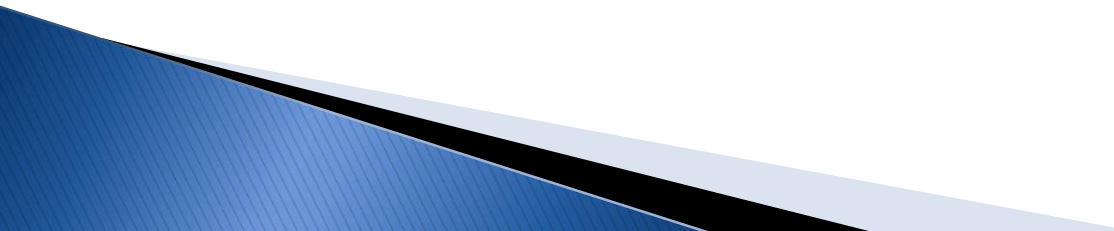
Other Interesting Decisions

- While picking up check, she slips and falls in parking lot. 5th Circuit said compensable.
- Picking up the check was required by the employer, claimant was being paid at the time, her workday had not finished, and the employer benefited from her presence at the scene of the accident.

Other Interesting Decisions

- Claimant intended to shop on a personal errand before clocking in and slips in the parking lot.
 - Attached by a co-worker in front of a nursing home.
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Strip Mall Case

- Beauty salon in strip mall.
 - Claimant is a stylist, and she acknowledges that she can't begin work until she arrives at the store.
 - She clocks in when she reaches the store.
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Strip Mall Case (cont'd.)

- Parks in a lot, but is not instructed to park in a certain spot or even area of the lot.
 - However, she is instructed to avoid the first few spots directly in front of the store.
- Lease states that the landlord is responsible for maintenance of the lot and sidewalk in front of the store.
 - Lease even states that the business cannot place signs on the sidewalk.

Strip Mall Case (cont'd.)

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Strip Mall Case (cont'd.)

- Claimant not carrying anything with her other than her purse as she exited her car to enter the store.
- Claims that there is an unwritten policy to park in a certain area, and to clean up the sidewalk when there is weather.

Result

- Both DHO and SHO relied the claim based upon *Foster v. BWC* (2nd District Court of Appeals).
- Questions from the SHO:
 - Were the instructions to park in a certain area written?
 - Was the requirement to clean the front of the store written?
 - Was there discipline for failing to adhere to these “policies”?

Document, Document, Document!

- What helps to prevail:
 - Job descriptions.
 - Time cards.
 - Lease.
 - Witness statements/videos/photos.
 - Early treatment records.
 - Policies.
 - Testimony.
 - Maps.

Questions?