Guide to Workers’ Compensation Claims
Stemming from Motor Vehicle Accidents

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An injury which occurs during an employee’s travel between home and work is not normally compensable under the Workers’ Compensation Act. This is known as the “coming and going rule” and is as simple as it sounds. If an employee sustains an injury going to work, or coming home from work, that injury is not covered through workers’ compensation insurance. There are several exceptions, however, to the “coming and going rule” and the exceptions are much more difficult than the rule itself. This article is a general overview of the exceptions to the coming and going rule, as well as an overview of additional legal twists which arise when an employee sustains an injury in a motor vehicle accident. There are a lot of defenses to workers’ compensation claims when the claim arises out of a motor vehicle accident. Knowing which defenses apply to which situations is key in determining compensability.

A. Gilbert Exception/Use of Vehicle to Perform Job Duties

The exception promulgated in Gilbert states:

The rule excluding off premise injuries occurring during the trip to and from work does not apply to those situations in which the employee, as a part of the job, is required to bring his or her own vehicle for the use during the working day.

Gilbert v. Star Tribune, 480 N.W.2d 114, 115 (Minn. 1992). The vehicle must be used during the work day and the employee must perform principal tasks of his job in the vehicle. See, Sweep v. Krause Anderson Constr., 63 W.C.D. 259 (W.C.C.A. 2003). The requirement to bring the vehicle to work must be mandatory. Wenda v. Olsten Healthcare, 1997 WL 63600 (W.C.C.A. 1997). According to Professor Larson, the theory behind this rule is that the:

Obligations of the job reach out beyond the premises, make the vehicle a mandatory part of the employment environment, and compel the employee to submit to the hazards associated with motor travel, which otherwise he would not have the option of avoiding. But in addition there is at work the factor of making the journey part of the job, since it is a service to the employer to convey to the premises a major piece of equipment devoted to the employer’s purpose.

1 Larson, THE LAW OF WORKMEN'S COMPENSATION, § 17.50 at 4 249 (1991) (cited for authority in Wenda v. Olsten Healthcare). In Gilbert, the employer expected the employee to assemble the employer’s newspapers at the paper depot and deliver the newspapers along the designated route. Gilbert at 115. The employee kept various work tools in the vehicle. Carriers were not compensated for travel from home to the
paper depot or travel from the last customer delivery to home. The Minnesota Supreme Court held this was a compensable injury as the employee was required to furnish a vehicle as a part of his employment. *Id.*

**Changing Work Sites**

The Workers’ Compensation Court of Appeals has been reluctant to expand the holding in *Gilbert*. In *Wenda v. Olsten Healthcare*, the Workers’ Compensation Court of Appeals, reversing the compensation judge, found that the *Gilbert* exception does not apply when the vehicle is used to transport the employee to different job sites and is not actually using the vehicle to perform job duties. *Wenda v. Olsten Healthcare*, 1997 WL 63600 (W.C.C.A. 1997) (The court found that the employee was using the motor vehicle solely for the purpose of transporting himself to work. It was not intended or required that he use the vehicle during the working day or for the employer’s purpose. The fact the job site or work location might change frequently, or was not accessible by public transportation, did not nullify the requirements under the *Gilbert* exception that the car must be used as a part of the actual job.). *Id.*

**Corporate Vehicle**

The Workers’ Compensation Court of Appeals further declined to expand the *Gilbert* exception in *Vu v. Waconia Ford Mercury*. In *Vu*, the employee was given a corporate vehicle and the employee was required to have the corporate vehicle at the dealership with him every day. In *Vu*, the employee did not perform the principal tasks of his job in the vehicle and the appellate court found that there was no causal relationship between the employee’s obligation to have the vehicle with him at work and the work that he was actually employed to perform. *Id.* at 12.

**Performance of Duties**

In *Williams v. Grand Rapids Baptist Church*, 2006 WL 2923535 (W.C.C.A. 2006), the appellate court found the employee was not required to use his vehicle in the actual performance of his job as a pastor. The court found this case similar to the situation in *Wenda*, when the registered nurse was not actually required to use the vehicle in the performance of his nursing duties. As in *Wenda* and *Vu*, the employee’s vehicle, although he needed to get to and from work locations, was not integral to the performance of his duties. The court found that the employee’s accident, therefore, did not arise out of and in the scope of his employment. *Id.* at *4.*

**B. Special Errand**

Another exception that may apply making the commute within the course of employment is the special errand rule. Coverage under the special errand rule is “portal to portal.” The special errand rule applies when the following factors are met: (1) there is an express or implied request that the service to be performed after working hours by an employee who has fixed hours of employment; (2) the trip involved on the errand be an integral part of the service performed; and (3) the work performed, although related to employment, be special in the sense that the task requested was not one which was

C. **Minnesota Statute Section 176.011, subdivision 16**

Under Minn. Stat. § 176.011, subd. 16, “where the employer regularly furnishes transportation to employees to and from the place of employment, those employees are subject to this chapter while being so transported.” Here, the employer did provide a company-owned vehicle. However, that is not enough. For compensability to exist under this subdivision, the statute requires not only that the transportation issue be furnished by the employer but also the injury at issue to have occurred while the employee was “being . . . transported.” The implication of the statutory exception is that liability extends to the transporting vehicle only in circumstances where the employee entrusts his or her safety to the employer and is then injured while he or she is passively in the employer’s care. See *Vu v. Waconia Ford Mercury*, 62 W.C.D. 6, 10 (W.C.C.A. 2001). The Legislature’s use of a passive verb form “being so transported” provides against coverage in the more common situation where the employee is the active driver of an employer-owned vehicle, as a permissive use for his or her own convenience and not that of the employer. *Id.*

In the case here at issue, the employee was entirely autonomous in his use of the employer’s vehicle; that is, the vehicle that he was riding in was entirely under his direction and control; he was not “being transported” by the employer.

D. **Traveling Employee**

Employment that requires travel creates a special situation. Some injuries sustained by traveling employees are compensable while others are not. Where the employee was, what the employee was doing, and if the employee was required to be traveling as a part of job duties, are all considered when deciding whether to award compensation to an employee injured while traveling. Because of the many exceptions and theories surrounding the compensability of traveling employee injuries, an important determination is whether the employee travel cases are applicable in the first case. Classic examples of traveling employees are over-the-road truck drivers and salespersons. These types of employment “take the employers premise with them” during their travels, thus continue to be covered from when they leave until when they return. Employees, however, have tried to broaden the definition of traveling employee to other occupations.

The workers’ compensation courts have addressed this dilemma in *Gillund v. Royal/Milbank Ins. Co.*, 46 W.C.D. 520 (1992). In *Gillund*, the employee worked out of his home as a claims adjuster, owned no personal car, and was provided a company car that he kept in his garage. The employee reimbursed the employer for personal use of the vehicle. On the date of injury, the employee woke up and noticed that several inches of snow had fallen during the night. He had a heart attack after shoveling the driveway and walks. The compensation judge awarded compensation based on portal-to-portal coverage received by traveling employees, an exception to the coming and
going rule, as well as the “dual purpose” doctrine. The Workers’ Compensation Court of Appeals reversed the compensation judge because the traveling employee analysis was inappropriate. The employee was not in the course of a business trip at the time of the injury, the employee could not commute to and from employment since home was his workplace, and the employee’s activity was incident to his role as a homeowner and was necessary for the normal property maintenance and upkeep. A key factor of whether the traveling employee analysis is applicable is to determine whether the employee was actually injured during employment-related travel.

To recover injuries sustained while traveling, the employee must be able to show that travel was part of the employment. The employee must show that the trip furthered the employer’s interests, the employee received complete or partial reimbursement for travel expenses, or the employee received wages for the time spent traveling. If the employee can show that these events occurred, the entire journey will be considered within the course of employment and injuries sustained during the trip will be compensable. *Lundgaard v. State Dept. of Public Safety*, 237 N.W.2d 617 (Minn. 1979).

E. Are Construction Workers Traveling Employees?

Questions arise to construction workers whose job premise change frequently. The courts have held on several occasions that construction workers are not traveling, thus after the day ends at the construction site, coverage ends, even if the construction worker is staying away from home in a hotel. See e.g., *Schmaltz v. Albert Kastner & Sons*, 42 W.C.D. 539, 543 (W.C.C.A. 1989) (Carpenter, required to provide transportation, travels to various sites during day, accident on way home not covered, not traveling employee. Each job site was an actual premise, therefore, not a traveling employee.); *Matetich v. Ulland Bros, Inc.*, 48 W.C.D. 350 (W.C.C.A. 1993) (Construction worker staying in hotel, injured at hotel, argued traveling employee. Judge Erickson held not traveling employee as job site changed with each job, thus not entitled to portal-to-portal coverage.).

F. Dual Purpose Doctrine

The doctrine tangential to the traveling employee exception to the coming and going rule is the dual purpose doctrine. A unique traveling employee situation arises when the employee travels for both personal and business reasons:

A trip which includes both personal and business errands remains a business trip for compensation purposes if the evidence supports a permissible inference that the work of the employee created the necessity for the trip which would have been made even though the private errand had been dropped. Conversely, if the work of the employee had no part in creating the necessity for the trip and it would have been made if the business errand was dropped, and the trip would have been canceled only upon failure of the private purpose, the trip and the risks are personal.
In *Brennan*, the employee was injured in a motor vehicle accident on his way home from attending a high school hockey tournament at the invitation of his insurance agent. 425 N.W.2d 837, 838 (Minn. 1988). The employee was the executive officer of his practice, and the insurance agent had invited him to the game, to discuss insurance and pension plans for his employees. The court held, despite the employee’s testimony that discussion of insurance was a concurrent cause of the trip to the hockey tournament, the attendance was primarily for personal recreation and any connection to his employment was remote. *Id.* at 839. Therefore, the injury did not arise out of and in the course of employment.

In *Matter of Owen v. Oneida Ltd.*, the New York Workers' Compensation Board found the employee’s business errand had lost its identity as part of the decedent’s employment and that it became part of personal activities which created the peril that resulted in the decedent’s death. 16 A.D.2d 1005 (1962) (cited in Larson Treatise). Owen traveled from his office to Vestal, New York, in his capacity as a mechanical engineer for employer. He specialized in designing jet propeller blades and was to have dinner with Robert Lewis, an owner of a tool and design firm. They met at a restaurant, had drinks, ate dinner and discussed business. The employee then left, later stopping at an American Legion Club, called his wife, and engaged in conversations with two co-employees. Then, he and the two employees went and got food and coffee at another restaurant. After leaving the last restaurant, the employee was killed in a car crash nine miles from his home and on a course that would have taken him home. *Id.* at 1006.

The court held the decedent’s activities after leaving the first restaurant, constituted a substantial departure from normal procedure that the business trip lost its identity as part of the decedent’s employment and that it was pursuit of personal activities that created the peril that resulted in death. *Id.* at 1006.

**G. Deviation**

A deviation from a business trip made for personal reasons takes an employee out of the course of employment until the business trip is resumed. If an employee who is traveling for business purposes takes a severable side trip, compensation is suspended until the employee completes the side trip or resumes travel towards his business goal. *Amundson v. Mac’s Rental & Sales*, slip op (W.C.C.A. 2005).

The following cases have found deviations for relatively minor side trips:

In *Falkum v. Daniel Starch & Staff*, the Minnesota Supreme Court found stopping at a grocery store to pick up a loaf of bread was a severable side trip on an otherwise covered commute home. 135 N.W.2d 693 (Minn. 1965). The employee was injured in a motor vehicle accident in the grocery store parking lot. The compensation judge
awarded compensation, the Workers’ Compensation Court of Appeals reversed, and the Minnesota Supreme Court affirmed that the deviation to the grocery store was a severable side trip. The employee argued that she was covered portal to portal and a physical deviation of a few feet is not such a deviation so as to take her out of the course and scope of her employment. The court disagreed, noting the trip to the grocery store was entirely personal in nature.

In *Kaplan v. Alpha Epsilon Phi Sorority*, 42 N.W.2d 342, the sorority housemother left the sorority house for a twofold purpose. One was to obtain bandages for use of the residents and upon completion of that errand she was to attend a religious service. While on her way to the drugstore she skipped and sustained injuries, for which she sought workers’ compensation. The industrial commission awarded damages, but the Minnesota Supreme Court remanded with the following instruction: “assuming the employee left the sorority house for the dominant purpose of attending religious services, her accidental injuries still arose out of and in the course of her employment if at the time of the accident, as a deviation from her personal mission, she was in the act of going to the drugstore to obtain bandages.”

Other Minnesota cases denied benefits on the deviation principle. *See*, e.g., *Rhea v. Overholt*, 25 N.W.2d 656 (Minn. 1946) (Compensation denied when traveling salesman left portfolio in car and proceeded to store where he left shirts for alteration. He then stopped in a tavern to use the bathroom and was injured upon leaving. Court held there was a deviation until returned to his car.); *Mills v. Standard Parts Serv.*, 131 N.W.2d 546 (Minn. 1964) (Stopped for a personal lunch while walking between store locations. Injured in a slip and fall at a location he would not have traversed if a direct route had been traveled. Benefits denied because he had not yet returned to direct route of travel.). In *Butler v. Hennepin County Home School*, the employee needed to transact business at a bank. Slip op. (W.C.C.A. 1995). She instead first went to a restaurant, which was 0.2 miles from the bank. She proceeded to walk toward the entrance and slipped on ice. Workers’ compensation was denied. The court noted the employee had turned away from the most direct route to the bank, there was no business purpose for the trip to the restaurant, the employer did not ask the employee to stop at the restaurant, and even though the length was less than a mile, the compensation judge was not persuaded that this was an insubstantial deviation.

H. But is it a Deviation?

An issue may arise as to whether the deviated activity was personal or work related. *Geldert v. Hennepin County Adult Correction*, slip op. (W.C.C.A. Oct. 20, 1999), a dispute surrounded whether activity was personal or work related. The employee, who was regularly required to drive between the employer’s different work sites, was injured in his house after driving home to retrieve his forgotten driver’s license and parking card. Because trip home was not a specific work duty assigned by the employer, and because the trip was not on the employee’s customary route, the injury was sustained during a side trip and was beyond the scope of the Act.
Classical deviation situations arise when the employee clearly leaves the scope of his duties and performs a personal activity. See, *Geldert v. Hennepin County Adult Correction*, slip op. (W.C.C.A. Oct. 20, 1999); *Fox v. Econo-Cooler*, 35 W.C.D. 41 (W.C.C.A. 1982) (employee drops off coolers in Brainerd for work, then spends next two days hunting with non-work friends and is killed while driving around during hunting trip, is a non-compensable deviation).

Another issue the Minnesota workers’ compensation courts have addressed is when an employee was on a deviation, but as a passenger, not the driver. In *Gunderson v. MAC’s Landscaping*, the employee was a landscaper, who did landscaping work at job sites away from the employer’s premise. 65 W.C.D. 274 (W.C.C.A. 2005). The employee would first arrive at the employer’s premise to discuss the work for the day, then the employee would go to the job site in a truck owned by employer. On the date of injury, the employee and co-workers left in employer’s truck and stopped at a Super America for cigarettes and food. The injured employee did not make the decision to stop at the gas station. After leaving Super America, but not yet back on direct route to the job site, the vehicle was involved in an accident. Employer denied benefits and alleged deviation.

The court was not persuaded by the deviation argument. There was not a significant variance in distance between the direct route and the route the employees followed. Further, once the side trip was completed and the employee is back on the business trip route, the employee is again covered. Even if a deviation occurred, it ended by the time of the incident. Also significant to the court’s determination was the employee did not make the decision to stop at Super America.

The *Gunderson* case held the motor vehicle accident arose out of and in the course of employment, even though the employees went on a personal errand and were not on the direct route yet. Important to the deviation defense, then, is whether the injured employee chose to deviate. If the employee is simply a passenger who did not request a personal errand, under *Gunderson*, it may still be a compensable claim.

I. Meal Times

While meal time injuries occurring on the employer’s premise are compensable under the personal comfort doctrine, they are not compensable if off premise. Below are examples of injuries during off-premise lunch breaks. In each case, the courts denied the claim.

Under circumstances, the death of employee, who was permitted to eat lunch on premises or elsewhere, in a crossing accident on a public highway near premises while he was driving to lunchroom was not due to accident arising out of employment, although it was necessary for him to use crossing en route to and from work. M.S.A. § 176.011, subd. 16. *Bronson v. Joyner’s Silver & Electroplating Inc.*, 127 N.W.2d 678 (Minn. 1964).
Ordinarily, an employee who is injured, either in going to or away from the premises of his or her employment, whether it is during a lunch hour, or before or after work actually commences or ceases, is not entitled to workers' compensation unless he or she is engaged in a service for the employer while so traveling. Minn. Stat. § 176.011, subd. 16; Johannsen v. Acton Constr. Co., 199 N.W.2d 826 (Minn. 1963).

An employee who is injured on his or her way to or from work, either during regular lunch hour or otherwise, and is not engaged in any special service for his or her employer at the time, is not entitled to the benefits of the Compensation Act. But such rule does not apply where the employee, in addition to attending to personal affairs, also engages in some work for the employer pursuant to employer instructions. Locke v. Steel County, 27 N.W.2d 285 (Minn. 1947).

J. Intoxication Defense When Injury Arises out of Motor Vehicle Accident

Intoxication is a difficult defense. Intoxication must be the proximate cause of injury, not just a substantial contributing cause. Common sense, however, dictates that when an employee is intoxicated and gets behind the wheel, it is more likely that intoxication will be the proximate cause of a motor vehicle accident if caused by the employee. Factors to be considered are the facts of the accident, speed of employee, amount the employee drank, blood alcohol level, impressions of police, DWIs or other tickets and any other witnesses who could testify to the employee's level of intoxication.

In Gephart v. White Bear Yacht Club, the employee suffered severe head injuries when involved in a motor vehicle accident, while in the course of his employment. 1987 WL 92006 (WCCA Dec. 10, 1987). The compensation judge found the employee's intoxication was the proximate cause of the motor vehicle accident. The employee's blood alcohol level was .19. While the blood alcohol level along does not prove the case, “it is certainly an important factor worthy of careful consideration.” A toxicologist testified that .19 would be gross intoxication in terms of driving. The toxicologist further testified that an experienced drinker can learn to mask some of the outward signs of intoxication but cannot mask the impairing effect of alcohol on testing or on an automatic body function such as vision. When blood alcohol levels are between .05 and .10, a person’s reasoning, judgment, vision, depth perception, and ability to move the muscles are impaired.

Evidence surrounding the facts of the motor vehicle accident also supported affirming the compensation judge’s decision in Gephart. The employee’s car collided with the rear end of a Polara with enough force to lift the Polara’s rear wheels off the ground and break the rear axle. There was significant property damage. The employee was traveling at a high rate of speed.

Lastly, the state trooper testified that the employee smelled of alcohol, swore repeatedly, and was combative and incoherent. Intoxication was the proximate cause of injury and benefits were denied.
In another intoxication/motor vehicle accident decision, the court looked at factors such as alcohol level, expert testimony, accident facts, weather conditions, road conditions, absence of vehicle defects, and the fact that intoxication affects attention, concentration and driving ability. *Ahrens v. Williamson Music Co.*, 38 W.C.D. 703 (W.C.C.A. 1986). In *Ahrens*, the employee’s job was to visit bars where his employer had placed pinball machines, pool tables and music machines. At the place of the accident, the road makes a curve to the left. The vehicle swung sharply to the left at that point, crossing the entire roadway and striking a guardrail, not coming to a stop until 100 feet after it hit the guardrail. *Id.* at 706. The weather was good and the highway was dry. *Id.* There was no evidence there was any other vehicle on the roadway. Based on these facts, along with the .22 alcohol level of the employee, the compensation judge’s finding that intoxication was the proximate cause of the injury was affirmed.

Other cases have upheld the compensation judge’s determination that intoxication was not the proximate cause under similar facts. In *Manthey v. Charles Bernick*, 306 N.W.2d 544 (Minn. 1981), the pertinent facts were: the employee had a .12 blood alcohol, witnesses testified there was no intoxicated behavior, he was known to be a fast driver, admitted in the emergency room that he had consumed too much beer, an expert testified that amount alcohol could affect a person’s ability to drive, driving a truck which tipped easy and employee was not experienced with, truck was loaded with freight and unbalanced, and testimony that employee could “handle his liquor” without observable effect. The Minnesota Supreme Court was satisfied that the evidence as a whole permitted the finding that intoxication was not a proximate cause, although noting a finding that intoxication was the proximate cause would also have been upheld. *Id.* at 547. See also, *Loftman v. Teledyne*, 38 W.C.D. 76 (W.C.C.A. 1984) (.18 blood alcohol level, but employee’s testimony regarding how accident occurred justified finding that intoxication not cause of accident, court did not reiterate specifics of accident in its opinion); *Lamertus v. Barrett Moving & Storage Co.*, 35 W.C.D. 264 (W.C.C.A. 1982) (intoxication not proximate cause when evidence shows several other contributing causes such as speed of employee’s vehicle).
Employee Motor Vehicle Accident Checklist

MAP THE TRIP
- What location is employee leaving from before the accident?
- Where is employee going?
- List all stops taken and planned
- Where is employee’s residence in relation to the route?
- Where is the job premise?
- Is there evidence of deviation for personal purpose?

CONTROL FACTORS
- Who owns the car?
- Who decided the route?
- Is the trip at the employer’s request?
- Is employer paying mileage?
- Is employee paid hourly rate during trip? Per diem?
- Are there specific time deadlines, route(s), or other employer requests regarding the trip?

EMPLOYEE ACTS
- Intoxication, either alcohol or drugs
- Personal errands (meals, bathroom breaks, drug store stops, etc.) taken during trip or planned during trip?
- Is employee traveling away from job premise at employer’s request?
- What are the employee’s job duties? Does the employee need the car to perform job duties?

SPECIFIC EMPLOYMENT/ISSUES
- Construction workers
- Client entertainment
- The moving employer premise

OTHER CONSIDERATIONS
- No-Fault benefits, intervention interest
- Who is at fault for the accident-subrogation possibilities?
- 14 days to deny or 60 days to reverse acceptance of claim
- Don’t forget about other defenses; obtain an IME if warranted; be prepared to defend a motor vehicle accident found to arise out of and in the course of employment.