# Compensability in "Coming and Going" Cases

Although many employees feel like they are never farther away from the office than the nearest Wi-Fi or cell signal, it is still largely the norm for them to endure the Monday-through-Friday commute to work. While driving to work may seem like part of the workday, in most states injuries sustained by a worker during their commute are usually not considered work-related and are *excluded* from workers compensation coverage by the "coming and going" rule.

This rule generally provides that an injury sustained by a worker while they are coming or going to work is not in the course and scope of employment and therefore is not compensable. The rule is a common legal concept addressing compensability that you can find in statutory provisions and case law across the states. However, the law itself, and how the courts apply it, can nonetheless vary, as demonstrated by recent cases in Oklahoma and Florida.

**Compensable in Oklahoma**

In *Bober v. Oklahoma State University*, the Oklahoma courts considered whether the claimant was due workers compensation benefits for injuries she sustained from a fall in the parking lot of her employer, Oklahoma State University (OSU), before clocking in for work. On her way into work, Ms. Bober arrived in the designated parking lot on OSU's campus as required by her employer. Upon exiting her car and on her way into the building where she worked, she fell and was injured on the ice-covered sidewalk surrounding the parking lot, which her employer owned and maintained.


Ms. Bober filed a workers compensation claim. The employer initially accepted the claim and provided medical treatment and temporary total disability benefits. Upon the claimant's request for further treatment and compensation for the injury, the employer denied compensability, arguing that the injury did not arise in the course and scope of employment because of the coming and going rule. The Administrative Law Judge (ALJ) and Workers' Compensation Commission (WCC) agreed with the employer, finding that the injury did not arise in the course and scope of employment—Bober had not begun work, was in the parking lot, and had not yet reached her work location inside the building.

The case then went to the Oklahoma Supreme Court. Reversing the ALJ and WCC rulings in a 6–3 decision, the Court found that the injury *was* compensable, as arising in the course and scope of employment, and was *not* subject to Oklahoma's coming and going rule.

As noted by the Court, course and scope of employment in Oklahoma includes, "…an activity … that relates to and derives from the work, business, trade … of an employer, and is performed by an employee in furtherance of the affairs or business of an employer." Travel or transportation to and from work, and injuries occurring in a parking lot or common area adjacent to the employer's place of business before an employee clocks in or begins work, are specifically excluded from the rule.

Although the court acknowledged that Ms. Bober had not yet clocked in or begun work, and was not in the building where she worked, it found that her actions at the time of injury were related to and in furtherance of her employer's business because:

1. The claimant was following her employer's instructions by parking in the specific parking lot

2. The claimant was not in the process of traveling or "transportation"
3. The parking lot and sidewalk in question were not *adjacent* to the employer's place of business, as defined by the court as "… lying near or close, nearby, or having a common border …" but rather "were in fact on the premises" of the employer

While some coming and going cases may not be intuitive and require a more in-depth analysis by the court, a recent case in Florida demonstrates that some coming and going cases can still be relatively straightforward.

**Not Compensable in Florida**

In *Evans v. Holland & Knight*, Florida's courts considered whether an injury sustained in a public parking lot was compensable under workers compensation. In this case, the claimant, Ms. Evans, was on her way into work when she fell and broke her ankle in the parking lot. (As part of her employment, the employer had given her a parking pass for this particular lot.) The employee filed a workers compensation claim for her injuries, which the employer contested.

In reviewing the claim, the Judge of Compensation Claims (JCC) found that the injury was *not* compensable under workers compensation because of the coming and going rule. On appeal, in a relatively clear-cut application of the law, the First District Court of Appeal

(1st DCA) confirmed the JCC's ruling. The 1st DCA noted that the injury occurred during the claimant's commute and, per Florida law, a coming and going injury does not arise in the course and scope of employment. The court conceded the claimant's argument that Florida law offers exceptions to the coming and going rule, such as commuting injuries suffered on the employer's premises or caused by a special hazard that must be navigated to enter or exit the workplace. But it did not agree that any of these exceptions applied and promptly dismissed the action.

**Conclusion**

The coming and going cases reviewed were resolved in Oklahoma and Florida; however, it remains to be seen how the law will evolve as new cases are decided and state legislatures undertake new reforms. It does seem certain that as the compensability standards for coming and going injuries may vary from state to state, analysis by the courts in every jurisdiction will unquestionably remain fact-intensive.

*Adam W. Levell, Esq., is a counsel with NCCI's Legal Division.*