



Inclement weather and commutes: A recipe for what in Oregon?

By Brian M. Solodky and Courtney C. Kreutz ■ April 14, 2017

Most commutes are excluded from workers' compensation coverage under the "coming and going" rule. The basic principal is injuries sustained while a worker is travelling to and/or from work are not compensable. As you probably know, there are many well-established exceptions to the "coming and going" rule. This article focuses on a lingering grey area in Oregon case law: whether employees designated as "essential" and required to report to work regardless of weather conditions are covered under Oregon workers' compensation laws if injured in a motor vehicle accident during their commute.

Case law regarding the "coming and going" rule is very fact specific and every case must be judged on its own merits. Let's assume for this post an "essential" employee who is required to report to work during a major weather event was injured in a motor vehicle accident while commuting to work in his/her personal vehicle. The potentially applicable exception to the "coming and going" rule is the "special errand" exception. For the "special errand" exception to apply, either the worker must be acting in furtherance of the employer's business or the employer must have the right to control the worker at the time of injury. Oregon courts have elaborated that

when an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.¹

In *Hickey v. Union Pacific Railroad Co.*, 104 Or App 724 (1990), the court found the "special errand" exception applied when an injured worker (a warehouse foreman) worked his regular hours, but unexpectedly had to return after a truck that required loading arrived late. On the foreman's way home after loading the truck, he was struck and killed by a train. The court held the added hazard of the trip (which occurred late at night and over train tracks during the only time a train crossed those tracks), the deviation from normal working hours, lack of advance notice and primary benefit to the employer were sufficient to apply the "special errand" rule. The Court specifically found the trip

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Are employees designated as "essential" and required to report to work regardless of weather conditions covered under Oregon workers' compensation laws if injured in a motor vehicle accident during their commute?



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home from work created a risk of injury that was substantially increased over the risks the injured worker normally bore going to and from work during his regular work hours.

The *Hickey* decision is instructive, but not determinative, when exploring compensability of an essential employee injured during his/her commute. The best case for workers' compensation coverage probably can be made in a situation where all non-essential employees are instructed to stay home by the employer, but an essential employee is injured as a result of road conditions caused by extreme weather. If this past winter's weather patterns are an accurate indicator of years to come, it probably will not be long until the Oregon courts have an opportunity to weigh in on this issue again and provide more guidance.

The Oregon practice attorneys at Reinisch Wilson Weier PC are available to answer questions about the "coming and going" rule, a "special errand" exception or just about any other Oregon claims processing issue. ■

¹ *Hickey v. Union Pacific Railroad Co.*, 104 Or App 724 (1990) 9citing 1Larson, Larson's Workers' Compensation Law § 16.10 (1990).

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