



# Just Where Was Your Employee Injured And Why It Matters: Workers' Compensation And The "Coming And Going" Rule

Insights

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Think of the typical office employee who commutes to their job by driving to and from work every day. Say this unfortunate employee gets into a motor vehicle accident on the way to or from work. Is this a compensable workers' compensation claim? Typically, the answer is no because of the generally recognized "coming and going" rule. Under workers' compensation law, employees who have a "fixed situs" workplace and are injured coming from work or going to work typically do not have a compensable workers' compensation claim. Of course, there are many exceptions, but this general rule holds true in most cases.

## Typical Analysis Applied In Injury Cases

Under the example above, the typical analysis begins by finding that the injury itself was not "in the course of employment" and did not "arise from" employment. "In the course of" means that the injury did not occur during normal work time or work place. In other words, because the employee does not normally "work" while driving to or from work, the injury was not in the course of work. The injury also did not "arise" from work, meaning that it was not proximately caused by the employment itself.

Now, the typical reaction we get when explaining this concept is this: *Commuting to work is a necessary component to the employment. Without it, the employee would not be employed. So why shouldn't the unfortunate employee in the example above have a compensable workers' compensation claim?* The truly simple answer is that including such claims would overwhelm the workers' compensation system. Practically speaking, there also must be some "fine line" separating a workplace injury from other injuries. Just where that line should be drawn is often determined by state courts and is one of the driving forces behind most of the litigation in this area of workers' compensation law. Here are a few examples of how several states draw that line.

## Ohio

We were recently involved in a case where an employee of a waterproofing company was killed on his way home from work. The coming-and-going rule applies, so case closed, right? Not so fast.

The employee was driving home in a company van which was used to perform the required work at the various job sites throughout the metro area. The widow's attorney argued that the deceased employee was not a "fixed situs" employee because he traveled to different jobs throughout the week. Accordingly, the argument went, the coming-and-going rule did not apply and a death claim

should be allowed. However, in our case, Ohio courts have consistently ruled that “fixed situs” can mean that an employee travels to one location or several locations in a day. Other states have determined that the line between compensable and non-compensable claims is a bit more flexible.

## **California**

For example, California has the “required vehicle exception” to the coming-and-going rule. The seminal case was the California Supreme Court’s 1972 decision in *Hinojosa v. WCAB*. In that case, a farm worker was required by his employer to secure his own transportation while traveling from farm to farm and was paid for the travel time. The claimant was injured in a motor vehicle accident on the way home from his last farm location.

The employer put forth the coming-and-going rule as a defense, but the Supreme Court disagreed, reasoning that the employer could have supplied a vehicle for transportation between jobs but failed to do so. Because the injured worker was forced to provide their own on-the-job transportation, it meant that they were also required to bring the vehicle to the first job and from the last job.

## **Illinois**

In Illinois, if the employer pays the employee wages for commute time, an injury that occurs during a paid commute is an exception to the coming-and-going rule and results in a compensable workers’ compensation claim. Conversely, an employer who reimburses an employee for commuting expenses does not trigger this exception.

## **Texas**

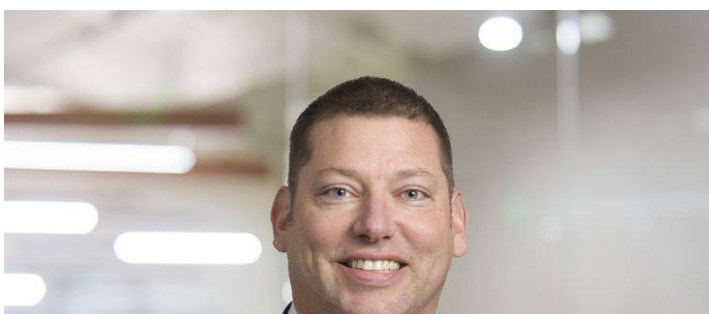
Some Texas exceptions to the coming-and-going rule are statutory. For instance, the rule generally applies to transportation to and from the place of employment unless: the transportation is furnished as a part of a contract of employment or is paid for by the employer; the means of the transportation are under the control of the employer; or the employee is directed in the employee’s employment to proceed from one place to another place.

## **Conclusion**

As with any of these claims, the outcomes are usually very fact-specific, and each state may have a slightly different view of compensability. The long and short is this: *when*, and more importantly, *where* the injury occurs may be the difference between no claim or a very costly one.

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