

## Employer liability: The going and coming rule



### Do you know where your employees' are?

Recently there have been several cases decided by the California Court of Appeal regarding employer's liability when an employee is using their personal vehicles for business purposes. California workers' compensation law recognizes that an employee must be in the "course and scope" of their duties of employment (arising out of or in the course of employment) also known as the AOE/COE principal. But under general liability principles, is an employee still "working" when driving home from the airport after a business conference?

In this case, an employee of Warner Brothers was driving home from the airport after attending an employer approved business conference and was involved in an accident injuring three pedestrians. The plaintiffs sued the driver's employer (Warner Brothers) alleging that the employee was in the course and scope of his employment and that the employer was legally responsible for the damages sustained by the individual plaintiffs.

The plaintiffs sought to impose liability against the employer based on principles of respondeat superior. Under respondeat



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superior the employer is liable for the injuries caused by an employee who is working within the scope of his employment relationship. The legal relationship between an employer and an employee is called agency. The employer is called the principal when engaging someone to act for him. The person who does the work for the employer is called the agent. The theory behind respondeat superior is that the principal controls the agent's behavior and must then assume some responsibility for the agent's actions.

Warner Brothers filed a motion for summary judgment based on the "going and coming rule," which provides that an employer is not subject to vicarious liability for accidents occurring during an employee's commute to or from the workplace. The trial court granted the motion and entered judgment in favor of the employer. On appeal, the plaintiffs contended the business conference was a special errand under the "special errand doctrine," which holds an employer vicariously liable for accidents occurring while an employee is engaged in a special errand for the employer, including the employees' commute to or from the special errand.

The Court held that an employee's attendance at an out-of-town business conference may be considered a special errand under the special errand doctrine. In addition, when an employee intends to drive home from the errand, the errand is not concluded simply because the employee drives his regular commute route, but rather, the errand is concluded when the employee returns home or deviates from the errand for personal reasons. Because the employer failed to show that the employee was not acting within the course and scope of his employment at the time of the accident, summary judgment was improperly granted. (*Jeewarat v. Warner Brothers Entertainment, Inc.* California Court of Appeal, Second Appellate District 09/03/09).

## Maintaining A Professional Office Environment

Ever notice how some employees have a different sense of entitlement in the workplace? Some fill their work areas with pictures of significant others, fiances or spouses in various stages of undress or in revealing clothing. Others create a small shrine to family members, pets or sports teams. Here are some practical tips for dealing with cluttered workstations that detract from the professionalism of your workplace:

- Extend your dress code policy to include criteria regarding photographs or artwork in employees' workstations.
- Preserve the right to limit other objects of art that detract from the professional appearance of the workplace.
- Incorporate into employees' annual review a check on how they maintain their workstations in terms of the neatness, organization and businesslike appearances.
- Establish a policy limiting the number of photographs employees can have at their workstations, and stipulate how they must be presented (e.g., framed).
- If you find it necessary to speak to an employee about removing personal items, don't be drawn into debating the aesthetic merits of a photograph, piece of art or other decoration.
- Make sure you apply your agency policy consistently with each employee.
- Don't put your agency in a position in which an employee can allege a hostile work environment because you made he or she remove religious proverbs from their workplace while you allowed a co-worker to keep his or her "Far Side" or "Dilbert" cartoons up at their workstation.
- We want to allow employees to have some sense of ownership and comfort in their assigned workspace. On the other hand, as a public agency you must keep in mind that your workplace advertises your business and professionalism to the public and clients when they enter your agency.\* ■

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