

CONSTRUCTION LAWLETTER

For Industry Professionals, Directors, Officers, Managers, Agents, Trades and Suppliers

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Issue 2006-2

February, 2006

COMMUTING EMPLOYEE; INJURIES COMPENSABLE, WHEN.

(Part 2 of 2, Concluding from previous issue).

{¶ 19} Ordinarily, "an employee's commute to a fixed work site bears no meaningful relation to his employment contract and serves no purpose of the employer's business. That is not the case, however, where * * * the **employee** travels to the premises of one of his employer's customers to satisfy a business obligation." Id. at 121. If the **employee** sustains his injuries off his employer's premises, then to show that he received his injuries in the course of employment, "the **employee**, acting within the scope of his employment, must, at the time of his injury, have been engaged in the promotion of his employer's business and in the furtherance of his affairs." Id. at 121, quoting *Indus. Comm. v. Bateman* (1933), [126 Ohio St. 279](#), 185 N.E. 50.

{¶ 20} "[P]ayment for travel is commonly considered to be a key factor in determining whether an **employee** was in the course of his or her employment while traveling to a job site." Id. at 121 fn.1 (citation omitted). However, it should not "serve as a leading factor in the course-of-employment inquiry." Id.

{¶ 21} In *Ruckman*, the court determined that although the employees were fixed situs employees, they nevertheless showed that they received their injuries in the course of employment. The court stated: "The nature of the rigging business requires that drilling be done on a customer's premises. That is a necessary condition of the work contract. The riggers set up on a customer's premises, drill a well and, after completion, disassemble the derrick for transport to the next job site.

Consequently, while coming to and going from a customer's premises, these employees are engaged in the promotion and furtherance of their employer's business as a condition of their employment." Id. at 121. ***

{¶ 24} Courts use a totality of the circumstances test to determine whether an injury arose out of employment. See id. at 122, citing *Lord v. Daugherty* (1981), [66 Ohio St.2d 441](#), 423 N.E.2d 96. A court should review the following factors: "(1) the proximity of the scene of the accident to the place of employment, (2) the degree of control the employer had over the scene of the accident, and (3) the benefit the employer received from the injured employee's presence at the scene of the accident." Id., quoting *Lord*, syllabus. ****Habermehl v. Cincinnati Ins. Co.*, 2005-Ohio-6765.

"Work is accomplished by those employees who have not yet reached their level of incompetence."

—*The Peter Principle* Morrow 69

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