

Going and Coming



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Introduction



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Introduction

California's workers compensation system is designed to provide benefits for industrial injuries, or injuries caused by work.

Two fundamental questions are:

1. When does work begin?
2. What is a workplace?



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Introduction



The legal doctrine addressing the first question is the Going and Coming Rule.

The Premise Liability rule addresses the second.



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The Fundamentals of Workers' Compensation

To understand the going and coming and premises line rules, we should first examine the fundamental doctrines of workers' compensation liability.

Labor Code section 3600: Workers' compensation benefits are owed

- ✓ only if its employee sustains an injury "*arising out of and in the course of employment*".



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The Fundamentals of Workers' Compensation

At the time of the injury, the employee must be

- ✓ “performing service growing out of and incidental to his or her employment and
- ✓ is acting within the course of employment” (§ 3600(a)(2).



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The Fundamentals of Workers' Compensation

The determination of whether an injury arises out of and in the course of employment requires a two-prong analysis.

(LaTourette v. Workers' Comp. Appeals Bd. (1998) 17 Cal. 4th 644 .)



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The Fundamentals of Workers' Compensation

First, the injury must occur

- ✓ “in the course of employment” which ordinarily refers to the **time, place, and circumstances** under which the injury occurs.
- ✓ An employee is acting within the course of employment when he does those “reasonable things which his contract with his employment expressly or impliedly permits him to do.” (*LaTourette v. Workers' Comp. Appeals Bd.*)



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The Fundamentals of Workers' Compensation



Second, the injury must

- ✓ “arise out of” the employment.
- ✓ The injury must occur by reason of a condition or incident of employment. In other words, the employment and the injury must be linked in some causal fashion... (*Maier v. Workers' Comp. Appeals Bd.* (1983) 33 Cal. 3d 729.)



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Summary

Only injuries that occur at a

- ✓ **time, place and circumstance** relating to work,
- ✓ plus a causal connection between work and the claimed injury, are covered under workers compensation.



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Summary

For example,

- ✓ injuries occurring outside of the workplace are generally not compensable—subject to many exceptions.
- ✓ Injuries not caused (at least 1% causation) by employment are not compensable.



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The Going and Coming Rule



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The Going and Coming Rule

The courts have created a rule addressing AOE/COE in situations where employees are traveling to or from work, called the “Going and Coming Rule.”



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The Going and Coming Rule

Injuries sustained while an employee is “going and coming” to and from the place of employment do not normally occur in the course of employment because the employee is neither

- ✓ providing benefit to the employer nor
- ✓ under the control of the employer during that commute
(*Santa Rosa Junior College v. Workers’ Comp. Appeals Bd. (Smythe)* (1985) 40 Cal. 3d 345,351–352.)



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The Going and Coming Rule



The going and coming rule “has had a tortuous history.” (*Price v. Workers’ Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 565.) The rule, which has often been criticized and is subject to numerous exceptions, is difficult to apply uniformly and not susceptible to automatic application.

Each case must be judged on its own unique facts.



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The Going and Coming Rule

The going and coming rule is also riddled with exceptions.

- ✓ Exceptions include where the trip involves an incidental benefit to the employer, not common to commute trips by ordinary members of the work force. (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 962 [88 Cal. Rptr. 188, 471 P.2d 988].)



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A Sample of Exceptions to Going and Coming Rule

1. Required Vehicle Exception:

- ✓ If the employer requires a worker to provide their own transportation as a condition of employment, then any injuries that occur during the commute to or from work are compensable. *Hinojosa v. WCAB* (1972) 8 Cal. 3d 150 (farm worker required by employer to travel to different sites during the day, injury while driving compensable).



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A Sample of Exceptions to Going and Coming Rule

- ✓ *Betts v. YMCA of the East Valley* (SCIF), 2015 Cal. Wrk. Comp. P.D. LEXIS 248 [2015 Cal. Wrk. Comp. P.D. LEXIS 248]
(express condition of employment for applicant to use her car to travel between the main office and her site, for which she was paid mileage and to use her car to run other errands including delivery of snacks to her cite for the afternoon shift.)



A Sample of Exceptions to Going and Coming Rule

2. Personal Comfort Doctrine:

- ✓ When the employer knowingly allows employees to use their vehicles for the benefit of the employer, injuries may be compensable. *Bloxham v. Lithia Ford Mazda Suzuki*, 2015 Cal. Wrk. Comp. P.D. LEXIS 271 [2015 Cal. Wrk. Comp. P.D. LEXIS 271]



A Sample of Exceptions to Going and Coming Rule

- **Personal Comfort Doctrine (con't)**
 - ✓ employer condoned employees driving to get snacks, since the employees frequently brought “back coffee, snacks or other objects of convenience for coworkers who remain behind working—all inuring to the employers benefit.”



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Premise Liability Rule



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Premise Liability Rule

One exception to the going and coming rule is the premises line rule. The courts determined that

- ✓ an employee's commute terminates and the course of employment begins only when the employee enters the employer's premises.



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Premise Liability Rule

- ✓ The basis for extending the employer's premises to include driveways, parking lots, approaches, and roads leading to the employer's premises is found in the employer's control over these areas and the necessity for the employee to use them for ingress and egress.



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Premise Liability Rule



After entry onto the employer's premises, injury is generally presumed compensable as arising in the course of employment.

Conversely, once the employee leaves the premises, injuries sustained during the commute home are generally non-compensable.



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Premise Liability Rule

The employee's travel between his workstation and the point of entry to the employer's premises is a reasonable margin of time and space that constitutes the employer's premises.

In other words, there is not a sharp, hardline rule to when and where employment begins but rather employees are covered under workers' compensation during a reasonable distance and time before and after leaving the employer's premises.



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Premise Liability Rule

Therefore “injuries sustained by an employee while going to or from his place of work upon premises **owned or controlled** by his employer are generally deemed to have arisen out of and in the course of the employment” (Cooper, supra, at p. 757 (citing Smith v. Indus. Acci. Com., 18 Cal. 2d 843 [118 P.2d 6]); see also Gonzalez v. Dept of Indus. Rels. (February 8, 2019, ADJ11121478) [2019 Cal. Wrk. Comp. P.D. LEXIS 52].)



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Premise Liability Rule

Injuries sustained in close proximity to the employers premises may, in fact arise out of the employment, especially

- ✓ when the accident occurs in the parking lot used by employees or
- ✓ on public property immediately adjacent to the workplace.



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Premise Liability Rule

Thus, the course of employment includes a “reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done” (*Lewis v. Workmens’ App. Bd.* (1975) 15 Cal. 3d 559, 561, 125 Cal. Rptr. 353, 542 P.2d 225.)



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Premise Liability Rule

For example,

- ✓ injuries while in the employer’s parking lot, or a nearby lot or street parking if there is no employee lot, are generally found to be compensable. (*Price v. Workers’ Comp. Appeals Bd.*, 37 Cal.3d at p. 566)
- ✓ finding the injury occurred within the course of the employment and was compensable where an employee was injured outside the employer’s premises while changing the oil in his car and waiting to be admitted to the workplace; *Ultramar Diamond Shamrock, Southland Claims Mgmt. v. Workers’ Compensation Appeals Bd.* (2000) 65 Cal. Comp. Cases 983, 984 [2000 Cal. Wrk. Comp. LEXIS 6452]



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Premise Liability Rule

- ✓ finding injury compensable when applicant was instructed by his employer to park in the lot across the street from his work place and was injured while crossing the street; *Haddad v. Bath and Body Works* (May 30, 2014, ADJ8266153) [2014 Cal. Wrk. Comp. P.D. LEXIS 233, *3-6)
- ✓ a retail store manager's injury was found compensable when she fell after leaving the store and exiting within the confines of the mall and walking towards the parking structure. *Haddad v. Bath and Body Works* (May 30, 2014, ADJ8266153) [2014 Cal. Wrk. Comp. P.D. LEXIS 233, *3-6)



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Jones v Regents of the Univ of CA

In the recent case of *Rose Jones v. The Regents of the University of California*, the Court of Appeal held that the workers' compensation exclusive remedy rule barred an applicant's claim for a bicycle injury while traveling home from work. (97 Cal.App.5th 502 (2023))



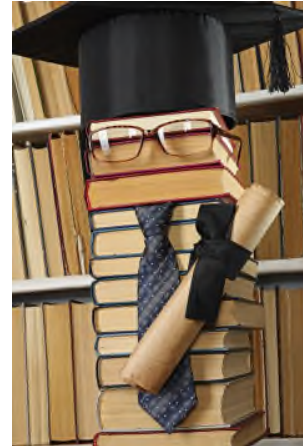
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Jones v Regents of the Univ of CA

Facts: The accident occurred at the end of the employee's work day when she exited her office at the science library, walked a short distance with her bike to a bike path, mounted her bike and began riding home.



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Jones v Regents of the Univ of CA

She was still on campus when the injury occurred and after riding for about 10 seconds, she reached a trench surrounded by caution tape and posts.

She swerved and attempted to brake but fell off her bike and sustained injuries.



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Jones v Regents of the Univ of CA

Jones sued the University, alleging negligence and premises liability.

The University filed a motion for summary judgment, claiming that the injuries occurred within the course of her employment and that the workers compensation exclusivity rule barred a civil negligence action.

The Court of Appeal agreed that the case fell under the workers' compensation system.



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Jones v Regents of the Univ of CA

Reasoning:

- ✓ The injuries occurred on the university's campus,
- ✓ which was undisputedly owned by the university,
- ✓ immediately after she left her workstation.



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Jones v Regents of the Univ of CA

The court cited *Smith v. Industrial Accident Commission* (1941) 18 Cal.2d 843.

In that case, an injury that occurred while traveling to a ferry terminal on the way home from work was deemed industrial

- ✓ because the entire island (which was several hundred acres) was all under the employer's control.

Although the ferry was not operated or controlled by the employer,

- ✓ the premises line rule supported the conclusion that the injury was industrial.



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Jones v Regents of the Univ of CA

In Jones, like Smith, the employee was leaving work rather than arriving.

Similarly, both employees traveled using the means of their own choice on roads used by non-employees as well as employees.



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Jones v Regents of the Univ of CA

Finally, the employer's premises were expansive. The trial court correctly applied an objective and fair boundary to where the employer's premises began. They were not required to draw a sharp line.



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Company Vehicles



If the Employer provides the Employee with a “company vehicle”, injuries sustained while driving to and from work are *generally* compensable.

- ✓ Referred to as the *vehicle-use exception*- ER provides the EE with a vehicle and requires it to be used as an incident of employment. *Hufford v Howell's Forest Harvesting 2023 Cal.Wrk.Comp.P.D Lexis 88*



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Company Vehicles

Evidence Supporting a “Company Vehicle” Exception to the Going and Coming Rule:

- ✓ The ER furnished a vehicle to the IW for the purpose of transporting himself to and/or from work
- ✓ The vehicle was under the ER’s control



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Company Vehicles

Evidence Supporting a “Company Vehicle” Exception to the Going and Coming Rule:

- ✓ The ER owned the vehicle, paid for its insurance, maintenance and fuel
- ✓ The ER required IW to drive the vehicle as part of their work duties



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Company Vehicles

Affirmative Defenses

- ✓ Injuries while using a company vehicle for “purely personal” reasons or if the employee takes a “material deviation” are generally not compensable.



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Company Vehicles

Questions for the Claim Professionals

- ✓ Is there an express provision in the HR/EE handbook prohibiting personal errands in the assigned company vehicle?
- ✓ Are EE's disciplined for violating the rule?
DOCUMENT, DOCUMENT, DOCUMENT!



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Company Vehicles

- ✓ What evidence shows the trip was for purely personal reasons (e.g., text messages, testimony, etc.?)
- ✓ Was there possible EE intoxication? (another potential affirmative defense)



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Going and Coming Rule Takeaway

Takeaway:

- ✓ Evaluating both the physical area where an injury occurs
- ✓ and the time of the injury is important.

Claims professionals should not immediately conclude that an injury is compensable or non-compensable based upon the physical location where it occurred.



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Going and Coming Rule Takeaway

Some injuries that occur outside of the employer's facility may be industrial, for example where the employees are required to pass through a public point of ingress or egress to the facility.

Similarly, the accepted customs or habits of employees and employers may result in a broadening of the employer's premises.



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Going and Coming Rule Takeaway

For example, an employer that allows employees to congregate outside of the facility may be held liable when an injury occurs before the facility is opened.



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Going and Coming Rule Takeaway

Similarly,

- ✓ an injury may not be industrial if an employee unreasonably loiters after his or her work day is completed and they are expected to leave.
- ✓ What is reasonable must be determined by the expectations of the employer, but are often provided in employee handbooks and other training materials.



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Going and Coming Rule Takeaway

In evaluating questionable claims, the claims professional should

- ✓ carefully review witness statements
- ✓ employee training materials, and the
- ✓ habits and customs of both employees and employers.
- ✓ a site inspection to determine the physical location of the employer's facility may also be beneficial.



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Going and Coming Rule Takeaway

Taken together, these tools can assist the insurer in determining compensability when injuries occur outside of the employer’s premises.



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