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Employee Commute Injury – Not Just The Employee's Problem Anymore

On January 4, 2022, the United States Department of Labor's Occupational Safety and Health Administration ("Fed/OSHA") released a Letter of Interpretation ("LOI") regarding injuries sustained by employees during their commute to the work site. The LOI discussed the determination of work-relatedness under Fed/OSHA Standard Number 1904.5, which is identical to the Cal/OSHA regulation found at CCR Title 8 Section 14300.5, addressing when an injury is work related and must be recorded on a Form 300 injury log. While California has its own approved workplace safety and health program ("Cal/OSHA"), Fed/OSHA's regulations and interpretations of those regulations provide key insight into how Cal/OSHA will enforce its regulations.

The question Fed/OSHA considered in the January 4 LOI was whether an employee's injury resulting from a motor vehicle accident occurring during a trip to work to assist with a workplace emergency, outside of the employee's normal work hours, was a work-related injury. The LOI laid out the standard rule as follows:

"For purposes of Part 1904, OSHA's longstanding position is that injuries and illnesses that occur during an employee's normal commute from home to work, and from work to home, are not work-related and therefore not recordable. See, the preamble to OSHA's January 19, 2001, final rule revising the recordkeeping regulation (66 Federal Register 5916 at 5960). When an employee is traveling during their normal commute between home and work, that employee is not in the work environment, nor is that employee performing a work activity in the interest of the employer. Instead, the employee's normal commute to and from work represents a non-work-related activity that is within the personal control of the employee. The employee's normal commute from home to work ends once the employee arrives at the work environment or starts traveling 'in the interest of the employer.'"

The answer in this scenario, however, was **yes, it was a recordable injury.** "In the scenario described in your letter, the employee had completed his normal commute to and from work for the day, and was directed back to the workplace by the employer to assist with a work-related emergency. Since the employee was required to return to the workplace outside of his normal commute, the employee was engaged in a work activity "in the interest of the employer," and was traveling as a "condition of employment." Accordingly, the resulting injury and hospitalization is work-related and must be recorded on the OSHA 300 log." The full LOI can be found at: https://www.osha.gov/laws-regs/standardinterpretations/2022-01-04.

What This Means for Employers:

The general rule remains,

> "[w]hen an employee is traveling during their normal commute between home and work, that employee is not in the work environment, nor is that employee performing a work activity in the interest of the employer. Instead, the employee's normal commute to and from work represents a non-work-related activity that is within the personal control of the employee.'"

However, employers can no longer apply a blanket rule of non-work relatedness to all commute related injuries. Employers must now consider the facts specific to any commute related injury when the employee was directed to return to work for the benefit of the employer and outside of the employee's normal commute – *think emergency needs or requests to go pick up supplies on a day off*. If the injury is work-related under such a scenario, employers must report it on their OSHA 300 log.