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When Going to Work is Work: McMorris v. New Haven and the Workers' Compensation Act

Working Together

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Generally speaking, our workers' compensation laws provide certain benefits for injuries arising out of or in the course of employment. Certain employees (police officers and firefighters) are referred to as "portal to portal" employees and are deemed to be in acting in the course of their employment upon leaving their place of abode on the way to work, and until their return home after work. A recent ruling by the Connecticut Appellate Court provides greater clarity for determining when one is working for workers' compensation purposes.

In *McMorris v. City of New Haven Police Department,* 156 Conn. App. 822., *cert. denied*, 317 Conn. 911(June 17, 2015), a police officer often dropped his children off at a day care center on the way to work. On a day he was doing so, he got into a car accident and suffered injuries; the accident occurred while he was wearing his uniform and before he would slightly deviate from his normal route to work in order to drop his children off at day care.

The Workers' Compensation Commission found that these injuries were covered by the Workers Compensation Act, as they arose in the course of employment for a portal to portal employee. The Workers' Compensation Commissioner found that the police officer's act of taking his children to day care did not terminate his employment relationship, as he was on his way to work. The City's claim that the officer was engaged in a "preliminary act in preparation for work" and thus not protected by the Act was rejected by the Commissioner, particularly due to the fact that the accident did not take place at the police officer's abode. Rather, the accident took place during the police officer's commute to work and thus was in the course of employment.

The Appellate Court affirmed the Workers' Compensation Commission rulings, noting that a minor or insubstantial deviation from employment does not serve to disqualify one from workers' compensation benefits. Furthermore, the police officer was injured prior to even where he would have deviated slightly from his normal route to the police station. In any event, the Court noted that at the time of the accident, the police officer was "where he would have been expected to be in the course of his employment," and agreed with the Commissioner's finding that the act of driving his children to day care was so inconsequential relative to his job duties, which includes driving to work, that it did not remove him from the course and scope of his employment. *PLEASE NOTE: The Connecticut Supreme Court has declined to review this case.*

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Lessons for all : The issue of an "incidental deviation" from a work assignment is relevant for both portal-to-portal employees and "regular" employees. The long standing view is that injuries suffered during "dual purpose" travel are compensable under the Workers' Compensation Act if the trip would have been performed in the absence of a personal benefit to the employee. In a very instructive case, the Connecticut Supreme Court found that an employee who was in the middle of an employment-related mission (albeit against the orders of the employee's supervisor) and injured while mailing a personal greeting card suffered an injury that was covered by the Workers' Compensation Act; the Court found that this type of deviation from work was insubstantial and would not deprive the employee of the Act's protections. Kish v. Nursing and Home Care, 248 Conn. 379 (1999). Interestingly, it appears the fact that an employee was injured while arguably committing an act of work-related misconduct will not deprive that employee of protection under the Act, as long as the employee was engaged in a work-related mission. The Supreme Court noted that "when misconduct involves a violation ... relating to the *method* of accomplishing the ultimate work [to be done by the claimant], the act remains within the course of employment," regardless of whether the supervisor agreed to the specific act. Kish v. Nursing & Home Care, Inc., 248 Conn. at 385.

A work place rule that effectively and clearly prohibits deviation from work assignments could give greater support to an employer seeking to discipline the rogue employee. In addition, such a rule could arguably provide support for a claim by an employer that 1) an employee who has deviated from his/her assignment was not engaged in the course of his/her employment, and 2) the employer thus is not required to indemnify the employee if sued (for example, should the employee get into an accident and a third party bring suit against the employer). However, such a rule may not eliminate the employee's workers' compensation protections.

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