BLEAKLEY CYPHER PARENT WARREN & QUINN

MICHIGAN WORKERS' COMPENSATION LEGAL TRENDS

September 2017

WORK COMP 101

Travel Allowance

2017 - .535/mile

2016 - .540/mile

2015 - .575/mile

Medical Direction

Carrier/ER may direct care for up to 28 days from the inception of care after a claim is made. After 28 days, the employee can direct care. Employee must give notice of desire to go to physician of own choosing.

Penalties

Carrier/ER must pay or deny medical bill within 30 days of receipt. Otherwise liable for penalty of $50 day.

Indemnity 2017

SAWW: $965.62

Maximum Rate: $870.00

2/3 SAWW: $643.75 discontinued fringe benefits may not be used to raise the weekly benefits above this amount.

CASE LAW UPDATE – MVA WHILE DRIVING HOME, WORK RELATED?

In 2015 there were 297,023 motor vehicle accidents in the state of Michigan. Suffice it to say, driving a motor vehicle is dangerous business. It's no wonder the workers compensation system has developed a robust set of legal guidelines to deal with work-related motor vehicle accidents.

The legal guidelines addressing work-related motor vehicle accidents are fact-specific and ever developing. As a result, it has never been more important to seek the advice of counsel to navigate this complex and nuanced area of law. Recent case law illuminates the many factors considered in such a claim.

In *Krueger v Satcon Tech Corp.*, 31 MIWCLR 33, Magistrate Ognisanti went through the four commonly used factors to assist with his decision making. Those factors, derived from appellate case law, are used to determine whether an individual injured in a motor vehicle while driving to or from work is eligible for workers compensation benefits. Each factor by itself is not dispositive, rather they must be weighed as a whole.

The four factors are: 1) Whether the employer paid for travel, 2) Whether the incident occurred during working hours, 3) Whether the employer derived a special benefit from the employee's activities, and 4) Whether the travel exposed the employee to excessive traffic risks.

In *Krueger*, an employee was injured in a motor vehicle accident while driving home from work in a rental car paid for by the employer. At the outset, Magistrate Ognisanti noted that paying for or furnishing of transportation tends to bring travel, including travel to and from work, within the scope of employment. He further noted that the vehicle was rented for Mr. Krueger to conduct business for the employer, and that Mr. Krueger used his company reimbursed credit card for this business expense.

Nevertheless, despite the above, Magistrate Ognisanti found that the motor vehicle accident did not arise out of the claimant's employment. Rather, Magistrate Ognisanti pointed out that the injury Mr. Krueger sustained did not occur during working hours; that the employer received no "special benefit" from Mr. Krueger's travel; and that there was no evidence that Mr. Krueger's travel from his workplace to his home exposed him to any traffic risks, let alone excessive traffic risks.

This case illustrates the multifaceted nature of a motor vehicle accident that is associated with work. As the above case demonstrates, while there may be factors that could support either side of compensability, they must be assessed together. In addition to the four factors, different Magistrates will consider additional information if it helps them further assess the nexus between employment risks and the driving activity. These types of cases are extremely nuanced and we encourage you to seek out the opinion of experienced counsel to assist with evaluation and investigation of the relevant facts and to assess compensability.

CASE LAW UPDATE – PARKING LOT WIPEOUT

Having experienced one of the most pleasant summers in recent memory, it is hard to imagine the ground will soon be covered with ice and snow. Whether we want it or not, a Michigan winter is right around the corner and with it comes treacherous footing and an increase risk of a fall.

Historically, the courts have struggled with the age-old question in Michigan jurisprudence of whether an employee's fall in a parking lot is compensable. This area of the law is defined by a general rule with several exceptions that have developed over time. Understanding these nuances can help tackle parking lot claims.

Generally, if a parking lot is owned, leased or maintained by the employer, injuries occurring there are considered "in the course of employment." One caveat to this general principle is that the employee must have been traveling to or coming from work (within a reasonable timeframe). The Board of Magistrates recently addressed this caveat in *Erickson v Associated Community Services*, 31 MI WCLR 42. In *Erickson*, Magistrate Williams denied the plaintiff's ankle injury when her heel caught in a joint between the walkway in the parking lot outside the employer's new office.

The facts in *Erickson* are illuminating. On the day of the injury, Ms. Erickson, a call center representative, drove to the employer's new office on a nonmandatory Saturday looking to pick up extra hours. The department in which the plaintiff normally worked was not operating out of this office. Moreover, she was not assigned any work at the office and was planning to drive to another of the employer's facilities to inquire about work. She was heading to her car, with the intent to drive to the other facility, when she tripped and fell.

Ultimately, the magistrate did not find Ms. Erickson's injuries compensable. Magistrate Williams noted that although the employer owned the parking lot where Ms. Erickson fell, Ms. Erickson's injury did not occur on the employer premises where work was to be performed, as Ms. Erickson was not scheduled to work that day. Accordingly, Magistrate Williams found Ms. Erickson was not traveling to or coming from work as required by law.

Comment: Magistrate Williams' analysis focused solely on the question as to whether Ms. Erickson's injury was "in the course of" her employment. In our opinion, Magistrate Williams' analysis is only half complete as Ms. Erickson is also required to prove that her injury "arose out of" her employment. Although one might consider this distinction academic, on closer inspection the distinction can have a wide-ranging and important effect on compensability. Under an "arising out of" analysis, it must be demonstrated that the alleged injury had a causal connection with the work performed – the connection between the work and the injury must be one that follows as a natural incident to the employment. Making this legal distinction is a valuable tool in contesting a claimed work injury that, on its face, appears compensable. The attorneys at Bleakley, Cypher, Parent, Warren & Quinn, specialize in workers compensation cases and are available to address any questions you may have regarding motor vehicle accident cases, parking lot cases, and anything in between.

This Newsletter is meant to highlight developments in the workers' compensation arena and to elaborate on general concepts. If you would like to discuss in more detail this issue or any other issue please do not hesitate to contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.

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