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MICHIGAN WORKERS' COMPENSATION LEGAL TRENDS

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IS TRAVEL TO AND FROM WORK COMPENSABLE?

The general and well-accepted rule of law has long been that injuries that occur while going to and from work are not compensable. Decades of legal jurisprudence have discussed and explained that the mere occurrence of an injury while utilizing a work vehicle is not enough to prove compensability. In that respect, for the last several decades the compensability inquiry was guided by the case of *Forgach v George Koch & Sons Co*, 167 Mich App 50(1988) which provided general factors for determining whether an accident suffered while going to and from work was compensable.

The court in *Forgach*, and many court decisions thereafter, emphasized that no one factor was determinative, but that a compensability assessment required an analysis of the totality of the circumstances. In other words, the longstanding rule of law was that simply driving to and from work in an employer-owned vehicle would not satisfy the compensability requirement unless more is shown.

That being said, the Michigan Court of Appeals appears to subscribe to the adage that every rule (even their own) is made to be broken, or at least bent, on occasion. In the recent published decision of ***Smith v. Chrysler Group, LLC, (decided on Feb. 25th, 2020)*** the court disavowed the *Forgach* case and its progeny. Under the new *Smith* case, no longer is a balancing of the circumstances/factors necessary. Instead, an injury will be deemed compensable when **any one** of the following factors is independently established:

1. The employee is on a special mission for the employer
2. The travel took place as a result of a split-shift schedule or employment requiring a similar irregular nonfixed working schedule
3. **The employer paid for and /or furnished employee transportation**
4. The injury occurred during or between work hours
5. The employer derived a special benefit from the employee's activities at the time of injury
or
6. The employment subjected the employee to excessive exposure or traffic risks

If the court's decision in *Smith* is not overturned on appeal by the Michigan Supreme Court, it would represent a substantial change to current state of the law, significantly broadening compensability for injuries sustained while going to and from work. We anticipate that the Chrysler Group will appeal this decision and we will continue to monitor this case closely to keep you informed.

WORKERS' COMPENSATION SEMINAR ALERT

The Law Firm of Bleakley, Cypher, Parent, Warren & Quinn strives to provide the best legal services available with respect to workers' compensation matters anywhere in the State of Michigan. Consistent with that goal, we provide a series of annual workers' compensation seminars. The seminars provide a valuable opportunity to network and to obtain updates with respect to changes in workers' compensation law and the administration of claims.

Our first 2020 seminar is scheduled in Grand Rapids, Michigan, on March 13, 2020. You will want to be there, as our special guest keynote speakers are Magistrate Chris Slater and Dr. Stanley Szczecienski, DO. Please visit our website at www.bcpwq.com to register. We look forward to seeing you on March 13th.

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 contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn directly.

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