



ALFA International
THE GLOBAL LEGAL NETWORK

2022 Workers' Compensation Seminar

March 23-25, 2022

IS YOUR EMPLOYEE ALWAYS YOUR EMPLOYEE?
A Case Study of Common Exceptions for Compensability

Dan Sanchez
Moderator
BROWN & JAMES, P.C.
St. Louis, MO
dsanchez@bjpc.com

CASE STUDY #1: A LUNCH BREAK GONE WRONG

On the date of injury, Monica was employed by Employer, a local public transit agency which ran buses and light-rail trains. She was a bus operator for Employer, and had been for several years. She worked a split shift; meaning that she worked a morning shift from 5:30 a.m. until about 11:30 a.m. or 12:00 p.m., and then began an afternoon shift at 1:30 p.m., which ended at 5:00 p.m. Between her first and second shifts, she had a break of one-and-a-half to two hours. She was paid an hourly wage, rather than a salary, but was not paid during this break. According to her own testimony, she did not consider herself on duty.

Upon arriving to work on the morning of the accident, Monica parked her personal vehicle at Employer's employee-only parking lot, at its bus garage. From there, she took a shuttle provided by Employer to Employer's train station a few minutes away ("Washington Park"). She then took one of Employer's trains to pick up her bus at another station to begin her first shift ("5th and Missouri").

Monica's first shift ended at a different station ("Belleville"), about 30 minutes away from the 5th and Missouri station, between 11:30 a.m. and 12:00 p.m. She was to begin her second shift at the 5th and Missouri station at 1:30 p.m. From the Belleville station, she took one of Employer's trains to the Washington Park station, and then rode Employer's shuttle to the garage where she picked up the vehicle of her co-worker. Monica's intention was to drive said vehicle to the 5th and Missouri station, where she would deliver it to the co-worker, whose shift would be ending as Monica's afternoon shift began.

Before heading to the 5th and Missouri station, Monica attempted to stop to eat lunch at a restaurant between the garage and the 5th and Missouri station. As she was turning right into the restaurant parking lot, she was rear-ended by another vehicle. Photographic and testimonial evidence showed the employee to be heading away from the 5th and Missouri station when she was rear-ended. The accident did not occur on Employer's premises. Employer offered a lunch room on its premises where employees could eat, and Monica had eaten lunch in the lunch room before. Employer did not instruct Monica to stop and get lunch on her way to the 5th and Missouri station on the date in question.

CASE STUDY #2: SHOPPING AT THE COMPANY STORE

Connie worked as an assembly line operator for Employer, which makes pet and food products. At the end of her shift, she clocked out, walked through the facility to the parking lot, got in her car, drove a short distance on a public road, and re-entered Employer's premises across the street to shop for items at the company store. The company store was accessible by a metal staircase. Included in the items purchased were a large bag of dog food for her dog and a can of gravy for a holiday banquet she was to have with her co-workers before her next shift. The banquet was organized by Connie's supervisor. Participants were asked to check a sign up list and mark down what items they were going to bring. Connie spoke with a coworker on the date of injury and checked the list to determine what remaining items were available. Thereafter, she picked up the can of gravy while buying dog food for her pet.

Upon exiting the store, Connie rolled the heavy bag of dog food down a roller conveyor toward her vehicle. She then proceeded to walk down the staircase with her grocery bags in hand. When she reached the bottom of the stairs, she slipped on the snow-covered ground, resulting in a broken ankle and other alleged injuries.

ROUNDTABLE DISCUSSION PROMPTS

1. Based on the facts presented in the cases above, are these compensable injuries within the course and scope of employment? Were Monica or Connie employees at the time of their respective accidents?
2. How would your respective jurisdictions likely address an argument that the worker in Case Study #1 was a traveling employee at the time of her injuries?
3. How would your respective jurisdictions likely address an argument that these injuries are compensable because the worker was benefiting the employer at the time of her injuries?
4. How would your respective jurisdictions likely address an argument that the injuries are compensable because they were incurred while the worker was engaging in acts of personal comfort?
5. How would your respective jurisdictions likely address an argument that the worker in Case Study #2 was injured while participating in a work-sponsored function?
6. What affect, if any, should the location of the injuries (on premises or off premises) have on the determination of employee status and the compensability of the injuries?
7. What scenarios have you encountered where an early determination of employee status was critical to the outcome of a claim?