MOBILE WORKFORCE

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I. **IN THE COURSE OF** – Generally, the compensability issue relative to "mobile" workers is whether the injury is in the course of employment, which refers to what the employee was doing and, more importantly, when, where, and why

A. **Rule:** "The words 'in the course of' simply refer to the time, place, and circumstances of the injury. Id. So an injury occurs in the course of employment when it happens within the period of employment at a place the employee may reasonably be, and while the employee is doing work or something incidental to it." Hanson v. Reichelt, 452 N.W.2d 164, 166 (Iowa 1990).

B. Location

1) Premises Rule – Injuries occurring on the employer's premises are almost always compensable. Bailey v. Batchelder, 576 N.W.2d 334, 339 (Iowa 1998). If an injury occurring on premises is found not compensable it is generally because the condition does not arise out of the employment rather than not being in the course, although there are exceptions such as horseplay that are not covered here. Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996).

2) Off Premises Injuries

a) **Rule**: An injury that occurs at a location "controlled by the employer" or "elsewhere in places where the[] employer's business requires their presence and subjects them to dangers incident to the business" may also be compensable. Iowa Code § 85.61(7).

b) Zone of Protection – This ill-defined exception to the premises rule extends coverage where the situs of the injury is "so closely related in time, location, and employee usage to the work premises" that the area is brought within the "zone of protection". Frost v. S.S. Kresge Co., 299 N.W.2d 646 (Iowa 1980); Bailey v. Batchelder, 576 N.W.2d 334, 339 (Iowa

1998). As would be expected, this exception has been difficult to apply in practice. See Ware v. Pepper Jax Grill, File No. 5050005 (Arb. 11/13/15).

C. Purpose/Benefit

1) Obviously, the performance of assigned work activities benefits the employer; however, the worker need not be performing "some specifically prescribed task". Instead, an injury is compensable so long as the worker is performing "some act which he deems necessary for the benefit or interest of his employer". Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996); Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 226 N.W. 719, 723 (1929). The question is therefore whether the employer benefits from the act the worker is performing at the time of the injury. Briar Cliff Coll. v. Campolo, 360 N.W.2d 91, 94 (Iowa 1984).

2) This factor is particularly important when the worker is injured during a recreational activity. Campolo 360 N.W.2d at 94.

3) Personal Comfort – "Employees who, within the time and space limits of their employment, engage in acts which minister to their personal comfort do not thereby leave the course of employment". Miedema v. Dial Corp., 551 N.W.2d 309 (1996) (use of restroom); Dorman v. Carroll County, 316 N.W.2d 423, 425 (Iowa Ct. App. 1981) (Sheriff's deputies stopping to eat).

D. Timing

1) **Rule**: If the worker had a set work schedule an injury is more likely to be compensable if the injury occurred during that period of time. If the worker did not have a set schedule, the timing of the injury is generally of little importance.

2) Before/After Work – "[T]he hours of employment include a reasonable amount of time before and after the scheduled work hours". Bailey v. Batchelder, 576 N.W.2d 334, 340 (Iowa 1998). "What constitutes a reasonable amount of time depend 'not only on the length of time involved but also on the circumstances occasioning the interval and the nature of the employee's activity'". Id. Generally, "arrival before work in a time span between thirty and sixty minutes [is] not so unreasonable as to take the injuries outside the 'course of employment' prong. Id. at 341. Ex: Workers' compensation was only remedy where employee arrived about an hour prior to her shift to read the paper in

the breakroom and was abducted in the employee parking lot. The employee regularly came in to work to do this. Id. at 340–341.

E. Control – The greater control the employer exerts over a location, method/route of travel, etc. the greater the likelihood the injury is compensable. Ex: Injury that occurred 12 to 20 feet away from the employer's premises was compensable where the employer exerted control over the area by performing snow removal and using the area to advertise sales. Frost v. S.S. Kresge Co., 299 N.W.2d 646, 650 (Iowa 1980).

F. Violation of Rule/Statute – "It is not every violation of a statute or rule by an employee that constitutes a defense but only such as amounts to a departure from the course of employment. Where an employee when injured is rendering a service he is employed to do or is doing something incidental thereto but does it in an unlawful or forbidden manner, he does not thereby depart from his employment even though the injury is a consequence of such violation". Pohler v. T.W. Snow Constr. Co., 33 N.W.2d 416, 422 (Iowa 1948).

1) In most cases, the violation of a rule or statute itself is not going to be determinative. Instead, if an injury is not compensable it will be based more on a traditional "in the course of" analysis.

2) An employer may, however, be able to limit its liability by clearly defining the employment premises, work schedule, and permitted acts of employment. The more clearly an employer defines, the less likely an injury occurring outside that definition is in the course of employment.

II. COMING & GOING RULE

A. **Rule**: "[A]bsent special circumstances, injuries occurring off the employer's premises while the employee is on the way to or from work are not compensable." Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150–51 (Iowa 1996). This rule applies "only to employees having 'fixed hours and place of work'". Waterhouse v. Waterhouse Water Conditioning, File No. 1039817 (App. 2/23/95) (quoting Medical Associates Clinic, P.C. v. First Nat'l Bank of Dubuque, 440 N.W.2d 374 (Iowa 1989)). There are numerous exceptions.

B. Special Errand – "[I]f an employee is on a special errand or mission for his or her employer at the time of injury, the injury is held to have arisen in the course of

employment". Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). This is probably the most common exception to the coming and going rule.

1) Examples – "[S]ubstitute truck driver employee was not on a special errand at the time he was injured on his trip home after completing another driver's delivery route; employee was not involved in a mission 'special' from that which he would typically perform as a substitute driver." Bulman v. Sanitary Farm Dairies, 73 N.W.2d 27 (Iowa 1955). "[E]mployee electrician was on a special errand at the time he was killed while driving to a work site; employee was required to travel to the work site by his own means and was to be reimbursed eight cents per mile by the employer". Pribyl v. Standard Elec. Co., 246 Iowa 333, 343, 67 N.W.2d 438 (Iowa 1954). "[E]mployee construction supervisor was on a special errand at the time he was killed by freight train while returning to his temporary home; employee was stationed out-of-state for three weeks to complete a railroad excavation project". Pohler v. T. W. Snow Const. Co., 33 N.W.2d 416 (Iowa 1948). "[E]mployee janitor was not on a special errand at the time he was injured on his trip to work; employee was injured as he made his daily trip to school as he did every weekday morning". Otto v. Indep. Sch. Dist., 23 N.W.2d 915 (Iowa 1946). "[E]mployee janitor was on a special errand at the time he was killed while walking back to school to turn on the gymnasium lights; employee was requested to return to work outside of his regular working hours after he had returned home for the day to perform an urgent and unexpected duty". Kyle v. Greene High Sch., 226 N.W. 71 (Iowa 1929).

2) Deviations

   a) **Rule:** An injury that occurs during a special errand "is not compensable if [the worker] is found to have 'deviate[d] sufficiently from the line of duty so that his or her actions are foreign to the employer's work'". Ciha, 552 N.W.2d at 153 (emphasis added).

   b) Examples – Injury was compensable where worker took "scenic" route to return home, rather than a route that would have been five to seven minutes faster. Ciha, 552 N.W.2d at 153. Injury was not compensable, despite employer paying for meals, lodging, and other travel expenses, where worker drove to three taverns before returning to his hotel room. Sheerin v. Holin Co., 380 N.W.2d 415, 417 (Iowa 1986). Workers' two block deviation to call his wife after completing a special errand was not an abandonment given that the deviation had been completed by the time

he was killed. Pohler v. T. W. Snow Const. Co., 33 N.W.2d 416 (Iowa 1948).

c) Return from Deviation – If the worker returns to the employment (i.e., has returned to the route) following what would otherwise be a "sufficient" deviation and is injured thereafter, the injury is compensable. Crees v. Sheldahl Tel. Co., 139 N.W.2d 190, 195 (Iowa 1965). Ex: Employee drives two hours off course to view a tourist attraction, but then returns to the route for the employment-related trip and thereafter is injured in an accident, the injury is compensable.

3) Dual Purpose – Although sometimes phrased as a separate exception, this rule is more properly termed a corollary of the special errand exception. See Great Rivers Medical Center v. Vickers, 753 N.W.2d 570, 578 (the dual purpose "exception also requires a special errand").

a) **Rule:** An "[i]njury during a trip which serves both a business and a personal purpose is within the course of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal injury". McMullin v. Dept. of Revenue, 437 N.W.2d 596, 598–599 (Iowa Ct. App. 1989). Presumably, the business aspect of the trip itself must have been sufficient to qualify as a "special errand".

b) Corollary – If the worker would have proceeded on the trip due to the personal purpose, even in the absence of the business purpose, the injury is not compensable. Pohler v. T.W. Snow Const. Co., 33 N.W.2d 416, 419 (Iowa 1948). Likewise, the injury is not compensable if the trip would have been cancelled, despite the business purpose remaining undone, if the personal purpose is no longer present.

c) Example – State tax auditor was injured on his way to pick up co-worker, who was returning from a personal trip, at the airport as per established office practice. Even if picking up the co-worker were a personal trip the injury was compensable under dual purpose exception because the auditor also intended to pick up the office's mail from a PO Box on the way. McMullin v. Dept. of Revenue, 437 N.W.2d 596, 598–599 (Iowa Ct. App. 1989).

C. Divided Premises

1) **Rule:** Injuries that occur during travel between two separate premises of an employer are compensable. Frost v. S.S. Kresge Co., 299 N.W.2d 646, 649 (Iowa 1980). Once an employee enters employment at one site, trips between the various premises during the work day are within the course of employment.

2) Ex: Employee works for a company that owns multiple apartment complexes. Each morning he reports to the home office to receive work orders. If the worker is injured while driving to one of the apartment complexes to perform a repair, the injury is compensable.

D. Employer Provided/Funded Transportation

1) **Rule**: The coming and going rule does not prevent compensability where the employer has assumed responsibility to furnish transportation to and from the job site.

2) Employer Funded Transportation

a) The payment or reimbursement of transportation costs must not be a gratuity. The employer must have obligated itself to pay or reimburse such expenses. Pribyl v. Standard Elec. Co., 67 N.W.2d 438, 443–444 (Iowa 1954). ("there must be something more than mere payment of such transportation costs"). "[I]f the employer assumes the burden of the workman's coming and going expense, that is held to imply that the time of coming and going is part of the time of employment". Bulman v. Sanitary Farm Dairies, 73 N.W.2d 27, 30 (Iowa 1955).

b) Ex: It is useful if there is a contract/employment handbook that obligates the employer to pay or reimburse transportation expenses. The fact that the provision for travel expenses is actually held out as an inducement to accept employment is a material factor supporting compensability of an injury.

3) Employer Provided Transportation

a) **Rule:** "[W]hen an injury occurs while a worker is being transported to an intended place of employment in a vehicle owned by the employer, the latter's control over that situation makes the vehicle an extension of the

workplace". Thayer v. State, 653 N.W.2d 595, 600 (Iowa 2002) (emphasis added). This is true even if the worker must pay to utilize the transportation. Id. at 601.

b) Example – Workers' compensation was exclusive remedy where University provided transportation by fan that was driven by co-worker selected and trained by the University and the University selected routes and set policies for use of the van, despite the fact that worker may have paid for the transportation. Thayer, 653 N.W.2d at 600.

E. Personal Vehicle – "[A]n employee's trip to and from work is considered within the course of employment if the employee is required, as part of his employment, to provide a vehicle for his use during the work day". Medical Assoc. Clinic, P.C. v. First Nat. Bank of Dubuque, 440 N.W.2d 374, 375 (Iowa 1989). Under this exception, it is not relevant whether the claimant is paid or reimbursed for business use of their personal vehicle. Id. at 376. The rationale for this exception is that, by requiring the employee to make their vehicle available for business use during the day, the employer has exerted control over the manner by which the claimant conveys themselves to work. Id.

F. Special Risk/Hazard – An exception exists if the worker must use a road/route or form of transportation to reach the worksite that is more hazardous or causes the worker to encounter a hazard more frequently than the general public. Frost v. S.S. Kresge Co., 299 N.W.2d 646, 649 (Iowa 1980). Ex: Reforestation worker for whom a dangerously narrow mountain road is the only means of getting to the work site.

G. **Note:** The exceptions act more as frameworks for applying the various factors underlying the determination of whether an injury is in the course of employment rather than rigid/formal exceptions. It is therefore important to evaluate the totality of the circumstances in addition to the exceptions.

III. TRAVELING WORKERS & CONTINUOUS EMPLOYMENT – Ex: Truckers, traveling nurses and salespeople, etc.

A. **Rule:** "Employees whose work entails travel away from the employer's premises are held . . . to be within the course of their employment continuously during the trip, except when there is a distinct departure on a personal errand". Ward v. Numanco, File No. 5011677 (App. 8/14/06); Heissler v. Strange Bros. Hide Co., 237 N.W. 343 ("[a] traveling salesman or canvasser is assumed to be under

coverage after the completion of his work for the day or for the week when he shall have reached his home or a place that may be reasonably regarded as his headquarters").

B. This certainly includes many "daily activities" such as eating because it is necessary for the worker to eat in order to continue performing work activities. More recent cases have found that, for such workers, injuries suffered while engaging in recreation while away from home are also compensable, although these results are called into question by prior precedent stating that the injury must be incurred while engaging in something more reasonably incident to employment. Numanco, File No. 5011677; see Walker v. Speeder Machinery Corp., 240 N.W. 725 (Iowa 1932) (injury to traveling worker that occurred while walking to a restaurant to eat was compensable, but would not have been if the worker had been going to a theater or some other form of entertainment).

C. The fact that the employer pays for transportation, meals, and lodging for these employees while on the road is an important factor. Walker, 240 N.W. at 732; Crees v. Sheldahl Tel. Co., 139 N.W.2d 190, 192 (Iowa 1965).

D. Note: The rule is probably the same regardless of whether the worker returns home each night or is on the road for multiple days at a time. Either way, the worker is in continuous employment until they return to home or their home office, absent a substantial deviation.

IV. TELECOMMUTERS – When is the home a place of employment and how far does coverage extend?

A. Factors – "[T]he quantity and regularity of work performed at home; the continuing presence of work equipment at home; and special circumstances of the particular employment that make it necessary and not merely personally convenient to work at home". Seaman v. Burgess Health Center, 872 N.W.2d 198 (Iowa Ct. App. 2015) (unpublished decision).

B. "Catching up on occasional work at home or completing tasks at home that could be completed at the employer's premises is an insufficient basis to find that claimant had dual employment premises". Seaman, 872 N.W.2d at *4. "[T]he fact of being on-call does not automatically bring all travel between home and the workplace into the course of employment if not responding to a special call". Waterhouse, File No. 1039817.

C. Not overly relevant whether they take the tax deduction for a home office.

V. SCOPE OF THE WORK AREA – Does the entire home qualify as a work premises?

A. Poorly Defined Work Area – Assume an employee who performs most of their work at home using a laptop. The employee can and regularly does use the laptop to perform work throughout their home. Ex: Worker decides to work in their backyard to enjoy nice weather. The worker trips in a hole while walking through the backyard. This would likely be compensable.

B. Well Defined Work Area – Assume an employee who performs most of their work at home in an office that has been set aside for that purpose. The employer has furnished the room with office furniture, a desktop computer, telephone line, etc.

1) In this scenario, the "work premises" is arguably limited solely to the room in which the employee works. The employer does not necessarily benefit from anything the employee does when they leave the room. Is the employee then "coming and going" anytime they leave the room? More likely, the compensability of an injury occurring outside the home office depends on the extent and purpose of the deviation, as well as timing.

2) The employee goes to the kitchen to get a cup of coffee, injuring herself after slipping on some water on the floor. This injury is probably compensable under the personal comfort rule, as well as because the deviation is relatively minor.

3) The employee's home office is on the lower floor of his home. The employee goes upstairs to take a 2 hour nap and is injured coming back downstairs. This injury may not be compensable because the 2 hour nap was a substantial deviation from the employment.

4) Timing – Assume the same employee is expected to be at their desk and working from 8 a.m. to 5 p.m., aside from periodic breaks. The employee is not paid for work outside of this period. At 5 p.m. the employee logs off the computer, then goes upstairs to shut a window and is injured on the staircase. This injury is likely not compensable because the workday had ended and the trip upstairs had nothing to do with the employment. The same scenario may be compensable for a worker who does not have set hours. The employee's testimony as to whether they intended to continue working after shutting the window would also likely be important.

VI. COMING & GOING SITUATIONS

A. Again, assume an individual who has a clearly defined home office. Keep in mind that, generally, set work location and set hours are required for the coming and going rule to apply.

B. Personal Errands

1) Employee leaves his home to pick up his child from school, although he intends to continue working upon returning home. This is probably not compensable.

2) Employee goes to a convenience store to pick up something to eat. This case would probably be analyzed similarly to cases where the employee leaves the work premises on their lunch break.

C. Divided Premises – Most travel between the home office and actual work premises is probably in the course of employment.

1) Employee leaves his home to pick up a file, which he intends to return home to work on. He is killed in an accident on the way home. This would be a pretty clear case where the divided premises exception would apply.

2) Same facts, but on the way home he drives 2 blocks off course to pick up food. Prior to returning to the direct route, he is in an accident. This is probably still compensable because the deviation is fairly minor.

3) Same facts, but on the way home he drives 5 miles off course to visit his girlfriend for 2 hours. While returning to the direct route he is in an accident. This is almost certainly not compensable because the deviation was substantial and he had not returned to the direct route before the accident occurred. Alternatively, the injury is probably compensable if the employee had returned to the direct route before the accident occurred.

4) Employee has a home office, but only works from home 25% of the time. On a day when the employee did not plan to work from home, he is killed in an accident while driving to the actual work premises. This may be a coming and going situation.

5) Same facts, but the employee makes it to work and completes the day of work. He is killed in an accident returning home that night. He did not intend to perform any work at home that evening. This is probably another coming and going situation because the worker was returning home for personal, rather than business, reasons.