

When is an Employer Liable for an Accident in a Company Supplied Vehicle?

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“...use of a company vehicle frequently gives rise to questions of liability...”

Employers frequently provide company cars for a variety of reasons to their employees. While there are a number of good business reasons for doing this, use of a company vehicle frequently gives rise to questions of liability to third parties injured in an accident, as well as exposure to worker’s compensation liability if the employee is injured.

American Home Assurance Co. v. De Los Santos



A recent case out from the San Antonio court of appeals gives an excellent outline of some of the key factors which give rise to liability of an employer in such situations.

American Home Assurance Co. v. De Los Santos, No. 04-10-00852-CV (Tex. App.-San Antonio, January 18, 2012) considered what constituted course and scope of employment in a workers' compensation claim. In

this case, De Los Santos, the employee at issue had been furnished a car by his employer. The accident resulting in the employee's death occurred on a public highway at 5:50 a.m. while De Los Santos was traveling in the company truck from his home in Orange Grove, Texas, to the Buck Hamilton Ranch to begin his work day and meet a Mr. Clark. Noting that work required travel between work and home is not generally considered travel in the course and scope of his employment, the court considered the exceptions allowing that travel from home to work can be compensable if (1) the transportation is furnished as a part of the contract of employment or is paid for by the employer; (2) the means of transportation are under the control of the employer; or (3) the employee is directed in the employee's employment to proceed from one place to another place. (Tex. Labor Code Ann. §401.011(12)). Establishing one of these circumstances does

not establish that travel is in the course and scope of his employment but it does establish that travel is not automatically excluded from being within the course and scope of employment solely by virtue of the fact that the employee is traveling between home and work.

“...the evidence failed to establish why the truck was furnished in the course and scope of employment.”



After considering case law, the court held that while furnishing De Los Santos with a company truck did meet exception (1) noted above, the evidence failed to establish **why** the truck was furnished in the course and scope of employment. In this case, the evidence could have shown that the employer provided the company truck because the work site was remote, or because the company-furnished truck was part of the employer's plan to have its employees arrive and leave at the same time, or that it was necessary for the employer to furnish De Los Santos with a company truck in order to induce him to the work site. The evidence did not demonstrate that a company truck was driven by De Los Santos as an integral part of his employment contract. The mere gratuitous furnishing of the vehicle by an employer to an employee as an accommodation is not sufficient to make a trip to a worksite within the course and scope of employment.

In response to an argument that De Los Santos was on a "special mission" the court noted that a "special mission" is a trip made by an employee under the direction and for the benefit of his employer. In this case, there was no evidence of a special mission, but that De Los Santos was traveling on his customary route to the work site.

The court also addressed the subsidiary argument that the travel originated in the employer's business because De Los Santos was transporting tools and equipment, as De Los Santos and Mr. Clark had agreed that De Los Santos would bring a barrel to the work site that day to catch petroleum liquid that spilled while they worked on the well. The court held this fact was not sufficient to render the accident during the course and scope of the employment as they were not carrying the equipment at the direction of their employer.

Does your company have clear written policies and procedures for vehicle use?



If you are an employer who provides employees with vehicles on a temporary or permanent basis, the best way to assure that you are protected from liability for accidents occurring on personal errands is to have clear written policies and procedures for vehicle use, signed and acknowledged by the employee driving the vehicle. This includes policies on when the car is to be used for business, limitations on origin, destination, and

time to the extent practicable, taking on passengers, and when the policies can be varied by instruction from the employer. While those policies cannot change the law or the Worker's Compensation statute, to the extent acknowledged they can be effective in preventing an employee from arguing that a purely personal errand is work related.