



# DELAWARE

## EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

Vol. 22, No. 7  
July 2017

### **WORKERS' COMP**

## **America runs on Dunkin': Workers' comp rulings are changing the game**

by Casandra Faline Roberts

*Workers' compensation benefits are designed to compensate employees for injuries that occur in the course and scope of employment. Basic workers' comp principles establish that the course and scope of employment excludes routine commutes to and from work (before arriving at and after departing from the employer's premises). Delaware is no exception. With rare exceptions, for employees with a fixed and consistent workplace location (e.g., an office or industrial building), workers' comp liability does not attach for injuries that don't occur on the employer's premises.*

*However, as workplace demands become more mobile and start to include remote access, the issue becomes murkier. The premises rule does not strictly apply to employees whose tasks include traveling from worksite to worksite or from client to client. Several recent Industrial Accident Board (IAB) rulings show the ever-expanding concept of the course and scope of employment.*

***The mobile office***

*Speakman v. John Steel, Jr., Inc.*, focused on a supervisor/estimator whose job description involved driving around to visit jobsites and prepare estimates all day. After the employee was involved in a motor vehicle accident on his way home, his workers' comp claim was denied based on the "going and coming" rule. The employee appealed the decision to the IAB. Benefits were awarded because he (1) had no fixed place of employment, (2) worked out of an employer-furnished truck that had a computer and functioned as a "rolling office," and (3) had a home office for which he claimed a tax deduction.

### ***The mobile break room***

The *Walley v. Amazon.com*, a lack of employee parking during peak hours required employees to use an overflow parking lot at a nearby Baptist church. The employer offered a van shuttle service for employees. The shuttle van was involved in a collision after making a stop at Dunkin' Donuts, and an employee was injured.

The employer denied the employee's workers' comp claim based on the proposition that the accident occurred off its premises. It cited a "frolic and detour" regarding the stop at Dunkin' Donuts. The fact that the van driver picked up workers and stopped at Dunkin' Donuts at their request *without the employer's permission* was important. The stop was not part of the regular route or an employer-sanctioned activity.

Nevertheless, the IAB held that the van shuttle's route was part of the employer's "premises." The board said that since the stop was on the direct route of the van's ultimate destination, the java fix was a minor deviation at best and was insufficient to take the accident out of the course and scope of employment.

### ***The home office***

The IAB's latest pronouncement regarding the course and scope of employment, *Smith v. Beebe Healthcare*, involved a home healthcare nurse who was injured coming out of her home in route to her first appointment. The IAB held that the premises

rule did not apply to the nurse as a traveling employee. In finding that the accident was in the course and scope of employment, the board cited (1) the nurse's pattern of working from home and signing in on her computer and (2) a pattern of the nurse being paid for working from home, which put her "on the clock."

***Bottom line***

Looking at the cases in the aggregate, two things are clear: (1) Workers' comp law continues to take a liberal view of the course and scope of employment (with a very fluid concept of "workplace") and (2) America really does run on Dunkin'.

*The author can be reached at [croberts@ycst.com](mailto:croberts@ycst.com).*

Copyright 2017 M. Lee Smith Publishers LLC

**DELAWARE EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Delaware employment law. Questions about individual problems should be addressed to the employment law attorney of your choice.**

[Back to Results](#)

[Back to Search](#)

[Exit Search](#)