

## Crash Course in the Danger of Employer Auto Liabilities

**INSURANCE:** Local attorney reveals a liability necessity.

Do you have employees who drive their own cars during work – perhaps a salesperson, an employee making deliveries, an employee going to the bank or someone who occasionally runs errands for you? If you do, you may be responsible if your employee is involved in an automobile accident driving from home to work and back.

Employers are liable, under the doctrine of respondeant superior, for acts of their employees taken in the course and scope of employment. The question then becomes, what actions are in the “course and scope of employment.” A recent California case regarding an employee who was involved in a car accident on his way home from work expanded the definition of “course and scope of employment” to include the period when an employee is traveling to or from work if the employee occasionally uses his vehicle for his employer’s benefit. *Lobo v Tamco* (2010) Employers should be aware that they may be liable for negligent acts of employees while they are driving to and from work.

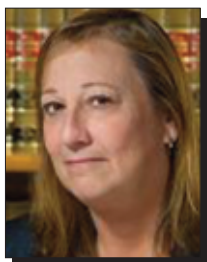
### Course and scope

To be acting in the course and scope of employment, an employee must be engaged in the duties which he/she was employed to perform or those actions which incidentally or indirectly contribute to the services performed for his/her employer.

The courts generally find that if the act of the employee is done as an accommodation for the employer, and benefits the employer, then the act falls within the course and scope of employment. This may include use of an employee’s own vehicle in driving to and from work in some circumstances.

### Coming and going

Under the “coming and going rule,” employers are generally exempt from liability for negligent acts committed by their employees while on their way to and from work, because commuting is said to be outside the course and scope of employment. However the coming and going



### WORKPLACE

Cynthia L. Rubin

rule has exceptions, and those exceptions may cause serious consequences to an unaware employer.

The exception discussed in the recent *Lobo v Tamco* case involved an employee who occasionally used his personal vehicle to carry out his employment duties. The issue was whether his employer was liable for an accident the employee had on his way home from work. The employer argued that the coming and going rule applied since the employee had left work for the day and was involved in an accident driving from work to home. The employee argued that since the employee was required to have his car at work and to use it for the employers benefit on occasion, that even commuting from home to work and back was within the course and scope of employment, because the employer derived a benefit from the employee having his car at work.

### Liability

In the *Lobo* case, the employee was the manager of quality control, which required him to visit customers from time to time. The employee testified that he usually got a ride to the customer location with another employee, but over the 16 years of his employment he may have driven his personal automobile approximately 12 times. There was testimony that the employer reimbursed the employee for expenses on the occasions he did drive his own car.

Previous cases had determined that if an employer required, either expressly or implicitly, that the employee make his vehicle available as an accommodation to the employer, and if the employer had reasonably come to rely on the use of the employees car and expected the employee to make the car available on a regular basis, then the employer was responsible for all negligent

acts of its employee while the employee was driving, including coming to and from work.

However in *Lobo*, the use of the employee’s car 12 times in 16 years would not qualify as a “regular basis.” Nonetheless the court found that the employer required its employee to make his car available whenever needed, and therefore the employer derived a benefit from the employee having his car and work even if the use of the car by the employee was occasional and sporadic (less than once per year over a span of 16 years). Since the employer derived a benefit from its employee having his car at work, driving to and from work was within the course and scope of employment, and the employer was held to be responsible for the accident its employee had driving from work to home.

The *Lobo* case has apparently broadened the principle of respondeant superior to include liability for an employee’s drive to and from work for any employee who has used or may use his/her personal automobile for the benefit of the employer. This would include the employee who drives to the bank or the post office or picks up the bagels for monthly staff meetings. Employers should be aware that if they have any employees who use their personal automobiles for the benefit of the employer, even sporadically, the employer will likely be liable for any accident those employees have driving not only during the work day, but while driving to and from work as well.

Employers can protect themselves by having liability insurance and an umbrella policy which will cover any expenses that may be incurred. Additionally, limiting the number of employees who drive for work would eliminate some of the risk. If the company has a company car an employee would not be benefiting the company by driving his/her own car and the company would not be liable for coming and going to work.

*Cynthia L. Rubin is an attorney with Goldfarb, Sturman & Averbach in Encino.*