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WESTON HURD CLIENT ADVISORY
June 2014

Parking Lot or A Lot of Liability?

By Michael J. Spisak

Oftentimes we hear companies plead, "But our employee fell in the company parking lot, he wasn't even *at work* when it happened." Whether a parking lot injury translates into a compensable workers' compensation claim depends on a number of factors.

To be compensable under the Ohio workers' compensation system, the injury must have occurred "in the course of, and arising out of, the injured employee's employment."[1] The "in the course of" portion refers to the time, place, and circumstances of the accident; the "arising out of" portion refers to a causal connection between the employment and the accident, *i.e.* was the injured worker doing something necessary for his/her job when he/she was injured?[2]

The time, place, and circumstances of an accident, or the "zone of employment" is usually described as that area in proximity to the employer's premises presenting hazards attributable to the employment. The boundaries of the "zone of employment" are determined by how close the injury occurred to the employment premises together with the peculiar circumstances and hazards which exist at the injury situs.[3] One crucial fact may determine whether your company has liability for an employee injury in a company parking lot, even if it is a parking lot which is also used by the general public: Control.[4]

Control over a parking lot is a very fact intensive issue and is not always cut-and-dried. Several key issues must be explored including ownership of the parking lot, whether the company is responsible for snow removal or upkeep, and whether the employees are directed to park in a certain portion of the parking lot. If your company is determined to have exercised control over the parking lot, then an employee injury may very well be compensable, even if the employee is not "on the clock."

In general, Ohio courts have held that ownership of the parking lot necessarily translates into control. However, there have been exceptions. In *Watkins v. The Metrohealth System* (Oct. 31, 2002), Cuyahoga App. No. 80567, the claimant was injured on her way to work while parking her car in a garage owned by the employer. The court held that the situation was "governed by the

'coming and going' rule" because the claimant was not required to use the employer's garage and did so as a matter of convenience, not necessity. The court also concluded that the claimant "fails the totality of the circumstances test because she cannot show that Metrohealth derived some particular benefit from her presence within the garage." Based on that analysis, a majority of the court disallowed the claim. While the claimant in *Watkins* was denied workers' compensation benefits, the *Watkins* holding is the minority view and ownership of a parking lot is generally a key deciding factor.

Determining who controls your parking lot and ensuring that it is properly maintained can go a long way in preventing workplace injuries and/or determining who is ultimately responsible should an injury occur.

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[1] *Bralley v Daugherty* (1980), 61 Ohio St. 2d 302.
[2] *Fisher v. Mayfield* (1990), 49 Ohio St. 3d 275.
[3] *Frishkorn v. Flowers* (1971), 26 Ohio App. 2d 165.
[4] *Littlefield v. Pillsbury Co.* (1983), 6 Ohio St. 3d 389.

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