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SACRAMENTO CONVENTION CENTER

When is an Incident an Injury?

Understanding the AOE/COE Aspect of Work Injury Claims

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parma

public agency risk management association

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Do you really need a puff piece about the presenter?

He's the guy standing in front of you. He's a lawyer.

Big deal…

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DISCLAIMER

- This information is general in nature and is not meant to apply to any specific case. Please feel free to contact us with specific questions.
- Also, please note that this presentation is not exhaustive. Rather, it is meant to provide you with a useful reference in order to help you determine with your lawyer on a case-by-case basis whether you should and how you might address the issues discussed herein.
- This presentation is not legal advice, but rather an overview and synopsis of an area of the law. The opinions of the presenter are his and his alone, and he probably thinks they are more important than they really are…

What the heck is AOE / COE?

1. The conditions of compensability – Labor Code § 3600
2. "…arising out of ***and*** in the course of the employment…"
3. Easy to say, challenging to apply

Arising Out of Employment:

- The injury must occur by reason of a condition or incident of the employment [See LaTourette v. WCAB (1998)]
  - Is there a causal link between the injury and the employment?

- Example: Employee is on the job on his employer's premises and performing his usual and customary job duties for the employer. Employee gets a headache and goes to retrieve an aspirin from the first aid kit in the break room. While returning to his workstation, the employee suffers a grand mal seizure (due to a pre-existing and nonindustrial condition), causing him to fall to the concrete floor and strike his head.

  - Is it compensable?

Arising Out of Employment:

- In part. See Employers Mutual Liability v. IAC (Gideon) (1953) 41 Cal.2d 676
- *"Injury need not have been of a kind anticipated by the employer **nor** have been peculiar to the employment in the sense that it would not have occurred elsewhere."*

In the Course of Employment:

- Ordinarily refers to the time, place, and circumstances under which the injury occurs. In drawing the line between purely personal acts and those deemed work-related, the courts will apply the basic principle that an employee doing those reasonable things within the time and space limits of the employment, which the employment contract expressly or impliedly permits, is acting in the course of the employment.

- The COE determination generally turns on the question of whether the act was done for the employer's "benefit" – be it for a designed business purpose, protection of property/ assets, or even securing good will for the employer.

In the Course of Employment:

- Example(s): Employee, operating a company vehicle and while in transit between job sites, stops to give assistance to the driver of another vehicle involved in a rollover accident. There is no relationship between the employee/employer and the individual involved in the rollover accident. While standing on the shoulder of the freeway and attempting to provide aid, employee is hit by another car traveling down the roadway. Is it compensable?

In the Course of Employment:

- Yes. The commissioners reasoned that (1) Applicant's injury arose out of his employment because his work required him to be driving on the freeway that day and, but for that fact, he would not have witnessed the other driver's accident, and (2) the injury occurred in the course of employment because Applicant's actions as a Good Samaritan were reasonably foreseeable and did not constitute a material deviation from his employment. [See Metcalfe v. Hines Horticulture, 2009 Cal. Wrk. Comp. P.D. LEXIS 426]

1% is the New Normal:

- The applicant has the initial burden of establishing "industrial causation"
- Don't worry. Its not that hard… [See South Coast Framing, Inc. v. WCAB (Clark) (2015) 61 Cal.4th 291]
- The question on appeal in South Coast Framing was the required nature and strength of the causal link between industrial exposure and harm (death).
- The CA Supreme Court found: *"A corollary of the no fault principles of workers' compensation is that an employer takes the employee as he finds him at the time of the employment. Thus, an employee may not be denied compensation merely because his physical condition was such that he sustained a disability which a person of stronger constitution or in better health would not have suffered."*
- As a result, the injured worker need only establish that industrial causation is reasonably probable (Don't call it the "1% Rule").

Every "A" Must Have a "C":

- § 3600 requires – as a condition of compensation – That an injury **arise** out of **and** occur in the **course** of employment

- Example: An employee is walking to his car after his work shift has ended. His car is parked in a poorly lit section of the parking lot set aside and reserved for employees by the employer. The employee steps on a rock in the middle of the parking lot and rolls his ankle and falls, causing injury. Is it compensable?

Every "A" Must Have a "C":

Change the facts: Employee parks in the parking lot on his day off because it's conveniently located next to his favorite pizza place, where he is meeting friends to watch the big game. While crossing the same poorly-lit section of the parking lot, he steps on a rock and rolls his ankle and falls, causing injury. Is it compensable?

Every "A" Must Have a "C":

Change the facts: Employee parks in the parking lot on his day off because it's conveniently located next to his favorite pizza place. While crossing the parking lot and headed to the restaurant, a coworker – on shift – sees employee and asks if he can help hold up a shelving unit inside the business while it is repaired. Employee does not clock in, and is only engaged for a few minutes. A bottle falls off the shelf, hitting the employee in the head and causing injury. Is it compensable?

- Wright v. Beverly Fabrics, Inc. (2002) 95 Cal.App. 4th 346

Every "A" Must Have a "C":

- Reasonable doubts as to whether an injury arose out of and in the course of employment are resolved in favor of the applicant. [See Garza v. WCAB (1970) 3 Cal.3d 312]

- Whether an employee's injury arose out of and in the course of his or her employment is generally a question of fact to be determined in light of the circumstances of a particular case [See Mason v. Lake Dolores Group (2004) 117 Cal.App.4th 822]

More Fun with AOE / COE:

An employee of a local church is attending a church event while off duty. She observes some ne'er-do-well sneaking out of the church cafeteria, stealing beer. She confronts the thief and attempts to prevent the beer theft. Our brave heroine is knocked to the ground by the fleeing beer bandit and injured. Is it compensable?

More Fun with AOE / COE:

Martinez v. WCAB (1976) 15 Cal.3d 982: The employees actions were considered a reasonable expectation of employment, especially in light of the church council's decision to self-police the event instead of hiring security guards.

More Fun with AOE / COE:

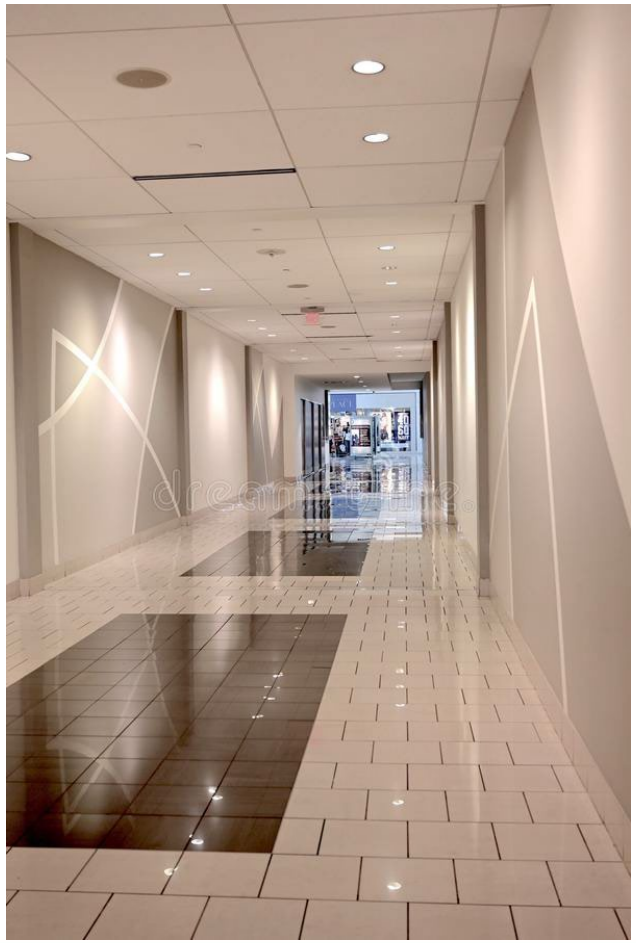
Company President just bought a brand-new Ferrari and brought it to the office to show it off to his subordinates. Joe the Janitor was so impressed with the shiny new car that he begged company president for a chance to drive it around the block. Even though it was the middle of the workday, President acquiesced and tossed Joe the keys. Pulling out of the parking lot, Joe lost control of the car crashed into a fence and was killed. Is it compensable?

More Fun with AOE / COE:

Fremont Indemnity v. WCAB (Makaeff) (1977) 69 Cal.App.3d 170: Driving was a "human response" to the situation, whether that response was triggered by a desire to please the company president, by desire to relax, or a little bit of both…

More Fun with AOE / COE:

Employee ends her shift by turning off the lights and locking up the “Eternally 18” fashion boutique where she is employed at the local mall. She exits the store into a common hallway accessible by other employees of the other large chain stores at the mall. This hallway is not accessible by the general public. Near the end of the corridor, mere feet from the exit and her parked car, she is attacked from behind and robbed. Is it compensable?



More Fun with AOE / COE:

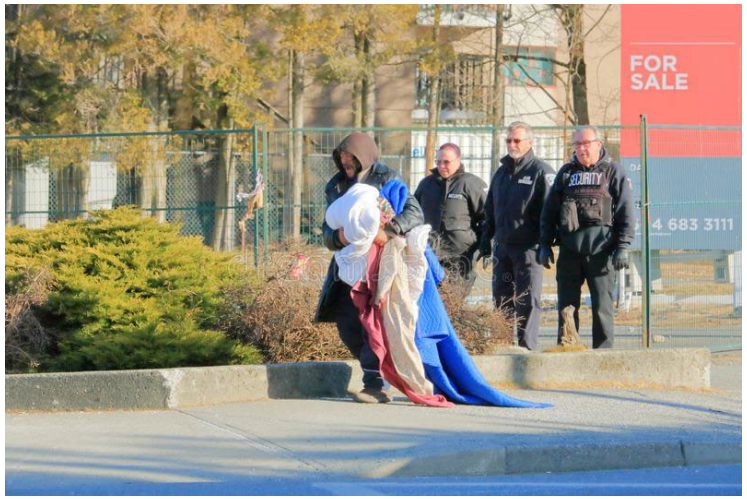
"Zone of Special Danger": Points of access to or egress from the employer's premises subjecting the employee to a special risk greater than that to which the public is subjected allows the employee to remain within the course of her employment until exiting that zone.

More Fun with AOE / COE:

- Unarmed private security officer Alexis is assigned to a detail working at the local greyhound bus terminal. While making her rounds, she observes Hobo Jim, a homeless man, sitting on one of the benches and directing profanity at passengers and employees of the bus terminal. Alexis requests that Hobo Jim exit the premises, or she will call the police. Alexis's employer, Super Savvy Security, notifies all of their employees via express written instructions that they are not to leave an assigned security post or give chase to anyone. If they observe criminal conduct, there are to note the behavior, ensure the safety of persons present at a post, and involve law enforcement.
- In line of sight of Alexis, Jim throws a small rock at one of the passenger's heads, striking them. Alexis gives chase to the vagrant, out the exit of the bus terminal and onto the public sidewalk. Outside of the bus terminal and nearly a full city block away from the exit, Alexis suffers a heart attack secondary to the exertion associated with her foot chase. Is it compensable?

More Fun with AOE / COE:

Zenith v. WCAB (Alex) (2022): While the employer argued that the injury was not compensable because the employee's conduct was an unauthorized departure from the course of his employment, the court distinguished between an employee doing an act entirely outside the scope of their employment versus doing an act within the scope in a forbidden manner.



More Fun with AOE / COE:

Correctional Sergeant Dan works at the local county jail . His job required him to guard inmates, provide for the inmate's well-being, and security of the inmates as well as the jail staff. As a corrections officer, Dan was required to maintain himself in good physical condition so that he could handle the strenuous physical contacts often required of a law enforcement officer. In order to maintain himself in peak physical fitness, Dan would engage in regular exercise. While doing jumping jacks at home, Dan felt an extreme stabbing pain in his left knee and filed a work injury claim. At the time the claim was filed, Dan was not preparing for any sort of physical fitness test related to or qualifying him for continued employment. Is it compensable?

More Fun with AOE / COE:

Young v. County of Butte (2013): Application of the classic "Ezzy Test" – a two part test to determine whether off-duty, recreational, social, or athletic activity is compensable. (1) Does the employee subjectively believe that his or her participation in the activity is expected by the employer, and (2) is that belief objectively reasonable. Usually, and where a safety officer is training for a specific fitness test or mandatory physical performance program (aimed at reaching a defined desired result), the standard set forth in the Ezzy case will be met.

Defeating AOE/COE:

- 3600 giveth, 3600 taketh away:
  - (a)(1): An employment relationship must exist
  - (a)(4): intoxication defense
  - (a)(5): Intentional or self-inflicted harm
  - (a)(6): Suicide
  - (a)(7): Horseplay / fighting / initial physical aggressor
  - (a)(8): Felony(convicted)
  - (a)(10): Post termination defense

Thank you!

Questions?

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