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Respondeat Superior Can Continue After Closing Time

Law360, New York (October 15, 2013, 1:02 PM ET) -- Recently, a California appeals court held that a company could be liable for an auto accident caused by an employee who was driving home from work. According to the court's opinion, the ruling is not a departure from existing law — but most employers will be surprised by what the court found to be an act within the "course and scope" of employment after the end of the business day.

After work on April 15, 2010, defendant Judy Bamberger, an insurance salesperson for Marsh USA Inc., left her office in downtown Los Angeles. On the way home she planned to stop for frozen yogurt and yoga class. While making a left turn into the parking lot of the yogurt shop, Bamberger collided with the plaintiff, Majid Moradi, who was riding his motorcycle in the opposite direction.

Moradi sued both Bamberger and Marsh for his injuries. Marsh won a motion for summary judgment on the grounds that at the time of the accident, Bamberger was "neither at work, nor working, nor pursuing any task on behalf of her employer, but was pursuing personal interests."

Plaintiff appealed, and in Moradi v. Marsh USA Inc. (No. B239859, filed Sept. 17, 2013) the Second Appellate District overturned the summary judgment, ruling that the trip home — including the stops for yogurt and yoga — were within the course and scope of Bamberger's employment and that Marsh could be liable for the accident.

The court began its analysis by noting that respondeat superior holds that an employer is liable for an employee's negligence occurring in the course and scope of employment because the organization is better able to insure or redistribute the risk, but there is a long-standing "going-and-coming rule" that employees are not within the course and scope during their daily commute.[1]

However, there is an exception to the "going-and-coming rule" that a commute is part of the course and scope when an employee uses the vehicle during business hours for the benefit of the employer — referred to as the "required-vehicle exception."[2] The required-vehicle exception has its roots in workers' compensation law, which holds that an employee is eligible for benefits if he is injured while bringing a car to work for the benefit of his employer.[3]

The Moradi court explained that Bamberger frequently used her car during the work day to drive to presentations and meetings with clients. On the day of the accident, she had used her car to take co-workers to a company-sponsored program and she was planning to drive to another out-of-office meeting the next morning.

Since the use of the car was for the benefit of the company, the court held that Marsh not only be held liable for injuries to Bamberger while commuting, but for injuries to others during the commute.

As for the stops on the way home from work, the Moradi court looked to prior decisions, which held that an employer is liable for an employee's conduct while driving a company car unless that conduct is so unusual and startling that it would seem unfair to attribute it to the employer, even while on a personal errand.[4]

It also cited prior employment cases holding that acts necessary to the "comfort, convenience, health and welfare" of an employee while at work, even if solely for that employee's benefit, do not place the employee outside the course and scope of employment.[5] The court ruled that Bamberger's stops for yoga and yogurt were not an unforeseeable and substantial departure from the commute so as to extinguish Marsh's liability.

The Moradi court also examined the incident through the lens of the "special-errand" exception to the going-and-coming rule. The special-errand exception states that if an employee is traveling outside of his normal duties at the request of his employer, then he is within the course and scope of his employment until the transit for the errand is completed, or he deviates from the errand for personal reasons.[6]

The court explained that whether or not an employee had abandoned the business errand was determined by weighing six factors found in Felix v. Asai, but it curiously declined to apply the factors to the facts at bar.

Instead, the court examined a case decided before the required-vehicle exception was even created. In the 1944 decision of Loper v. Morrison, the California Supreme Court held that an employee stopping at a bar for a sandwich and beer while making collections visits to customers did not constitute a substantial deviation from his employment activities.[7]

In a slightly anachronistic comparison, the Moradi court opined that if going to a tavern for beer did not preclude a finding of liability on the part of the Loper employer, then neither should a stop for frozen yogurt.

It is possible that the Moradi decision will be further appealed to the California Supreme Court, but until it is overturned or limited, employers — including law firms — should be mindful of their potential exposure.

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[1] See, Lobo v. Tamco (2010) 182 Cal.App.4th 297, 301

[2] Id.

[3] Smith v. Workmen's Comp. App. Bd. (1968) 69 Cal.2d 814.

[4] Lazar v. Thermal Equipment Corp. (1983) 148 Cal.App.3d 458

[5] Farmers Ins. Group v. County of Santa Clara (1995) 11 Cal.4th 992, 1004.

[6] Felix v. Asai (1987) 192 Cal.App.3d 926, 931.

[7] Loper v. Morrison (1944) 23 Cal.2d 600.
