

Does Workers' Compensation Apply to Your Commute?

Understanding the "Coming and Going Rule" in workers' comp cases

Commuting is a fact of life in New York – indeed, New York City regularly ranks among the cities with the longest average commutes in America. Whether it's a car crash, a slip and fall on the subway, or a pedestrian injury a few blocks from the office, it's natural for injured workers to ask whether injuries during a commute are covered by [workers' compensation](#).

The general answer is "no;" your commute is your own time, not part of your job duties. Exactly how the "commute" is defined for workers' comp purposes can be a matter of interpretation. An injury in the company parking lot may be covered by workers' comp, but an injury in the street outside the parking lot usually is not. However, there are several exceptions that can apply, especially for workers who have job duties outside the office.

The "special mission" or "special errand" exception

This is a legal term for a routine occurrence in many workplaces: your manager asks you to run an errand on your way to work or on your way back from a break. It's often convenient for employers to assign tasks outside the office to employees who are already out and about, and that's a perfectly fine employment practice, but the tradeoff is that the employer takes responsibility for injuries to the employee during that time.

For example, if your supervisor asks you to get a box of donuts for the staff meeting on your way to the office, and you slip and fall while carrying the donuts to your car, you should be eligible for workers' comp on the grounds that you were doing something for your employer at the time, even if it's not a routine part of your job. The same argument applies to any work errand – going to the post office to mail something for your employer, going to the bank to deposit your employer's money, and so on.

The "exception to the exception" is when the special errand is "unreasonable and insufficiently work-related," as determined by the Workers' Compensation Board. In other words, these situations are somewhat of a judgement call on the Board's part, and you will likely need an attorney to make the case that your injury occurred in the course and scope of your employment.

The company vehicle exception

If your employer "furnishes the means of transportation" – that is, transports you in a company vehicle, whether driven by you or someone else – then travel in that company vehicle may be covered by workers' compensation, depending on the circumstances.

One version of this exception applies if the employer has assumed responsibility for transporting employees, whether by contract or custom. For instance, a 1978 ruling by the New York State Court of Appeals held that an employee's death was covered by workers'

compensation because the employer had a common practice of transporting employees to and from work in its delivery trucks. [Matter of Holcomb v. Daily News, 45 N.Y.2d 602 \(1978\)](#). If transporting employees provides a benefit to the employer, then the employer (along with its workers' compensation insurance) is responsible for injuries while the employees are being transported.

Another instance of this exception may apply when a worker is injured while driving a vehicle that is visibly marked with the company logo or other advertising material. If the company vehicle is effectively a moving advertisement for the employer, then it can be argued the employer gains a benefit from the employee's use of the vehicle in the community, even if the employee is not on the clock or otherwise engaged in a work task at the time of injury. Again, these types of claims are factually intensive and require an experienced attorney to make the argument that the injury is compensable.

Exceptions for traveling employees

Travel during the workday, for instance going from jobsite to jobsite, *is* covered by workers' compensation. For some workers, such as truckers and taxi drivers, travel is essentially their entire job, so of course it's covered by workers' comp. Even employees who generally work at a fixed location, though, are covered by workers' comp if they must go to an off-site meeting or run an errand for their employer during their workday. Likewise, travel during a business trip, including going to and from the airport, train station, hotel, and other locations the employee needs to visit during the trip, is covered by workers' comp.

If your job is such that you have no fixed place of work, then commuting as part of your job should be covered by workers' comp. This is a common situation for visiting nurses, construction workers, contractors, traveling salespeople, tutors, and anyone else whose job is primarily done on-site on their client's or customer's premises instead of on their employer's premises. (Indeed, employers of such traveling workers may not even have a physical office location.)

You may have other legal options if you're injured on your commute

Whether or not an injury during travel is covered by workers' compensation, if it was caused by someone else, you can file a [third-party claim](#) against the person who caused the injury. For instance, if you were involved in a car accident, you can pursue legal action against the at-fault driver or another entity (such as a vehicle manufacturer) that caused or contributed to the accident. If you were hurt on premises owned by a company other than your employer, you may be able to file a personal injury claim against the owner or manager of the premises. These third-party claims can compensate you for damages not covered by workers' comp, such as pain and suffering.

That's one of the reasons it's so important to discuss your situation with an experienced attorney. We have the experience to navigate the New York workers' compensation system and

pursue a third-party claim simultaneously. If your employer or the insurance company disputes that your injury was work-related, we can make the case to the Workers' Compensation Board that workers' compensation should cover you. We would be happy to analyze your legal situation and explain your rights and options in a [free consultation](#).