

## New Decision Suggests that Fewer Employees can Recover Workers' Compensation Benefits for Injuries Sustained While Traveling To or From Work

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Due to a recent decision from the Pennsylvania Commonwealth Court, fewer Pennsylvania workers may be eligible for Workers' Compensation benefits after sustaining injuries while traveling to or from work.

Under Pennsylvania's "going and coming rule," an employee is ineligible for Workers' Compensation benefits for injuries sustained while traveling to and from his or her place of employment. Pennsylvania, however, recognizes four exceptions to this rule. Specifically, an employee may qualify for Workers' Compensation benefits for injuries sustained while traveling to and from work if:

- the employment contract includes transportation to and/or from work;
- the claimant has no fixed place of work;
- the claimant is on a special assignment or mission from the employer; or
- special circumstances are such that the claimant was furthering the business of the employer.

In *Kush v. Workers' Compensation Appeal Board (Power Contracting Company)*, No. 1688 C.D. 2017, 2018 WL 2246523 (Pa. Commw. Ct. May 17, 2018), the Commonwealth Court potentially narrowed the number of employees who qualify for these exceptions. James M. Kush, an electrical worker, argued that he was entitled to Workers' Compensation benefits after being injured in a car accident while driving to work. Specifically, Kush contended that he had "no fixed place of work" because he worked for two employers, drove directly to a different job site each day, and did not visit the corporate headquarters of either company on a normal workday. Further, he claimed that his employment contract included time spent for transportation to and from work because he drove a company truck supplied by one employer to job sites for both employers.

The Commonwealth Court rejected Kush's arguments and found that he did not qualify for an exception to the "going and coming rule." First, Kush had a fixed job location because he had moved his equipment to a specific job site on the date of his car accident, had planned on working at that job site all day, and had been working at that site exclusively for several weeks. In addition, Kush's employment contract did not include transportation to and from work because his wages did not include pay for travel, the employer named in his Workers' Compensation claim petition did not provide transportation to and from work, and he was not paid for time spent driving home at the end of the day. The Commonwealth Court thus denied Kush's claim for Workers' Compensation benefits.

Although the long-term impact of the *Kush* decision is still unclear, it does demonstrate that the facts surrounding an employee's employment situation are critical in assessing whether the employee is entitled to Workers' Compensation benefits. Employers thus should consult with an experienced attorney to determine whether they should challenge an employee's claim petition when the employee has been injured while traveling to or from the workplace.