

Returning to the course of employment

By Noah A. Frank / Bryce Downey & Lenkov LLC

An employee's injury is compensable under the Illinois Workers' Compensation Act, only if an accident arose out of and in the course of employment. 820 ILCS 305/2; *Ill. Bell Tel. Co. v. Indus. Comm'n*, 131 Ill.2d 478, 483 (1989). On August 15, 2011, the divided Workers' Compensation Division of the Appellate Court rendered a decision in *Johnson v. Ill. Workers' Compensation Comm'n*, No. 2-10-418WC, on this issue of accident. The Appellate Court held that a frolicking employee reentered the course of employment upon receipt of and response to his employer's order.

Facts

Will County Deputy Sheriff David Johnson ("Claimant") was assigned to patrol the northwest part of the County's community-oriented policing service area ("COPSA"). On July 20, 2007, Claimant left his patrol, and drove 3-miles beyond the county border into Du Page County to obtain his mail. Claimant violated work rules by failing to notify dispatch he had left his COPSA, and leaving Will County without prior permission.

As he exited the post office after completing his personal errand, Claimant received an assignment from the dispatcher, which was considered a mandatory order from the Sheriff. Claimant acknowledged the assignment, never notified the dispatcher that Claimant was outside of his assigned patrol area, and began traveling in excess of the posted speed limit. The dispatcher testified she would have given the assignment to a different officer had she known Claimant was outside his patrol area. Claimant falsely advised a fellow officer that he was three to five minutes away from the patrol stop when he was actually 10 to 15 minutes away.

While still in Du Page County, 1-1/2 miles from the county border, Claimant entered an intersection against the traffic signal with his emergency lights activated. Another vehicle traveling 60 miles per hour struck Claimant on the passenger side. Claimant sustained a left distal radius fracture, large scalp hematoma, numerous abrasions, right arm laceration, bruising, an abdominal herniation, and contusions of the sternum, ribs, left knee and right ankle. Claimant requested an ambulance for himself, and advised the dispatcher of his true position. On September 11, 2007, Claimant returned to full duty work. He was

suspended without pay for eight days for violation of work rules.

Appellate Holdings

The Commission held that Claimant failed to prove an accident arising out of and in the course of employment due to personal deviation and misconduct, and denied all benefits. The Circuit Court reversed and reinstated benefits, finding that Claimant's personal deviation ended when he received and responded to the dispatcher's assignment.

The Appellate Court affirmed, finding that Claimant's injuries arose out of and in the course of his employment. Prior to receiving the call from dispatch, Claimant was on a purely personal deviation. However, Claimant returned to the course of employment upon receiving and acknowledging an assignment from dispatch. Claimant sustained injuries from an accident that arose out of performing an act for his employer's benefit.

The Appellate Court rejected the employer's argument that Claimant's violation of work rules removed him from the sphere of employment. Citing *Saunders v. Indus. Comm'n*, 189 Ill.623, 633 (2000), the Appellate Court reasoned that if a worker is doing the work he is employed to do, he is within the sphere of employment, even though he violated a work rule.

Dissent

Justice Hudson joined Justice McCullough's dissent that Claimant's personal deviation took him out of the course of employment for the following reasons: (1) he did not ask permission to leave the county, (2) he did not advise dispatch he was leaving his patrol zone, (3) he did not provide an accurate estimated time of arrival, (4) he violated work rules by not informing dispatch of his location upon receipt of the assignment, and (5) Claimant exceeded the speed limit to conceal his true location.

Practical Considerations

Johnson illustrates the importance of knowing an employee's location prior to dispatching orders. A frolicking employee will be within the course of employment upon receipt of a dispatched order. A dispatcher should first request a location, then determine whether the worker is in an appropriate position to carry out an order. If so, the order may be relayed. If the worker is on a frolic, the dispatcher should advise the worker that he is outside the scope of employment and that no orders will be relayed.

Employers who have policies regarding personal deviations should enforce those policies. A pattern and practice of discipline demonstrates that policy violation is not tolerated, and that the employee has removed himself from the sphere of employment. ■

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Company Web Sites: Best practices for avoiding securities fraud
By Elizabeth A. Bleskey and David M. Schomberg

A. Introduction
The increased flow of information on company Web sites, however, companies are not necessarily required to have Web sites.
Posting on a company's Web site may be deemed to be an act of securities fraud if it is an alternative to certain SEC filing requirements or a standard method of providing information independent of SEC filing requirements. A company's Web site may include:
• a link, hyperlink, or compensation committee charters, instead of providing them to any stakeholder;
• an annual agreement to the company's code of ethics, instead of filing it with the SEC;
• a link to a press release for an initial public offering, rather than on EDGAR.
If a company elects to meet securities disclosure obligations by posting required information on the company's Web site, the company must establish controls and procedures to ensure compliance with relevant securities regulations. When filing the periodic financial statements, companies should file all relevant supplemental filings with an effective date of filing.
C. Company Web Site and Antifraud Provisions, Generally
The antifraud provisions of federal and state securities laws apply to both public and private companies, including a company's Web site. Under the antifraud provisions, it is unlawful for any person, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact in connection with the purchase or sale of any security. A fact is "material" if it

is a substantial likelihood that a reasonable investor would consider the fact important in making the investment decision and is having significant effect on the total mix of information made available.
Information posted on a company's Web site may be considered part of the "disclosure" of information under the antifraud provisions. The disclosure should include the "total mix" of information, or the "total mix" doctrine. The disclosure should include the information to which the investor may also need to refer to appear in some location on the Web site.
D. Web Site Formatting
Web site information can be formatted independently of comparable paper-based information. Generally, Web site content does not have to be presented in a particular format. Instead, information can be presented with a non-reproducible format. However, certain information, such as financial statements, may require "printed" format. Similarly, certain information, such as financial statements, may require "printed" format. For example, electronically posted press releases require both "hardcopy" and "printed" format.
E. Hypertext to Third Party Information
When a company is an issuer, the company's Web site may include a link to third party information, such as an "offer" or "offer" to sell securities, a prospectus, or other information. The company must have been subject to the antifraud provisions. Similarly, a company is deemed to have adopted information from a hyperlink