

Monthly Memo

**Employee Use of Personal Car May Make Employers Liable
for Accident on Employee's Commute Home**

Luis Del Rosario, was employed by Tamco, a Steel manufacturing company. Del Rosario often commuted to and from work using his own personal car. As Del Rosario was exiting Tamco premises at the end of his work day, he struck and killed an on duty Sheriff's Deputy, Daniel Lobo, as he was riding his sheriff's motorcycle. Lobo's widow, on behalf of herself and three minor daughters, filed a wrongful death suit against Del Rosario and Tamco.

Employers have often been held liable for employee's actions if the employees were acting in a manner that would benefit the employer. Courts have found however, that under the "Going and Coming Rule," employers are *not liable* for employee's actions when they are going to or coming from work. Del Rosario, Tamco argued, was not acting within the scope of employment when the accident occurred since Del Rosario was leaving work. The lower court agreed with Tamco and granted the Defendant company's summary judgment motion. Plaintiff Mrs. Lobo appealed.

Mrs. Lobo contended that a well known exception to the "Going and Coming Rule"- the "required vehicle exception," applied in this case. The "required-vehicle exception" applies where the use of an employee's car gives some incidental benefit to the employer.

Del Rosario, as a quality control manager for the steel bar manufacturing company, was responsible for answering customer complaints, and when necessary, visiting customers' facilities to gain information and/or maintain customer relations. If a customer called with quality concerns, Del Rosario would accompany a sales engineer to the site so that he could answer any technical questions. Tamco never provided Del Rosario a company car for that purpose. Although Del Rosario would often ride in the sales engineer's car, he would, on occasion use his own car and would be reimbursed for the mileage. Del Rosario used his own car for such purposes fewer than ten times in his sixteen years at Tamco.

The court of Appeals, sided with the Plaintiffs. The court concluded that the employee's commute *was* within his scope of employment because the employer "requires or reasonably relies upon the employee to make his personal vehicle available to use for the employer's benefit and the employer derives a benefit from the availability of the [employee's personal] vehicle . . . the fact that the employer only rarely makes use of the employee's personal vehicle should not, in and of itself, defeat the plaintiff's case." The case was sent back to the lower court for further review.

This ruling puts employers on notice that by requiring employees to utilize their personal vehicles to perform any aspect of their job, an employer may be opening itself up to potential vicarious liability for conduct occurring outside of work hours. Employers may want to reexamine positions that require infrequent use of the employee's personal vehicle to determine if the positions can be restructured to eliminate any need for personal vehicle use.