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Yoga and Yogurt: All in a Day's Work

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Question: Is an employer liable for the damage caused by its employee when that employee is involved in an automobile accident outside of work hours and on a personal errand? Answer: As with most things, it depends.

The Second Appellate District of California recently overturned summary judgment in favor of the employer, finding that the employee's stop for yoga and yogurt on the way home from work was within the course and scope of her employment. Therefore, respondeat superior applied, and the employer was liable for the accident caused by the employee during those errands. The court applied the exception to the long-standing "going-and-coming rule" that an employee's commute to and from work is not within the course and scope of employment. The exception applies when the employee's use of the vehicle during work hours benefits the employer. In this case, the employee had used the car to drive co-workers to a company-sponsored program on the day of the accident and was to drive to another meeting the next morning. As for the personal nature of the yoga and yogurt stop, the court found that it was "a foreseeable, minor deviation on her drive home" as opposed to "an unforeseeable, substantial departure from her commute." *Moradi v. Marsh USA, Inc.,* 219 Cal. App. 4th 886, 905, 162 Cal. Rptr. 3d 280, 293 (2013).

Contrast the above result with the decision of the Fifth Appellate District of California just two weeks later in *Halliburton Energy Servs., Inc. v. Dep't of Transp.*, 220 Cal. App. 4th 87, 162 Cal. Rptr. 3d 752 (2013). In that case, the employee finished his 12-hour shift and drove his company truck 140 miles to meet his wife and daughter at a car dealership to buy a car for his wife. He then had lunch with his family and started the return trip, where he intended to stop at his hotel room for clean clothes and food before the start of his next 12-hour shift. On the way, he was involved in an accident that injured the six plaintiffs. The plaintiffs argued that the exception to the "going-and-coming rule" applied. The court found that the employee's trip was entirely personal and declined to separate the return trip to work from the overall trip to the car dealership. The employee's trip was "a complete and material departure from his employment duties." Although on-call 24 hours a day, the employee did not inform his supervisor where he was going, more evidence that the trip was "entirely inconsistent with serving the employer's purpose."

While the above cases are difficult to reconcile, they demonstrate the importance of properly implemented and enforced policies limiting company vehicle use to legitimate business purposes.