

The San Diego Union-Tribune

Employer not liable for accident partially remote employee caused during commute

Under the “going and coming” rule, however, employers are not liable for legal wrongs their employees commit while commuting to and from work, with limited exceptions

By [Dan Eaton](#) PUBLISHED: May 18, 2026 at 6:00 AM PDT

My first Law at Work column appeared on Oct. 3, 2016. The column has appeared here biweekly on every alternating Monday since. This is the 250th column.

Employers are liable for legal wrongs their employees commit within the scope of their employment under a doctrine called respondeat superior. Under the “going and coming” rule, however, employers are not liable for legal wrongs their employees commit while commuting to and from work, with limited exceptions.

In a 2022 ruling, a California court of appeal panel explained: “The theory behind the going and coming rule is that the employment relationship is suspended from the time the employee leaves work until she returns or, put another way, that in commuting the employee is not rendering service to the employer.”

Notwithstanding this rule, an employer may be liable where the employer gets some specific benefit from the employee’s commuting trip.

In *Chang v. Southern California Permanente Medical Group*, decided last month, a Los Angeles-based court of appeal panel applied the going and coming rule in the context of an employee working partially from home.

Background

On Monday morning, Sept. 12, 2022, Kai-Lin Chang, while riding his bicycle, suffered injuries when he was allegedly hit by Southern California Permanente Medical Group (SCPMG) employee Brittany Doremus when Doremus, a doctor employed by SCPMG, allegedly made a sudden left turn into Chang’s path. Doremus was driving to her SCPMG medical center office. Doremus was turning into a dry cleaner’s parking lot on a personal errand.

Doremus regularly worked at the medical center on Mondays and Tuesdays. SCPMG permitted Doremus to work from home half of the day on Wednesdays.

Chang claimed SCPMG could be liable for the accident because SCPMG could not negate the possibility Doremus was talking or texting with coworkers on her employer-issued cell phone at the time of the accident. Alternatively, Chang claimed the going and coming rule should not apply because SCPMG allowed Doremus to work from home sometimes, meaning she was not commuting between home and work, but was instead traveling between job sites.

The trial court summarily rejected both arguments. The court of appeal affirmed.

Who has the burden?

Building on prior appellate rulings, the court of appeal held SCPMG did not have the burden of negating any possibility Doremus may have been engaged in work tasks at the time of the accident. Once SCPMG submitted Doremus's deposition testimony that she was not working when the accident occurred, Chang was required to produce admissible evidence contradicting that testimony. Chang's unsubstantiated speculation that Doremus might have been texting coworkers on her way to work was insufficient.

The court of appeal also rejected Chang's argument that the going and coming rule did not insulate SCPMG from liability because Doremus did much work remotely or virtually and that she could perform her work equally well from her home or the office. That contention did not change that at the time of the accident Doremus "was driving from her home to the medical center office at the beginning of the workday as she did every Monday."

Chang argued SCPMG benefited from allowing employees to work a hybrid home/office schedule by increased productivity and employee satisfaction. Those benefits justified a rule holding employers responsible when hybrid workers cause others injury while moving between their home and office. Not so, said the court of appeal.

"A hybrid worker who works both in-office and at home is no more acting within the scope of employment when driving to and from work on in-office days than is a nonhybrid worker who drives to and from work every day. In either case, the employee is providing no benefit to the employer apart from traveling to work, a benefit that under the going and coming rule does not trigger respondeat superior liability." A contrary conclusion would nullify the going and coming rule for workers who sometimes work from home and discourage employers from offering hybrid work options.

Unresolved question

What if an employee causes an accident during a commute on a day the employee — formally designated as hybrid or not — starts their day at home performing work-related tasks? Such is the nature of the law at work that this or some other factual variation may be the subject of a future ruling – and a future column.

Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at eaton@scmv.com.