



The Bunkhouse Rule

New decision shines light on an old rule regarding the exclusive Workers' Comp remedy when employee lives on his employer's premises

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The Bunkhouse Rule has been around since the 1920's, but many do not know what it is or how it works. Those who are familiar with the rule know that in certain situations, it provides a defense to a civil suit by allowing an employer to invoke the Workers' Compensation exclusive remedy rule for employees who live on an employer's property, even if they are injured after their shift is over. However, as explained below, now the rule can also be used offensively by plaintiffs to preclude the analysis of other exclusive remedy rules, thereby allowing an employee to sue his or her employer in a civil third-party case.

Last month, in a case handled by the author, the First Appellate District Court issued a 20-page published opinion chronicling both the history and future of the rule, shining new light on this old rule and highlighting the nuances to consider when a client is injured while living on employer-owned property. (See *Wright v. State of California* (Cal.App.1st Dist. 2015) 233 Cal.App.4th 1218.)

This article addresses this critically important rule, which must be thoroughly analyzed in a case involving an injury to an employee who lives on an employer's premises.

Wright v. State of California facts

Monnie Wright was a correctional officer at the San Quentin State Prison and resided in one of the state-owned houses on San Quentin, making the State of California both his employer and landlord. One morning while he was walking (i.e., commuting) from his rental premises to his work premises he fell down a

dilapidated concrete staircase that literally crumbled underneath his feet. He sustained serious and debilitating injuries in the fall that led to his early disability retirement. Not knowing whether the injury would be considered in the course and scope of his employment, Mr. Wright pursued both workers' compensation and civil remedies against his employer/landlord, the State of California.

Immediately after filing civil suit, his employer moved for summary judgment arguing that the workers' compensation exclusive remedy applied and thus barred his civil suit. The trial court granted the motion. The First Appellate District overturned the court's granting of summary judgment and remained the action back to state court.

Workers' Compensation Exclusivity Rule

Labor Code section 3600 *et seq.* provides that an employee's exclusive remedy against his employer for injuries arising out of and in the course and scope of employment is workers' compensation.

There are only a handful of exceptions to this general rule. And, the rule must be liberally construed in favor of finding workers' compensation coverage. (See *Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729, 732-733.)

Coming and Going Rule

Injuries that occur during an employee's commute (i.e., his comings and goings) are generally not covered by workers' compensation. (*Santa Rosa Junior College v. Workers' Compensation Appeals Board* (1985) 40 Cal.3d 345) In the absence of special or extraordinary circumstances, the rule applies. (*Hinojosa v. Workmen's Compensation Appeals Board* (1972) 8 Cal.3d 150, 156.) The rationale is that compensation is

available only when an employment service is being provided. The act of coming to and leaving work is not an employment service. Service begins only when the employee arrives at the place of employment and is suspended when he leaves until he later resumes. (*Jeevarat v. Warner Brothers Entertainment, Inc.* (2009) 177 Cal.App.4th 427, 435; *Ocean Acc. & Guarantee Co. v. Industrial Acc. Commission of Cal.* (1916) 173 Cal. 313; *Zenith Nat. Ins. Co. v. Workmen's Compensation Appeals Bd.* (1967) 66 Cal.2d 944.)

As with any rule, there are exceptions. The most common exception to the coming and going rule is the premises' line rule. The premises' line rule attempts to define the end of an employee's commute, and thus the beginning of workers' compensation coverage, as the moment the employee enters the employer's premises or an extension of the premises necessary to access the work premises after commuting. (See *General Ins. Co. v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 595, 599.) "Whether an employee has entered into the areas of his employment involves a factual determination to be made in light of the circumstances in the case." (*Parks v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d at 589 n. 5; *Hinojosa, supra*, 8 Cal.3d at 154-55.) The rule extends "employment" to areas necessary to access the work premises after commuting. See *Lewis v. Workers' Compensation Appeals Board* (1975) 15 Cal.3d 559.

In *Wright*, the State of California argued on summary judgment that the premises' line rule was a bright line rule and since Monnie Wright was technically on employer-owned premises at the time of his fall, he was covered by workers' compensation coverage to the exclusion of other remedies. The State conveniently overlooked the fact that there was no line



Discovery check-list for Bunkhouse cases

1. Does the employment contract contemplate the tenancy?
 - Is the rental unit mentioned in any employment document?
 - Was the rental unit a negotiated term during the hire?
 - Did the employment and the tenancy start at the same time?
2. Does the employment require or necessitate the tenancy?
 - Are there other housing options within a reasonable distance?
 - Is the job location so remote that employer-owned housing is the only suitable option?
 - Is the employee on-call at all times?
3. Does the employee derive benefits from the tenancy, beyond standard rental benefits?
 - Is the rent below market-rate?
 - Is rent taken directly out of the paycheck?
4. Are non-resident co-workers paid more as an off-set?
5. Is the lease agreement separate from the employment contract?
6. Does the lease agreement require the tenant to obtain liability insurance?
7. Does the lease agreement address liability of the landlord?
8. Can non-employees live in the rental units?
9. Does the employee carryout any work functions from his rental unit?
10. Do other non-resident employees access the rental unit for work functions?

for him to cross. Mr. Wright lived and worked on State property so there was no clear demarcation.

In effect, the State took the position that Mr. Wright and other workers that lived at San Quentin would be covered by workers' compensation coverage 24/7 – a surprising assumption of coverage. The First Appellate District Court pointed out that under this rationale, he and other co-workers would also then be covered on all state highways and other state owned properties at all times – coverage that is not the intention of the Workers' Compensation Act. (*Wright, supra*, 233 Cal.App.4th at 1237.)

Not surprisingly, there were no cases where courts used the premises' line rule to determine whether an employee-resident was covered by workers' compensation when injured on employer-owned property. Instead, the First Appellate District Court made it clear that employee-residents must be analyzed by the bunkhouse rule. (*Wright, supra*, 233 Cal.App.4th at 1231.)

The Bunkhouse Rule

While the premises line establishes when a nonresident employee enters the course of his or her employment, an employee who resides in employer-owned housing is differently situated. As to such an employee, the 'in the course of employment' requirement is generally analyzed by what is called 'the bunkhouse rule.'

(*Wright, supra*, 233 Cal.App.4th at 1231.)

Under the Bunkhouse Rule, an employee-resident's injuries are covered by workers' compensation only if the employment contract *contemplates* or the work *requires* the employee's residence on employer-owned premises. See *Vaught v. State of California* (2007) 157 Cal.App.4th 1538. The Bunkhouse Rule dates back to the 1920's, but hadn't seen much life until 2007 in the *Vaught* case where the court barred a civil suit by an employee-resident against his employer finding that his work both *contemplated* and *required* him to live on the employer premises

where he was injured. (*Ibid.*) Prior to *Vaught*, the Bunkhouse Rule had been periodically addressed about every 20 years. (See, e.g., *Larson v. Industrial Acc. Com.* (1924) 193 Cal. 406; *State Comp. Ins. Fund v. Industrial Acc. Com.* (1924) 194 Cal. 28; *Truck Ins. Exchange v. Industrial Acc. Commission* (1946) 27 Cal.2d 813; *Aubin v. Kaiser Steel Corp.* (1960) 185 Cal.App.2d 658; *Santa Rosa Junior College, supra*, 40 Cal.3d 345; *Crawford v. Worker's Comp. Appeals Bd.* (1986) 185 Cal.App.3d 1265.)

The *Wright* Court found the *Vaught* decision to be most instructive and embarked on an analysis regarding whether Monnie Wright's employment contract *contemplated* or *required* his employer-owned housing. The Court concluded that because he lived on the grounds voluntarily, paid market rent, obtained liability insurance as required by his lease and was not required to live on-site or be on-call that neither standard was met to cloak him with workers' compensation coverage 24/7. (*Wright, supra*, 233 Cal.App.4th at 1234-1235.)

The *Wright* decision is a victory for employee-residents and prevents negligent landlords, who also happen to be employers, from hiding behind the workers' compensation exclusivity shield. Using the clear guidelines articulated in *Wright*, employee-residents now have clearer standards within which they can understand and articulate their civil rights against their employer-landlords for premises liability and other torts unrelated to their employment.

[Editor's Note: Our thanks to Valerie T. McGinty and Daniel U. Smith who served as appellate co-counsel on this case.]



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