

4040 SERVANT: SCOPE OF EMPLOYMENT; GOING TO AND FROM PLACE OF EMPLOYMENT

Where an employee works for another at a given place of employment and lives at home or boards himself or herself, it is the business of the employee to present himself or herself at the place of employment, and the relationship of master and servant does not exist while he or she is going between his or her home and his or her place of employment.

[However, where, by the contract of employment, it is made the duty of the master to transport the servant from (to) his or her home, or other designated place, to (from) the place of his or her work, the relationship of master and servant exists during the course of the transportation.]

COMMENT

This instruction and comment were originally published in 1962. The comment was updated in 2004 and 2013.

Ohrmund v. Industrial Comm'n, 211 Wis. 153, 246 N.W. 589 (1933); Geldnich v. Burg, 202 Wis. 209, 231 N.W. 624 (1930); Bloom v. Krueger, 182 Wis. 29, 195 N.W. 851 (1923). See also Kerl v. Rasmussen, 2004 WI 86, 273 Wis.2d 106, 682 N.W.2d 328, fn. 4; Milwaukee Transport Services, Inc. v. Family Dollar Stores of Wisconsin, Inc., 2013 WI App 124, 351 Wis.2d 170, 840 N.W.2d 132.

The Ohrmund case expressed the general rule that an employee injured while returning to work after having been to dinner is not injured in the course of his employment; the case held further that this was true even though he was driving a car belonging to his employer, which he had been permitted to use so that he could hurry back to work; this phase of Ohrmund was overruled in Krause v. Western Casualty & Surety Co., 3 Wis.2d 61, 70, 87 N.W.2d 875 (1958). The court determined that Ohrmund was contrary to the rule laid down in Rock County v. Industrial Comm'n, 185 Wis. 134, 200 N.W. 657 (1924), and Sellmer Co. v. Industrial Comm'n, 264 Wis. 295, 59 N.W.2d 628 (1953). The court said:

... where the employer provides the transportation for an employee going to and from work and such employee is injured while making use of such transportation for such purpose, such injury occurs while the employee is in the course of his employment. Therefore, we expressly overrule the holding to the contrary in Ohrmund v. Industrial Comm'n, *supra*.