

# NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
ATTORNEYS AT LAW

October 15, 2010

## **Worker's Compensation Exclusivity for Injuries On the Way to Work!**

The rights of workers in personal injury cases are extremely limited in New Mexico. Workers are typically limited to recovery through worker's compensation for work related injuries. It is amazing how far the courts will go to find the injuries to be work related to invoke workers' compensation exclusivity as indicated in seminal 1997 case of *Espinosa v. Albuquerque Publishing*.

In the *Espinosa* case, Larry Espinosa was struck by a vehicle driven by a fellow employee. All good so far as "work related" goes. However, Mr. Espinosa was not at work. He was walking to work. The incident occurred 30 minutes before his shift began and 2 miles from his place of employment.

The Court went to great lengths to classify the case as work related so as to invoke the exclusivity provisions of the Workers' Compensation Act. In short, the Court found that the injury was work related thereby barring Mr. Espinosa from a personal injury claim. Instead, he was limited to the meager recovery allowed under the Workers' Compensation Act.

For exclusivity of remedies under the Act, it must be shown that the injury arose "in the course of his employment." The Court was able to twist the facts to fit within the Act through a broad interpretation of the so-called "going-and-coming rule." Essentially, since Mr. Espinosa was en route to work and the accident was the result of the negligence of a fellow employee, he was barred from any recovery for his injuries outside the Act.

Under the Workers' Compensation Act, workers have few rights and even fewer remedies when they are injured on the job. Workers' Compensation Exclusivity is extremely hard to overcome. This case as good as any illustrates just how far the Courts will go to protect employers from personal injury liability for their negligence and the negligence of their workers. This is of course done at the expense of injured workers all under the pretense of protecting workers.

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.newmexicoinjuryattorneyblog.com/>