Commuting accidents
A challenge for workers' compensation systems
# Contents

1. **Introduction** .......................... 3

2. **Country examples** ................. 5
   - 2.1 Belgium
   - 2.2 Finland
   - 2.3 France
   - 2.4 Germany
   - 2.5 Italy
   - 2.6 Japan
   - 2.7 Portugal
   - 2.8 Spain

3. **Aspects of covering commuting accidents under workers’ compensation insurance** 27
   - 3.1 Financing of commuting accidents
   - 3.2 Pros and cons of covering commuting accidents under workers’ compensation insurance

4. **Conclusion** .......................... 37

5. **Sources** ............................... 41
1 Introduction

In many economic systems, the idea of workers’ compensation insurance first caught on with the advent of industrialisation. Initially, it was geared exclusively to compensating the damage to life and limb that employees might suffer in their place of work. This exclusive character has changed over time, however. In about two-thirds of all legal systems worldwide, accidents on the way to or from work (so-called “commuting accidents”) are also included in the scope of cover of workers’ compensation insurance.

In most cases, it is the state monopoly systems that grant this extended cover. As we will see in Section 2 of this publication, however, private systems like the ones found in Belgium, Finland, and Portugal also cover commuting accidents to varying extents.

At the same time, in most legal systems discussion are taking place as to whether it makes sense to include commuting accidents within the scope of cover of workers’ compensation insurance. Particularly where fringe benefits are becoming the focal point of the political discussion, the question of appropriate distribution of the burden arises. Essentially, it is a matter of whether employers alone should have to assume the risk and cost of any accidents their employees may suffer on the way to their place of work.

Section 3 deals with alternative ways of financing the cost of commuting accidents. The most-requested alternative in this respect is equal apportionment between employers and employees, instead of the financing by the employer that is usual in most cases. In this section we therefore also take a brief look at the financing solutions in various countries.

Another issue that repeatedly crops up is whether the costs incurred as a result of commuting accidents ought not to be borne by statutory health and pension insurance, motor liability insurance or private personal accident insurance. Section 3 of the publication examines these and a few other aspects of the discussion critically.

Section 4 of the study summarises the findings from a country comparison and once again asks quite critically how much sense it makes to cover commuting accidents under workers’ compensation insurance.
2 Country examples

Commuting accidents play an important part in all systems of workers’ compensation insurance, and with good reason, as they generally have more serious consequences (permanent disablement, death) than ordinary occupational accidents and therefore usually lead to higher costs, particularly in the form of pension payments. The way that insurance in respect of commuting accidents is organised, however, means that there are some quite serious differences. These are illustrated below, taking eight different countries as examples, based on the following criteria: – History – Definition of commuting accident – Detours and interruptions – Statistics

Coverage of commuting accidents in Europe.
### Coverage of commuting accidents in Europe.

<table>
<thead>
<tr>
<th>Country</th>
<th>Covered</th>
<th>Not covered</th>
<th>Exceptional case/comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Europe</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Rep.</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
<td></td>
<td>The Dutch social security system pays compensation for all accidents without distinction, irrespective of their cause. The concept of occupational risk has been replaced by the more comprehensive concept of social risk.</td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td>x</td>
<td>Covered when the travel is arranged by the employer or implies a significant increase in the risk of injury.</td>
</tr>
<tr>
<td>Poland</td>
<td>x</td>
<td>x</td>
<td>Excluded since 1.1.2003.</td>
</tr>
<tr>
<td>Portugal</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>UK</strong></td>
<td></td>
<td>x</td>
<td>Not covered under workers’ compensation (no-fault). Employers’ liability insurance is predominant (proof of fault required).</td>
</tr>
</tbody>
</table>
### Coverage of commuting accidents (rest of the world).

<table>
<thead>
<tr>
<th>Country</th>
<th>Covered</th>
<th>Not covered</th>
<th>Exceptional case/comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Latin and North America</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Argentina</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>x</td>
<td></td>
<td>Controversial issue: no definite concept.</td>
</tr>
<tr>
<td>Chile</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Columbia</td>
<td>x</td>
<td></td>
<td>Exception: included if the means of transport was provided by the employer.</td>
</tr>
<tr>
<td>Paraguay</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uruguay</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>USA</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Asia</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>x</td>
<td></td>
<td>Included only if accident involves motor vehicle.</td>
</tr>
<tr>
<td>Japan</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>x</td>
<td></td>
<td>Included only if transport of the employer involved.</td>
</tr>
<tr>
<td>South Korea</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Australia/New Zealand</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New South Wales</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern Territory</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Queensland</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Australia</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tasmania</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Victoria</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western Australia</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td>x</td>
<td></td>
<td>Special regulation for motor vehicle injuries: included if the accident happens in a means of transport provided by the employer or on the way to a doctor after a work-related injury.</td>
</tr>
<tr>
<td><strong>Africa</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Africa</td>
<td>x</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2.1 Belgium

History

The first Belgian law on workers’ compensation insurance in 1903 did not yet contain any provisions relating to commuting accidents. During the Second World War, calls for employees to be protected on the way to work grew louder, the reasons for this being the particular dangers of travelling to work in wartime. With the Decree of 13 December 1945, commuting accidents were at last included within the scope of the Workers’ Compensation Act.

Under the current Workers’ Compensation Act of 10 April 1971, commuting accidents are also treated in the same way as accidents at work. As the following extract from the wording of the law shows, the definition of the insured journey to work has undergone numerous clarifications and extensions as a result of laws introduced in 1981, 1989 and 1999.

Definition of commuting accident

Article 8 §1, paragraphs 1 and 2, of the Workers’ Compensation Act of 10 April 1971 contains a comprehensive and very far-reaching definition of the insured way to work.

Article 8. - §1er.


1° par les différents lieux de résidence et de travail ou par les lieux d’embarquement ou de débarquement, pour se déplacer en véhicule avec une ou plusieurs personnes en vue d’effectuer en commun le trajet entre résidence et lieu de travail;
2° pour conduire ou reprendre les enfants à la garderie ou à l’école.

Le trajet de la résidence au lieu de travail commence dès que le travailleur franchit le seuil de sa résidence principale ou secondaire et finit dès qu’il en franchit de nouveau le seuil.

§2. Est notamment assimilé au chemin du travail, le trajet parcouru:

1° du lieu du travail vers le lieu où il prend ou se procure son repas et inversement;

2° de son lieu de travail à l’endroit où il suit des cours en vue de sa formation professionnelle et de cet endroit à sa résidence;
3° du lieu où il travaille en exécution d’un contrat de louage de travail avec un employeur, au lieu où il travaillera en exécution d’un contrat de louage de travail avec un autre employeur;
4° pour se rendre de l’endroit où il travaille au lieu où il perçoit en espèces tout ou partie de sa rémunération ou du montant qui y correspond, et inversement;
5° pour chercher un nouvel emploi pendant le délai de préavis, dans les limites fixées par la législation sur les contrats de louage de travail et avec l’autorisation de l’employeur;
6° pour se rendre, même en dehors des heures de travail, de sa résidence ou du lieu où il a repris du travail, chez son précédent employeur afin de remettre ou de recevoir des documents prescrits par la législation sociale, des vêtements ou des outils, et inversement;
7° du lieu d’embauchage au lieu d’exécution du travail pour les travailleurs occupés par des entreprises de chargement, déchargement et manutention des marchandises dans les ports, débarcadères, entrepôts et stations et des employeurs s’occupant de réparation de bateaux, lorsqu’il n’y a pas de contrat préalablement conclu;
8° pour les marins en vue de leur enrôlement, du bureau d’embauchage pour marins au commissariat maritime;
9° du lieu où le travailleur à domicile œuvre à façon des matières premières ou des produits partiellement achevés qu’un employeur lui a confiés au lieu où il prend ou délivre ces matières ou produits, et inversement;

Article 8 §1 sets out numerous extensions from amongst which we can infer what “normal” travel to and from work is. Thus, for example, it is permitted to take children to nursery or school and to pick them up again. Employees are also permitted to make a detour if they take part in a car-sharing scheme.
§2 of Article 8 specifies a further eleven individual cases where the journey is deemed to be covered, for example travelling to lunch or to professional training.

In Belgium, “normal” travel to and from work does not mean that employees are obliged to take the shortest route. They can choose an indirect route if they want to avoid a section of the route that is known to be dangerous.

Nor does “normal” travel mean always taking the same route. There must, however, be an understandable reason for deviating from it. For example, employees are not covered if they cross the road at a dangerous junction when there is a pedestrian crossing not far away.

The burden of proof that the journey to work is “normal” falls on the employee.

**Detours and interruptions**

In addition to the legal criteria, there is also extensive case law on this subject. This clarifies the question of what interruptions and detours are considered to be part of a “normal” journey to and/or from work and are therefore covered under workers’ compensation insurance. Two criteria have accordingly emerged as being decisive:

- The significance of the detour/interruption in terms of time and geographically
- The reason for the detour/interruption

Case law has recognised three reasons which do not lead to cover being forfeited in spite of a detour or interruption: force majeure, legitimate cause (“la cause légitime”) and important personal reasons (“la convenance personelle”).

**Statistics**

In 2000 there were 234,610 occupational accidents in Belgium. Of these, 23,214 were commuting accidents. In 2001 there was a fall of altogether 3% in the number of occupational accidents to 226,164, of which 22,993 were commuting accidents.

Whilst the number of occupational accidents may have fallen slightly, the proportion of commuting accidents has risen sharply. This is primarily because case law has over the years significantly expanded the definition of the insured journey to work, so that more road accidents now come under workers’ compensation insurance.

![Occupational accidents 1985–2000 and commuting accidents as a proportion of occupational accidents (in %).](www.socialsecurity.fgov.be)
In Belgium too, commuting accidents account for a disproportionately high number of serious and fatal occupational accidents. Whilst the proportion of commuting accidents – as shown above – is around 10%, in 2001 they accounted for 45% of fatal occupational accidents (232 fatal occupational accidents, of which 105 were commuting accidents). The proportion of all fatal occupational accidents accounted for by commuting accidents rose from 31.6% to 46.3% between 1985 and 2000.

**Fatal occupational accidents.**

![Graph showing fatal occupational accidents in Belgium from 1985 to 2000.](image)

Source: www.socialsecurity.fgov.be

By contrast, the proportion of serious accidents accounted for by commuting accidents has remained relatively constant.

**Serious occupational accidents.**

![Graph showing serious occupational accidents in Belgium from 1985 to 2000.](image)

Source: www.socialsecurity.fgov.be
2.2 Finland

History

Commuting accidents have been covered under Finnish occupational accident legislation since 1917. From 1918 to 1925, commuting accidents were covered only if travel conditions between home and workplace were dangerous. Since 1925, commuting accidents have again been covered under workers’ compensation insurance regardless of the dangerousness of the journey.

Definition of commuting accident

Finnish legislation defines when commuting to work is insured in Section 4 of the law of 20 August 1948/608 (Employment Accidents Insurance Act).

According to this definition, an employment accident also includes any accidents which give rise to injury or illness suffered by employees “in circumstances arising from employment while commuting from their home to the workplace or vice versa”.

Under Finnish case law and compensation practice, however, it is a condition precedent to a claim that employees take the shortest possible route between their residence and place of work.

Detours and interruptions

Case law here is very restrictive. Relatively long detours and interruptions inevitably result in cover being forfeited.

However, compensation practice in Finland also allows exceptions where employees drop their children off at nursery or school and pick them up from there again. Short detours are also allowed in order to draw money from cash dispensers or go shopping at the supermarket. In the case of short detours to meet the needs of everyday life, employees remain covered under workers’ compensation insurance when continuing their journey.

Statistics

The number of occupational accidents overall has risen slightly in recent years. 103,936 occupational accidents were recorded in 1996, compared to 117,176 in 2002.

Commuting accidents as a proportion of occupational accidents as a whole rose from 11.2% in 1996 to 13.8% in 2002.

Source: Finnish Federation of Accident Insurance Institutions
The number of fatal commuting accidents as a proportion of fatal occupational accidents as a whole fluctuated considerably over the period 1996–2002. Whereas the percentage in 1996 was still 33.8%, in the next two years it fell to 27.8% and 29.3% respectively. In 1999 it went up to 43.2%, reaching its highest levels of 46.4% and 48.8% in 2000 and 2001 respectively. It was not until 2002 that the relative frequency went back to 45%.

The total number of fatal occupational accidents fell between 1998 and 1999, then rose again in 2000. However, the increase was less than the increase in fatal commuting accidents. In 2002 the number of fatal occupational accidents fell to 60 (compared to 86 in 2001).

The probability of dying in an occupational accident is significantly lower than for a commuting accident. Whereas the risk of death in occupational accidents has fallen since 1998, it went up for commuting accidents between 1998 and 2000 and did not drop again appreciably until 2002.
2.3 France

History

The first Workers’ Compensation Act of 1898 did not yet cover commuting accidents. It was only with Art. 2 of the Act of 30 October 1946, as amended by the Act of 23 July 1957 (Art. L411-2) that commuting accidents were treated in the same way as occupational accidents. This equal treatment was continually contested, however. In the mid-1990s, social welfare reformer Hubert Groutel and others campaigned for commuting accidents, as an outside risk, to be removed from the cover and laid at the door of third-party motor insurers. Their efforts were unsuccessful, however.

As with the French workers’ compensation system as a whole, there have increasingly been calls for the existing system to be reformed, including the area of commuting accidents. Critics complain that the types of compensation are too complex and that there are too many ways of obtaining compensation. Some critics are demanding a simplification along the lines of the Dutch model, which makes no distinction between accidents at work and accidents during leisure time.

A study by Roland Masse (the so-called “rapport Masse”) attracted attention in 2002. In it he rejects the need for commuting accidents to be included under the Workers’ Compensation Act. According to Masse, the introduction of compulsory motor insurance in 1958 and the “Badinter” law in 1985 meant that adequate protection was already provided for the victims of road accidents.

Definition of commuting accident

The French system defines a commuting accident ("accident de trajet") in § 411-2 of the Code de Sécurité Sociale as those accidents that occur between the employee’s residence and his/her place of work.

Under French case law, only those journeys that are the direct result of the needs of the employee’s job are covered. The law only covers the employee’s direct route to work, and that is normally the shortest route.

Detours and interruptions

French case law is restrictive here. Generally speaking, detours and interruptions lead to the cover under § 411-2 being forfeited.

Exceptions only apply if the interruption or detour is in the employee’s personal interest, but is justified by the essential requirements of everyday life. This includes buying food, obtaining medicines, drawing money from a cash dispenser or posting a letter.

Further exceptions are detours and interruptions that are in some way connected with the performance of the professional activity.
Someone who regularly gives a colleague a lift home, buys work equipment, organises flowers for a staff party or visits the doctor following an accident at work, is therefore covered under the insurance.

However, case law on this point is not very consistent and hard to predict. Thus, for example, an employee’s journey to collect his/her pay is not covered under §41 1-2. Such a case is neither an occupational accident nor a commuting accident. Nor, according to French case law, is attending a union meeting sufficiently connected with the professional activity.

In these and many other cases, the courts seem to think it more important to reach a reasonable decision in an individual case to protect the individual employee than to follow a stringent line.

Statistics

In 2002, a total of 849,572 occupational accidents were recorded. Of these, 89,592 were commuting accidents, i.e. a proportion of 10.5%. There were 56,785 occupational accidents involving serious injuries (“incapacité permanente”), 9,776 of them as a result of commuting accidents. Overall, there were 1,301 fatalities, of which 615 were fatal commuting accidents. This corresponds to a proportion of around 47%. Since 1999, the number of serious commuting accidents, like the number of serious occupational accidents overall, has remained relatively constant. On average they accounted for 17.45% of the total.

Fatal occupational accidents.

Serious occupational accidents.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>70,000</td>
</tr>
<tr>
<td>2000</td>
<td>60,000</td>
</tr>
<tr>
<td>2001</td>
<td>50,000</td>
</tr>
<tr>
<td>2002</td>
<td>40,000</td>
</tr>
</tbody>
</table>

Serious commuting accidents

Fatal commuting accidents

Source: www.inrs.fr

The number of fatal commuting accidents among fatal occupational accidents is higher in France than in any of the other countries looked at. Since 1999 they have accounted for an average of 46.65%.

Commuting accidents as a proportion of occupational accidents (2002).

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>1,500</td>
</tr>
<tr>
<td>2000</td>
<td>1,000</td>
</tr>
<tr>
<td>2001</td>
<td>500</td>
</tr>
<tr>
<td>2002</td>
<td>0</td>
</tr>
</tbody>
</table>

Fatal occupational accidents

Fatal commuting accidents

Source: www.inrs.fr
2.4 Germany

History

The original Workers’ Compensation Act of 1884 did not contain any provisions on commuting accidents. As a rule, case law considered the insured’s usual journey between his/her residence and place of work as uninsured, the reason being that it was predominantly for his/her own purposes and not the employer’s. This principle remained even after the introduction of the Reich Insurance Code (RVO) in 1911. However, the courts did subsequently allow exceptions to this principle if the journey was undoubtedly and directly undertaken for the purposes of the enterprise and in the enterprise’s interests.

The commuting accident risk was incorporated into the RVO cover in 1925. The reasoning behind this was that the risk of the journey to work, given the technical and sociological separation between residential areas and business centres, was typically closer to the occupational risk than to the private sphere. Moreover, the journey to and from the place of work was generally only undertaken in the “rush hours”. These were characterised by dangerous situations which went beyond the general bounds.

In the mid-1990s, the question was again raised as to whether commuting accidents should be excluded from statutory workers’ compensation insurance. The background to this were political considerations as to how the employer could be relieved of new financial burdens, in particular of those resulting from the introduction of obligatory long term care insurance.

Definition of commuting accident

Book VII of the German Social Security Code defines in great detail the insured route.

§8 Abs.2 SGB VII:

(2) Versicherte Tätigkeiten sind auch

das Zurücklegen des mit der versicherten Tätigkeit zusammenhängenden unmittelbaren Weges nach und von dem Ort der Tätigkeit,

1. das Zurücklegen des von einem unmittelbaren Weg nach und von dem Ort der Tätigkeit abweichenden Weges, um
a) Kinder von Versicherten (§56 des Ersten Buches), die mit ihnen in einem gemeinsamen Haushalt leben, wegen ihrer, ihrer Ehegatten oder ihrer Lebenspartner beruflichen Tätigkeit fremder Obhut anzuvertrauen oder
b) mit anderen Berufstätigen oder Versicherten gemeinsam ein Fahrzeug zu benutzen,

3. das Zurücklegen des von einem unmittelbaren Weg nach und von dem Ort der Tätigkeit abweichenden Weges der Kinder von Personen (§56 des Ersten Buches), die mit ihnen in einem gemeinsamen Haushalt leben, wenn die Abweichung darauf beruht, dass die Kinder wegen der beruflichen Tätigkeit dieser Personen oder deren Ehegatten oder deren Lebenspartner fremder Obhut anvertraut werden,

4. das Zurücklegen des mit der versicherten Tätigkeit zusammenhängenden Weges von und nach der ständigen Familienwohnung, wenn die Versicherten wegen der Entfernung ihrer Familienwohnung von dem Ort der Tätigkeit an diesem oder in dessen Nähe eine Unterkunft haben,

The precondition for cover under the aforesaid §8 para. 2, point 1, of SGB VII is that the behaviour at the time the accident occurred had an “intrinsic material connection” with the professional activity. Under German case law, this is deemed to exist if the journey mainly serves the purpose of employees going about the insured activity.
Detours and interruptions

German legal decisions have created extensive case law here:

Defining an accident as a commuting accident depends on whether the interruption is for an errand which has an intrinsic material connection with the professional activity. The time limit as to whether the interruption is irrelevant has been set by case law at two hours. The only time that this simplified way of looking at things does not apply is if the nature of the activities during the interruption indicate that the operational chain of cause and effect has been broken.

It is not significant whether the employee takes the direct or normal route to work. Nor does the means of transport play any role. The only thing that matters is that the place of work is the intended destination or starting point of the journey; the other limit point of the journey is not specified.

According to German case law, insurance cover also includes detours, for example

– to collect children during working hours,
– in the case of car-sharing,
– in the case of diversions,
– if the place of work can be reached more quickly via a longer route.

Statistics

According to the figures from the German Federation of the Statutory Accident Insurance Institutions for the Industrial Sector (HVBG), commuting accidents fell continuously from 1960 to 2002. The fall is, however, more noticeable in the case of occupational accidents than commuting accidents. Whereas the number of purely occupational accidents (without commuting accidents) has more than halved overall since 1960 (from 2,262,929 in 1960 to 973,540 in 2002), commuting accidents have only fallen by around a third (from 248,474 in 1960 to 168,353 in 2002). The proportion of commuting accidents compared to serious accidents resulting in a reduction in earning power of more than 20% and fatalities is disproportionately high (see graphs below).

The financial burden of statutory workers’ compensation insurance as a result of including commuting accidents was, according to the HVBG’s 1995 calculations, approx. €1.3bn. This was therefore equivalent to a proportion of around 20% of total expenditure.

Commuting accidents in general

The number of commuting accidents fell continuously between 1960 and 1990. The lowest figure was in 1990 with just 155,817 notifiable commuting accidents. Until 1995, the number of commuting accidents then rose to 205,925 because of the effects of reunification. Since then the figure has hovered around the 170,000 mark, with a slight downward trend. In 2002 a total of 168,353 notifiable commuting accidents and 973,540 occupational accidents were recorded; with commuting accidents thus accounting for approximately 15% of all accidents in 2002.

Occupational accidents.
**Serious commuting accidents**
The proportion of serious accidents (earning capacity reduced by > 20%) accounted for by commuting accidents, on the other hand, was already 24% in 2002. Whilst the number of occupational accidents overall has fallen since 1960, the number of serious commuting accidents has only fallen very slightly since 1960.

**Fatal commuting accidents**
While the number of fatal commuting accidents stood at 1,536 in 1960, by 1990 it had fallen to 627. From 1990 to 2000 the figure rose again to 722 fatalities and fell in 2001 to 669 and in 2002 to 581. Commuting accidents accounted for 43% of fatal occupational accidents in 2002.

---

**Serious occupational accidents.**

![Graph showing serious occupational accidents](image)

Source: HVBG, Business and financial results of the commercial trade associations

---

**Fatal occupational accidents.**

![Graph showing fatal occupational accidents](image)

Source: HVBG, Business and financial results of the commercial trade associations
2.5 Italy

History

Up until the mid-1960s, the Italian Workers’ Compensation Act did not contain any provision for covering commuting accidents. In 1965, along with numerous other new provisions, a provision was included for the first time which stated that military personnel were covered under workers’ compensation insurance whilst travelling from their place of residence to the base. However, the 1965 reforms did not include any general ruling on the problems of commuting accidents.

Already prior to 1965, and increasingly after that time, legal decisions urged the legislators to clarify the circumstances under which the journey to and from work was covered by workers’ compensation insurance. Over several decades the Supreme Court set down general criteria for this.

It was not until February 2000 that a definition of commuting accident was added to the Act. Yet even after that time, it was up to the courts to interpret what a “normal” journey was for the purposes of this Act.

Definition of commuting accident

The Italian definition of a commuting accident is very strictly worded.

According to this definition, cover applies in respect of the “normal” route from the place of residence to the workplace and back again. The particular characteristic of the Italian system is that the law requires the employee to use public transport where this exists and is a reasonable option. In a substantive decision, in 2002 the Employment Law Division of the Italian Court of Cassation set out for the first time, what a “normal” route means for the purposes of the 2000 Act. Under it, accidents on the way from the place of residence to the workplace are not covered if the employee uses his/her own vehicle or chooses to walk a particularly dangerous route even though he/she does not have to.

The Court was considering the case of an employee who had an accident whilst driving home from work in her own car. The Court turned down the injured party’s claim for compensation and expressed its opinion on the cases in which, exceptionally, the employee was covered even when using a private motor vehicle:

– Where the road used has dangers which do not exist on normal roads, e.g. in the case of a mountain road.
– Where the employee is forced to use his/her own vehicle for the journey from his residence to his/her workplace because of the lack of public transport, or if he/she is urged or authorised to do so in the operational interests of the employer.
– Where using public transport entails substantial inconvenience for the employee and excessively prolongs his/her absence from his family.

Otherwise, employees have no right to compensation if they use their own motor vehicles.

The decision attracted a lot of attention in Italy, as it was contrary to most of the rulings handed down previously. The Court gave as reasons for its decision the following elements for consideration:

One the one hand: The journey from the place of residence to the place of work can be seen as an activity in preparation for the actual work done and is therefore fully valid as an occupational accident.

On the other hand: Road traffic involves a general risk which is borne by all road users equally.

In order for there to be an indemnifiable commuting accident, the court therefore considers it necessary for the road traffic risk to be increased as a result of the needs of work. The employer should not be burdened with the general risk of road traffic.

Articolo 12, Decreto legislativo 23 Febbraio 2000, n.38:

“Salvo il caso di interruzione o deviazione del tutto indipendente dal lavoro o, comunque, non necessitate, l’assicurazione comprende gli infortuni occorsi alle persone assicurate durante il normale percorso di andata e ritorno dal luogo di abitazione a quello di lavoro, durante il normale percorso che collega due luoghi di lavoro se il lavoratore ha piu rapporti di lavoro e, qualora non sia presente un servizio di mensa aziendale, durante il normale percorso di andata e ritorno dal luogo di lavoro a quello di consumazione abituale dei pasti.

L’ interruzione e la deviazione si intendono necessitate quando sono dovute a cause di forza maggiore, ad esigenze essenziali ed improrogabili o all’ adempimento di obblighi penalmente rilevanti. L’assicurazione opera anche nel caso di utilizzo del mezzo di trasporto privato, purché necessitato. Restano, in questo caso, esclusi gli infortuni direttamente cagionati dall’ abuso di alcolici e di psicofarmaci o dall’uso non terapeutico di stupefacenti ed allucinogeni; l’ assicurazione, inoltre, non opera nei confronti del conducente sprovviso della prescritta abilitazione di guida.”
Detours and interruptions

Articolo 12, Decreto legislativo 23 Febbraio 2000, n.38 (s.o.):
“... L’ interruzione e la deviazione si intendono necessitate quando sono dovute a cause di forza maggiore, ad esigenze essenziali ed impronterabili o all’ adempimento di obblighi penalmente rilevanti. ...”

Detours and interruptions from the normal route affect the classification as a commuting accident unless they are justified as a result of force majeure, serve vital necessities, or if otherwise there is a risk of criminal proceedings.

Statistics

During the period from 1999 to 2001, the number of occupational accidents initially rose slightly from 1,010,777 to 1,034,026. In 2002 it then fell sharply to 991,800.


By contrast, commuting accidents as a proportion of occupational accidents overall rose over the same period from 2.3% to 5.9% (from 23,375 to 58,309). This increase needs to be seen against the background of commuting accidents not being covered under the Workers’ Compensation Act until 2000.

Previously, the extent of cover for commuting accidents was determined solely by court decisions. These interpreted the insured commuting accident very differently and overall rather restrictively.

The Supreme Court case law that has applied since 2002 is again interpreted very restrictively. It remains to be seen whether the number of commuting accidents will fall as a result. In particular, it restricts cover for the use of private motor vehicles, a fact that will perhaps have a positive effect on the number of fatal commuting accidents:

The proportion of fatal occupational accidents overall accounted for by fatal commuting accidents is disproportionately high in Italy too. Whereas in 1999 it stood at 6.8%, by 2002 it had risen to 21.1%.
2.6 Japan

History

The Japanese workers’ compensation system was geared very closely to the British model, with a few borrowings from US principles. When it came to covering commuting accidents, however, the French state system was the model.

When the system was introduced in 1947, commuting accidents were not initially covered. The majority view was that they should not be included under workers’ compensation insurance, as employers had no influence at all on “road traffic” risks. Case law and the relevant Ministry of Labour were agreed that there was no cover because there was no causal link between work and the occurrence of the accident.

Under pressure from the trades unions, in February 1970 a commission was set up under the aegis of the Ministry of Labour. The commission eventually came to the conclusion that the increase in road traffic resulting from modernisation and urbanisation constituted an unavoidable social danger. This could not be attributed to the employee alone.

On 1 December 1973 a legal rule came into force that treated commuting accidents in the same way as occupational accidents.

Definition of commuting accident

The Labour Standards Act and the Workers’ Compensation Insurance Act of 1947 form the legal basis of the Japanese workers’ compensation system. The insurance accordingly covers the journey from the employee’s residence to his/her place of work and back again.

It is a precondition that the employee chooses a reasonable route and a reasonable method of travel.

A “reasonable” route means the route that the employee usually chooses, even if it is not the shortest route. If the employee has to choose another route, say because of traffic obstructions, this too is deemed to be “reasonable” for the purposes of the law.

The provisions also require a close causal link between the route and the performance of the professional activity. Accordingly, at the time of the accident the employee must actually be on the way to his/her place of work, or from there on his/her way back home. It makes no difference whether the employee interrupts the journey. He/she could therefore leave a lot earlier than is actually necessary, in order to avoid the rush hour.

Commuting accidents are also only covered if a risk inherent in the journey to work has occurred. Here are three examples of this from the extensive case law of the Japanese courts:

If an employee is mugged at night, this counts as a commuting accident, whereas being attacked by a psychopath does not. The second case is an instance of pure chance and not a danger inherent in the journey home. For the same reason, being attacked by a member of the Aum sect is not recognised. The attack could have just as easily happened on an occasion other than the journey home.

Detours and interruptions

No cover is provided for detours and interruptions which are not the result of operational requirements.

Thus, for example, the remainder of the journey home after a visit to the cinema is still not covered, even if the cinema is on the employee’s way home.

Exceptions are permitted if the detour or interruption is to carry out the necessities of everyday life. The Japanese Ministry of Labour listed the permitted detours and interruptions in an Implementing Regulation:

– Buying everyday items (food, articles from chemist’s shops etc.)
– Professional training, provided it is organised by the training organisations listed in the appendix to the Regulation
– Voting
– Visiting the doctor
Statistics

The number of victims of work accidents has been trending downwards on a long-term basis. The number of workers killed in occupational accidents hovered around the 2,000 mark for 17 years from 1981, but finally dropped below 2,000 in 1998. In 2001, the number was in the 1,700 to 1,800 range. For the 2000 fiscal year, they are also expected to be lower than the figures for the previous years.

In 2002, 50,000 commuting accidents were recorded in Japan. This figure has remained stable since around 1992. According to a 2001 report from the Japan International Center for Occupational Safety and Health, work-related traffic accidents accounted for about 30% of all fatal accidents in the fatal accident category.

Changes in the number of deaths and injuries caused by occupational accidents.

Source: Japan International Center for Occupational Safety and Health
2.7 Portugal

History

The first Workers’ Compensation Act, No. 1942 of 27 July 1936, did not contain any regulations on cover in respect of commuting accidents. Nevertheless, over time, legal decisions developed criteria under which commuting accidents became included in workers’ compensation insurance. These criteria and the fundamental question of whether commuting accidents should be covered was a highly controversial topic for a long time.

Following the pressure of case law, Law No. 2127 of 3 August 1965 laid down for the first time that accidents on the way to and from work would be covered by workers’ compensation insurance. Even so, the conditions under which commuting accidents were covered were strictly limited.

Even following the extensive revision of the Portuguese Workers’ Compensation Act carried out in 2003, the definition of occupational accident in Article 285 is still worded so that the way to and from work is also covered. The narrow interpretation of the term “commuting accident” has been retained.

Definition of commuting accident

As mentioned above, the Workers’ Compensation Act of 2003 (“Código do Trabalho”) regulates the basic cover of commuting accidents. Implementing Regulation No. 143/99 of 3 April 1999 defines what journeys are insured.

According to this Act, accidents occurring on the following journeys are covered:

- The way from home to the work place and back
- The way from the place where the insured person has lunch, and back
- The way to places to which insured persons go on the employer’s instructions and at which they carry out some work activity, and then back to their usual place of work
- The way to the place where they receive their salary payment
- The way to medical treatment following an accident at work

In these cases, the insured is entitled to benefits under workers’ compensation insurance.

Detours and interruptions

Essentially, there is no cover in the case of detours and interruptions. The above-mentioned implementing regulation allows exceptions only where they are absolutely necessary (“necessidades atendíveis”) or are justified through force majeure. Case law interprets these “necessidades atendíveis” very narrowly.
Statistics

Between 1997 and 2001, the proportion of occupational accidents accounted for by commuting accidents varied between 4.8% (1997) and 5.8% (1999). The last figure published by the Portuguese Ministry of Social Security and Labour related to 2001, when the proportion of occupational accidents accounted for by commuting accidents stood at altogether 5.5%.

In 2000, there were 234,192 occupational accidents in Portugal, 368 of them fatal. The number of commuting accidents in the same period came to 12,325, 69 of which were fatal.

Source: Ministério do Trabalho e Seguridade Social

Source: Ministério do Trabalho e Seguridade Social
2.8 Spain

History

The first Workers’ Compensation Act of 30 January 1900 did not contain any provisions relating to cover for commuting accidents. Even when obligatory workers’ compensation insurance was introduced in 1932, commuting accidents were still not included. Commuting accidents were recognised as occupational accidents for the first time in the Social Security Act of 21 April 1966. They have since been provided for and defined in Section 115 of the 1994 Social Security Act.

Definition of commuting accident

The legal regulation is worded very concisely and merely states that an accident suffered by a worker on his/her way to or from work will be treated in the same way as an occupational accident.

The Act does not contain a legal definition of what the insured journey is, however. The exact interpretation is therefore left to the courts. They have laid down the following conditions for cover to exist: The journey must be

- the “normal” journey between the place of residence or usual starting point and the place of work.
- the shortest and most suitable journey.

Detours are only covered under the insurance if the employee can give good reasons for the detour (traffic jam, dangerous route, etc.).

Employees are free to choose their own method of travel. It is also permitted to mix the methods of travel usually used. No cover is provided in respect of means of transport which are unroadworthy, and any that the employer has expressly prohibited.

Detours and interruptions

In general terms, cover ceases if an employee voluntarily interrupts his/her direct route for reasons that have nothing to do with the professional activity.

Exceptions apply, however, for so-called “simple detención,” that is to say short, insignificant interruptions. This can be, for example, the employee visiting a café or bar in order to “freshen up,” rest or chat with a friend. Where interruptions last for more than an hour, however, there is generally no longer any cover. This applies even if the insured drinks wine, beer or other alcoholic beverages.

Artículo 115 del Ley de la Seguridad Social:

2. Tendrán la consideración de accidentes de trabajo:
   a) Los que sufra el trabajador al ir o al volver del lugar de trabajo.
Statistics

Whereas in most other European countries the number of occupational accidents has fallen continuously, in Spain it went up from 637,301 (1995) to 1,016,670 (2002).

Of the 1,016,670 occupational accidents reported in 2002, 78,482 were commuting accidents. This proportion has risen from 6% to 7.72% since 1995.

Percentage growth in commuting accidents as a proportion of all occupational accidents.

14,453 serious occupational accidents occurred, of which 2,567 or 17.8% were commuting accidents.

In the case of fatal occupational accidents, the proportion of commuting accidents in 2002 was 28.69%, i.e. 443 out of 1,544.
3 Aspects of covering commuting accidents under workers’ compensation insurance

3.1 Financing of commuting accidents

Most workers’ compensation systems are financed from the employers’ premiums. They are based on a more or less sharply pronounced merit-rating system under which premium rates rise or fall according to a company’s claims experience. The main aim of such a system is to offer companies and employees incentives for offering preventive measures. Fewer losses due to accidents are not only socially desirable, but are also of direct economic benefit to the employer as a result of lower premiums.

Commuting accidents often form the exception to this rule. In practice, they lie outside the employer’s control and are consequently unaffected by any precautionary measures the employer may take. In many systems, commuting accidents are therefore financed by means of a separate tariff. This is not based on the individual company’s individual accident statistics, but provides for the equal distribution of all commuting accidents among all insured companies.

The Belgian and Italian systems thus use a standard percentage of the payroll total to finance commuting accidents. The Belgian and Italian systems thus use a standard percentage of the payroll total to finance commuting accidents.

Whereas France staggers the general tariff for occupational accidents and occupational diseases according to the company’s activity, the premium rate for commuting accidents is a certain percentage of the payroll total. This is essentially true of all companies. In 2003, this was 34 euro cents per €100 of payroll. However, the French rating system allows a reduction for companies that have introduced preventive measures against commuting accidents. The prevention service of the local health insurance funds, CRAM, which administer France’s national workers’ compensation system, is looking at the measures. Information events, the provision of canteens, the offer of transport facilities or safety checks for employees’ vehicles are among the things that are rewarded.

Until 1998, Belgian insurers had a single rate for commuting accidents. Since 1999, after a study by the insurers’ association revealed substantial differences in the risks for wage earners (blue-collar workers) and salaried employees (white-collar workers), the loading for commuting accidents has been calculated separately. In 2003, the recommended loading for salaried employees was 0.36%, while for wage earners it was 0.63%.

<table>
<thead>
<tr>
<th>Risk group</th>
<th>Premium in % of payroll (2003)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wage earners</td>
<td>0.63</td>
</tr>
<tr>
<td>Salaried employees</td>
<td>0.36</td>
</tr>
</tbody>
</table>

Source: Assuralia, Belgian Insurers Association, 2003

In 2001, the premium for commuting accidents accounted for 39% of the total premium for workers’ compensation insurance.

<table>
<thead>
<tr>
<th>Risk</th>
<th>Premium (in €m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional risk of “wage earners”</td>
<td>511.4</td>
</tr>
<tr>
<td>Professional risk of “salaried workers”</td>
<td>100.4</td>
</tr>
<tr>
<td>Risk of commuting to and from work (wage earners and salaried workers)</td>
<td>238.9</td>
</tr>
</tbody>
</table>

Source: Assuralia, Belgian Insurers Association, 2003

¹Caisse régionale d’assurance maladie (= district health insurance fund).
In Portugal, some insurance companies calculate a fixed premium per capita. Other companies calculate a separate premium for the commuting risk, which is likewise defined as a percentage rate of the payroll total, or sometimes even varied according to the means of transport used by the employees (public transport, passenger vehicle, or motorbike). These rates can vary between 0.5% and 1.2% of the payroll.

Switzerland also covers the risk of commuting to and from work within its workers’ compensation system, but they have a different way of pricing it. The Swiss system provides for compulsory 24-hour cover. Although the law states that premiums have to be paid by the employer, this is mainly for administrative reasons. In fact, employers deduct the premium for all risks outside working hours (so-called “Nichtberufsunfälle” or non-occupational accidents) from their employees’ wages. As commuting accidents are considered to be part of the “Nichtberufsunfälle”, it is in the end the employee that finances the commuting risk.

However, the law leaves it to employers to decide whether or not to arrange to take over their employees’ share of the financing.

<table>
<thead>
<tr>
<th>Nature of risk</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public transport and use of vehicles with four wheels</td>
<td>0.4554%</td>
</tr>
<tr>
<td>Use of vehicles with two wheels (by not more than 20% of the employees)</td>
<td>0.7590%</td>
</tr>
<tr>
<td>Use of vehicles with two wheels (by more than 20% of the employees)</td>
<td>1.2144%</td>
</tr>
</tbody>
</table>

Rating example: Portugal, 2000

### 3.2 Pros and cons of covering commuting accidents under workers’ compensation insurance

Although the reasons for the decision to cover commuting accidents under workers’ compensation differ a lot and are sometimes purely historically driven, some of them are worth discussing, as they seem to appear in all systems. To each of the given arguments we will show two aspects that either support the argument or give a counter-argument.

#### Changes in infrastructure

This argument is often used to justify covering commuting accidents under workers’ compensation insurance.

**Pro:**

The way to work is a prerequisite for the later insured activity. Employees travel in order to reach their place of work. The journey is therefore work-related.

**Contra:**

The actual risk is not the long journey time but the increasing density and danger of road traffic. This is a phenomenon that lies beyond the employer’s control. It is therefore not work-related.

Whereas, in the days of industrialisation, workers settled around the factories, nowadays they tend to live quite a way from their places of work. Travelling times can sometimes be quite long, but employees accept this as the price they have to pay for a more affordable quality of life on the outskirts of big cities. Employees are often dependent on their cars as a result.

In Japan, for example, the average (single!) journey time to work is 40 minutes.
Development of fatal road traffic accidents in general – Belgium/Germany

As commuting accidents are generally road accidents, their frequency and severity might be expected to follow the same trend as road accidents. The following comparison of fatal road traffic accidents in general and fatal commuting accidents, taking Belgium and Germany as examples, reveals quite a different picture, however:

<table>
<thead>
<tr>
<th>Year</th>
<th>Belgium</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>95</td>
<td>1.048</td>
</tr>
<tr>
<td>1990</td>
<td>111</td>
<td>1.976</td>
</tr>
<tr>
<td>2000</td>
<td>120</td>
<td>1.470</td>
</tr>
<tr>
<td>Change</td>
<td>+ 26.32%</td>
<td>− 38.65%</td>
</tr>
<tr>
<td>Change</td>
<td>− 31.11%</td>
<td>− 50.15%</td>
</tr>
</tbody>
</table>

The figures show that in Belgium the number of fatal commuting accidents increased over the period from 1980 to 2000, whereas the number of road deaths fell significantly over the same period. In Germany, the number of road deaths fell even more (by 50%). The number of fatal commuting accidents, on the other hand, also fell sharply, but not by as much as the fall in the number of fatal road accidents overall (31% down over the period 1980–2000).

As illustration:

Source: www.statistisches-bundesamt.de; www.hvbg.de

These figures are mainly affected by two important parameters. Firstly, commuting accidents generally happen during the rush hours, in which there is an increased risk of accidents.

Secondly, the number of commuting accidents is strongly determined by the definition of the route covered. Where legislators or case law extend the range of applicability, this automatically results in an increase in the number of road accidents that show up in commuting accident statistics. This is especially true of Belgium and is reflected in that country’s commuting accident statistics.

Result: Both factors – insured route and traffic density – lie beyond the control of individual entrepreneurs.
3.2 Pros and cons of covering commuting accidents

Road traffic as a social risk

Whereas in 1950 there were only 70 million motor vehicles worldwide, by 1995 this figure had risen to 630 million. For 2025, the WHO is predicting that the figure will rise to one billion. In 1990, road accidents were the ninth most common cause of death. According to a WHO/World Bank study, in 2020 they will be the third most common cause.

Pro:

The growing volume of traffic is generally an economic and social problem that employees should not have to cope with by themselves. The journey to the place of work is clearly operationally/professionally motivated. Employees usually have to make their way to work at times of peak traffic, though flexitime schemes have now become quite widespread, allowing the rush hours to be staggered to a certain extent.

Contra:

Employers are scarcely able to exert any influence on the “road traffic” risk. The transport infrastructure and the legal framework conditions are predetermined (road conditions, speed limits, etc.). It is up to employees to decide how they get to work. Unlike the working conditions themselves, employers have only limited possibilities for exerting influence where the choice of means transport is concerned, for instance.

Employee protection

Workers’ compensation systems worldwide provide cover for risks directly associated with professional activity, regardless of any fault on the part of the insured. They provide compensation for loss or damage suffered by employees while performing their work. The extensive protection of insureds appears justified, as even minor carelessness during the course of work can lead to considerable injuries to an employee or to a fellow worker.

Pro:

An employee’s need for protection also extends to the way to or from work in order to cover the risks of road traffic.

Contra:

Employees are not left without protection. Healthcare costs in the case of commuting accidents could be assumed by health insurance, while in the case of disability and incapacity the liability would fall to pension insurance. Motor liability insurance comes into play if a third party has caused the road traffic accident.

An extreme example in this connection is the Netherlands, where even work-related road accidents, for example as a lorry driver, are not treated as accidents at work.
Definition of commuting accident

The definition of “commuting accident” is of decisive importance. Depending on the degree of detail with which it has been formulated by the legislators, the definition will provide case law with more or less room for interpretation.

Pro:
Where commuting accidents are put on a par with accidents at work, employees enjoy the same cover as with accidents at work, regardless of fault.

Interpretation of the scope of cover by case law enables decisions to be made that are appropriate to individual cases, thereby taking better account of the particular features and changes that are part and parcel of modern working life.

Contra:
As the examples from the individual countries have shown, there are big differences in the definitions of commuting accidents. The relevant case law is generally what defines the scope of cover more precisely.

The host of decisions in respect of individual cases gives rise to considerable problems of delimitation and interpretation. The result is equitable legal decisions geared to the injured party’s need for protection in each case. This in turn often leads to differences in the scope of cover for commuting accidents and occupational accidents which cannot be explained in terms of system logic.

If a Belgian employee is injured on the way to work, he/she is always covered. The accident does not have to be work-related.

If he/she is stabbed at his place of work by an attacker during working time, however, this is only classed as an occupational accident if the performance of the work activity was the cause of the attack.

In Japan, if an employee is attacked by a member of the Aum sect while on his/her way home, he/she is not covered. If he is the victim of a “normal” mugging, however, then he/she is covered.
3.2 Pros and cons of covering commuting accidents

The following comparison shows what influence the definition of the insured journey has on the scope of workers’ compensation insurance:

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of Occupational Accidents</th>
<th>Percentage of Commuting Accidents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>92.3%</td>
<td>7.7%</td>
</tr>
<tr>
<td>France</td>
<td>89.5%</td>
<td>10.5%</td>
</tr>
<tr>
<td>Italy</td>
<td>94.1%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Belgium¹</td>
<td>90.0%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Finland</td>
<td>95.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Portugal¹</td>
<td>86.2%</td>
<td>13.8%</td>
</tr>
<tr>
<td>Germany</td>
<td>85.3%</td>
<td>14.7%</td>
</tr>
</tbody>
</table>

¹ Figures from 2000

The more clearly legislators define the scope of cover, the less room for manoeuvre the courts have, and the more precisely the risk carriers can calculate. Moreover, problems of delimitation and allocation lead to high litigation costs, which could be saved with a more precise definition. The key to managing the cost of commuting accidents is therefore to clearly delimit the insured route.

While the Italian workers’ compensation system essentially provides cover only where public transport is used, in most other systems the insureds are free to choose which form of transport they use. The number of commuting accidents in Italy is consequently very much smaller than in France, for example.

### Difference between commuting accidents and occupational accidents during journeys on company business

**Occupational accidents during journeys on company business**
These include accidents suffered by the employee during errands, delivery runs, or journeys to a building site using transport. The journey is thus an integral part of the insured activity. The transit is also part of the company organisation and is carried out during paid working time.

**Commuting accidents**
These are accidents that occur between the place of work and home, e.g. on the way to work in the employee's own private car. The characteristic feature is that the journey made has nothing to do with the actual work activity and takes place outside actual working hours.
### Simplified settlement of commuting and occupational accident claims by workers’ compensation insurers

Commuting accident claims can be settled by specialised workers’ compensation insurers who take care of everything. In this way, employees receive high-quality medical treatment and are returned to the workplace more quickly by specialists in rehabilitation following occupational accidents.

#### Pro:

The insurer relieves the injured employee from having to deal with the other party involved in the accident and pays them the indemnity laid down by law. The employee's claims are therefore settled comprehensively. The insurance company also deals with claims for recourse against third parties.

Workers’ compensation insurers – regardless of whether they are organised along state or private lines – are usually specialised in medical and occupational rehabilitation and can therefore offer measures from a single source.

#### Contra:

Most commuting accidents involve cars. Settling the resultant claims is considerably more complex than with other occupational accidents. Commuting accidents lie at the interface between civil and social security law. It is generally a matter of claims circumstances in which a third party, the other party involved in the accident, or other passengers are involved.

Where a workers’ compensation insurer pays compensation to the accident victim, any possible claims by the injured person pass to the insurer, which then has to investigate the extent and amount of any claims for recourse that may arise. In doing so, the insurer has to clarify the question of fault and is faced with questions under civil law that simply don’t arise with normal occupational accidents.

Moreover, in many cases the employee will anyway strive to bring civil proceedings against the party that caused the accident in order to enforce any claims for compensation for pain and suffering.

Motor accidents are not a typical workplace risk. Workers’ compensation insurers are therefore not automatically specialised in settling such claims.
Prevention

Arguments for and against including commuting accidents in workers’ compensation insurance can also be made in the area of prevention.

**Pro:**

Prevention work does not make any distinction as regards commuting accidents and occupational accidents during journeys on company business or business trips. Moreover, safety awareness is not divisible. The more strongly it encompasses all spheres of life, the more effective it becomes. It should not just be heightened during company activities but also during private activity in the home, in traffic, and during leisure and sporting activities.

The example of Switzerland shows that employers’ preventive measures can also be extended to include the leisure sphere.

There are also special measures for preventing commuting accidents, for example choosing company locations that have good links to local public transport, setting up a collection service (works buses) or encouraging staff to switch to public transport (e.g. “job tickets”). Flexitime schemes can also help to stagger the rush hour.

In Germany, for many years the number of commuting accidents coming under the sphere of responsibility of the statutory miners’ accident insurance scheme accounted for a particularly high proportion of notifiable commuting accidents in relation to the number of accidents overall. Studies carried out by the trade associations revealed that the proportion of motorcyclists among insureds was higher than in other economic sectors. The German trade associations have since been trying to have a preventive impact by offering safety training for motorcyclists.

**Contra:**

Employers’ technical and organisational safety measures are restricted to their business premises. They can do little if anything to influence the safety of road traffic.

Here it is up to the government, which can exert influence through speed limits, traffic control and the upkeep of public roads.

The safety of motor vehicles is not monitored by employers either, but by mostly national services like the TÜV [Technical Inspection Agency] in Germany or the UTAC [Technical Union of the Car, Motorbike and Bicycle] in France. Motor insurers and the service companies associated with them are also specialised in the specific features of road accidents, their prevention, and provisions following a road accident.
3.2 Pros and cons of covering commuting accidents

Commuting accidents and social policy

Workers’ compensation insurance always lies within the area of conflict between social employee protection and financeability by the employer. Its scope of cover is often considerably extended against the background of the purpose of social protection. During the oil crisis of the 1970s, almost all European countries also included car-sharing with other employed persons under the cover provided by workers’ compensation insurance. Likewise since the 1970s, in many European countries cover also applies in respect of detours and interruptions that insureds make to take their children to a crèche or child-minder, in order for them to be able to work in the first place.

Pro:

Workers’ compensation insurance thus takes account of the trends in the modern professional world.

Contra:

The employer is financing outside risks. The oil crisis has nothing to do with the company’s risks.

In some countries, accidents that schoolchildren suffer on their way to school are also included in the cover. In this case the employee is financing a risk that is indisputably unconnected with the production factor of work.

Liability privilege and commuting accidents

In countries like France, Belgium and Germany, claims cannot be asserted against employers by their employees under civil law in cases where the employees receive indemnity from workers’ compensation insurance. This so-called liability privilege is justified on the grounds that payments under workers’ compensation insurance are made regardless of fault on the part of the employer and without taking account of any contributory negligence on the part of the employee. The exclusion of access to the civil law courts is also justified because employers finance the insurance against occupational accidents and occupational diseases themselves. The liability privilege also serves to ensure industrial peace, in that it prevents disputes between employees and employers, and also amongst individual employees.

This fundamental principle does not apply in the case of commuting accidents, however. The reason for this is that employees would otherwise be worse off than injured parties for whom the road accident was not an occupational accident. In particular, they could not claim damages for pain and suffering.

Since 1 March 1993, French employees involved in a road accident can claim additional damages from their employers or colleagues if the latter were to blame for causing the accident.

However, this discontinuation of the liability privilege is of practical importance only in cases in which the insured takes colleagues with him to work in his car. In practice, blame on the part of employers is only conceivable in cases where they have provided the means of transport, or where the accident happens on company premises monitored by the employer. However, these cases are regarded as work-related accidents, not commuting accidents. Thus, the liability privilege still applies.

Pro:

The absence of the liability privilege is appropriate to the special features of commuting accidents. Here, colleagues do not face each other in a work context but in a general traffic situation. The parties involved in the accident also have compulsory third-party motor insurance behind them. Maintaining industrial peace therefore cannot be used as an argument for civil-law immunity among colleagues and/or vis-à-vis the employer.

Contra:

The absence of the liability privilege in the case of commuting accidents highlights the fact that this cover is at odds with the system of workers’ compensation insurance and has nothing to do with the entrepreneurial liability for which workers’ compensation insurances were created.
As the country analyses showed, commuting accidents play an important part in all the systems considered. Depending on the definition of the journey insured, their share of occupational accidents overall ranges from 3.3% in Portugal to 14.7% in Germany.

While commuting accidents still accounted for less than 15% of occupational accidents in all the countries looked at, their share of serious and fatal occupational accidents was very much higher. In France, for example, their share is over 47%. On average, commuting accidents therefore have more serious consequences (permanent disablement, death) than other occupational accidents and so tend to result in higher costs, particularly pension payments.

1 Figures from 2000
It is amazing that almost two-thirds of countries worldwide include commuting accidents in the scope of cover of workers’ compensation insurance. For accidents on the way to and from work essentially have nothing to do with the entrepreneurial liability for which workers’ compensation insurances were created. Employers’ liability for accidents on the way to work is at best conceivable where they have provided their employees with a means of transport. But in these cases, what is involved is usually company travel, i.e. it is already part of the insured activity and no longer to be regarded as the way to work.

With commuting accidents, the relation to an individual firm can only really be acknowledged where the route covered is particularly hazardous, for example to an oil rig. Apart from such special cases, the only relation the way to the place of work bears to the professional activity is that it is a prerequisite for reaching the workplace. Whether this general relation is sufficient to saddle just the employer with the commuting accidents risk is questionable. However, this is what most systems do in practice.

Preventing occupational accidents is the key goal of workers’ compensation insurers in all systems. Many countries therefore take account of a company’s individual claims experience in their rating and also grant discounts for preventive measures. However, this can only apply to a limited extent though for commuting accidents. Employers have hardly any possibilities for influencing accidents, as road traffic constitutes an area of risk that is regulated by the public authorities. It therefore makes little sense to link the payment of indemnity for commuting accidents to preventive measures.

Against this background, it is understandable that some countries are endeavouring to achieve more appropriate distribution of the risk.

In Italy, for example, employees are covered by workers’ compensation insurance only if they use public transport. If they decide to go to work by motorbike or in their car, they do so at their own risk. There are, of course, exceptions where there is no public transport available or employees cannot reasonably be expected to use it.

Another balance of interests would be for the commuting risk to be financed by the employer and the employee on a 50–50 basis. In individual cases, however, the administrative expense involved could preclude this.

The example of Portugal is also interesting. There, employers pay a premium for the commuting risk that is based on the type of transport that their employees use. Employers therefore have incentives to encourage their employees to use safer means of transport. Their possibilities for doing this are nevertheless restricted, as their operational authority to give instructions does not extend to the choice of means of transport. In this respect, they are therefore dependent on the goodwill of their employees.

As already mentioned at the outset, there is no ideal way of covering the risk of commuting accidents. Each country must decide individually on the nature and scope of cover, depending on the relevant social security and liability systems. It should, however, be borne in mind that where workers’ compensation insurance covers the commuting risk, it makes employers liable for a risk that bears only a slight relation to their enterprise and the risks arising from its operation, and which it is not possible to prevent at the level of the individual enterprise.
5 Sources

**Belgian Insurance Association (Assuralia).** Accidents du travail: cent ans d’indemnisation (Occupational accidents: one hundred years of compensation), 2003.

**Cour des Comptes.** La gestion du risque accidents du travail et maladies professionnelles (Management of the occupational accidents and occupational diseases risk), 2002.

**Dupeyroux, Jean-Jaques.** Droit de la Sécurité Sociale (Social Security Law), November 2001.

**Fagnart, Jean-Luc.** 1903–2003 Accidents du Travail: Cent ans d’indemnisation (1903–2003 Occupational accidents: one hundred years of compensation), Colloquium organised on 5 December 2003 by the Faculty of Law of the Free University of Brussels.

**Fonds des Accidents du Travail.** (Occupational accident funds) www.socialsecurity.fgov.be.

**Finnish Insurance Association (FAII).** www.vakes.fi.


**HVBG.** Geschäfts- und Rechnungsergebnisse der gewerblichen Berufsgenossenschaften 2002 (Business and financial results of the commercial trade associations in 2002).

**ILO.** statistics.

**INAIL.** www.inail.it.

**Institut National de Recherche et de Sécurité.** www.inrs.fr.

**Japan Statistical Yearbook.** www.stat.go.jp.

**Kranig, Andreas; Aulmann, Heinz.** Das Wegeunfallrisiko als Gegenstand der gesetzlichen Unfallversicherung (Teil 1) (The commuting accidents risk as the subject of statutory accident insurance (Part 1)), Neue Zeitschrift für Sozialrecht 1995, p. 203 et seq.

**Martinez González-Posada, Elías.** El accidente de trabajo: Evolución normativa y tratamiento jurídico comparado (The occupational accident: Normative development and legal treatment compared), 2003.

**Masse, Roland.** Réflexions et propositions relatives à la réparation intégrale des accidents du travail et des maladies professionnelles (Thoughts and suggestions on the full compensation of occupational accidents and occupational diseases), 2002.

**MISSCEEC.** Information on social security in Eastern European countries, Chapter VIII.


**Nishimura, Kinichiro.** Kyoto University, Lecture at the Max Planck Institute for Social Law, Munich, March 2004.


**Social Security Programs Throughout the World.** www.ssa.gov.

Commuting accidents
A challenge for workers’ compensation systems