

Ventura County Agricultural Association

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VOLUNTARY PARTICIPATION IN ALTERNATIVE COMMUTE PROGRAMS

An employee who voluntarily participates in a government-mandated or government-sponsored alternative program is not considered as acting within the course and scope of his or her employment while utilizing the program, unless the employee receives wages or salary for the period of travel.

Such a program is the California Vanpool Authority. The California Vanpool Authority has been in operation throughout California for a number of years servicing employers throughout the State's agricultural industry. Mr. Ron Hughes is the Executive Director of the California Vanpool Authority located at P.O. Box 209, 1340 North Dr., Hanford, California 93232. The website is www.calvans.org and Mr. Hughes may be contacted at (559) 582-3211, extension 2696 or 3596. His e-mail address is ron.hughes@co.kings.ca.us. His toll-free number is (866) 655-5444.

The California Vanpool Authority is a low-cost alternative to agricultural employers and farm labor contractors alike, who have agricultural employees experiencing difficulty in getting to work because of the lack of or cost of available private or public transportation. The concept of the program is that an agricultural employee of the company agrees to serve as the driver of one of the California Vanpool Authority vans.

Additional workers within the company (fellow employees) may obtain rides to and from work in the licensed van that is provided through the California Vanpool Authority. Each Vanpool driver is licensed and insured. All vehicles are equipped with geographic positioning systems (GPS) and first-aid kits.

Vanpool riders set the schedule. This provides workers to the worksite on a timely basis and employers know that a vanpool program results in decreased worker absence which increases overall productivity and profitability.

Vanpool riders share the cost of the ride to work. One low monthly fee covers the cost of the van use, as well as fuel, maintenance and insurance. Vanpool riders pay a modest monthly fee significantly lower than the cost of other transportation options. Volunteering their time, drivers are exempt from the monthly fee.

Participation in the California Vanpool Authority helps decrease traffic congestion, improves the valley's air quality, and provides additional protection to employers with

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respect to accidents occurring going to and coming from work. Each van has liability insurance up to \$10 million.

Enclosed is a more detailed explanation of the California Vanpool Authority, as presented by Mr. Hughes.

Such a program is specifically recognized in California Labor Code Section 3600.8, effective January 1, 1995. According to sub-section (a) of section 3600.8:

“a. No employee who voluntarily participates in an alternative commute program that is sponsored or mandated by a government entity shall be considered to be acting within the course of his or her employment while utilizing that program to travel to and from his or her place of employment, unless he or she is paid a regular wage or salary in compensation for those periods of travel...”

Pursuant to sub-section (b):

“b. Any alternative commute program provided, sponsored, or subsidized by an employee’s employer in order to comply with any trip reduction mandates of an air quality management district or local government shall be considered a program mandated by a government entity. An employer’s reimbursement of employee expenses or subsidization of costs related to an alternative commute program shall not be considered payment of a wage or salary in compensation for the period of travel...”

Thus, there are two compelling reasons for a company’s employees to be involved in such an alternative commute program:

1. An employee traveling to and from work is not considered to be in the course of their employment, unless paid a wage or salary in compensation for the periods of travel; and
2. The employer reimbursement of employee expenses or subsidization of costs related to the alternative commute program are not considered a payment of wage or salary in compensation for the period of travel.

Revenue and Taxation Code Section 17149 specifically excludes from an employee’s gross income any compensation or fair market value of any other benefit, except salary or wages, received by an employee from an employer for participation in any ride-sharing arrangement in California. These include, but are not limited to, commuting in a vanpool, carpool, or use of an alternative transportation method, other than a method otherwise specified in Section 17149(b), that reduces the use of a motor vehicle by a single occupant to travel to or from that individual’s place of employment.

Under this scenario, an employer could reimburse the employee for the day-to-day cost of commuting in the California Vanpool Authority and such compensation would not be considered as wages. [See enclosed sample "Transportation Fringe Benefit Voucher".] Thus, all travel time in the alternative vanpool program going to and coming from work would not be considered to be in the course and scope of the employee's employment for workers' compensation purposes. More importantly, the same van could be used during the work day to provide transportation to different field or orchard locations. However, such transportation would be considered to be within the course of the employee's employment for workers' compensation purposes and for applicable travel time pay at no less than the California hourly minimum wage rate. An alternative to such travel required during the work day would be to have the employees report only to one fixed location for the entire work day or to release workers to return home once work is completed at the initial worksite.

One of the caveats contained in Section 3600.8 (a) states that: "An employee who is injured while acting outside the scope of his or her employment, or his or her dependents in the event of the employee's death, shall not be barred from bringing an action at law for damages against his or her employer as a result of this section."

Furthermore, the Legislature added a declaration of intent noting that "It is the intent of the Legislature in enacting Section 1 of this act only to declare existing law and to clarify, and not to expand, limit, or otherwise alter the ability under existing law of any employee, or his or her dependent, to bring action at law for damages".

Thus, employees who are injured while participating in the California Vanpool Authority either going to and coming from their daily place of employment would retain the right of a private cause of action against the California Vanpool Authority which is insured up to \$10 million per vehicle. Presumably, such a cause of action could potentially involve either a lawsuit against the driver for negligence, as well as a third-party driver who may have caused the accident resulting in injuries suffered by a participating employee in the Vanpool Program.

It should be noted that the California Vanpool Authority has received approval from the U.S. Department of Labor as a *bona fide* carpooling arrangement between the workers themselves, thereby protecting agricultural employers, agricultural associations and farm labor contractors from potential statutory liabilities under the **Migrant and Seasonal Worker Protection Act**, as amended [29 U.S.C. Sections 1801, et. seq.; see also 29 C.F.R. Sections 500.70(c); 500.103(c); and 500.120].

In conclusion, participation in the California Vanpool Authority serves the dual purpose of protecting employers from unnecessary workers' compensation claims arising during travel to and from a daily worksite, as well as from potential claims of unlawful transportation of agricultural workers by supervisory employees under MSPA and applicable California laws.