

QUESTION: Is Workers' Compensation the sole remedy for a worker that is injured in an auto accident on company time in a company vehicle, or can he make a claim against the Uninsured Motorist (UM) Coverage in his employer's business auto insurance policy?

ANSWER: Workers Comp' is the injured worker's sole remedy *against the employer*. Nothing in the law prohibits an injured worker from taking legal action against a third party who may be responsible for the injury. (In the case of a motor vehicle accident, the [law](#) permits an injured person to sue for pain and suffering and similar non-monetary detriments only if they have suffered a "serious injury," as the [law](#) defines that term.) UM covers "all sums that the insured or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership, maintenance or use ..." It applies to the injured worker's remedy *against the vehicle owner or operator*, not the worker's employer. Workers' Comp does not get in the way of that.

The *Uninsured Motorists Endorsement – New York* and the [New York Supplementary Uninsured/Underinsured Motorists Endorsement](#) for commercial auto insurance make an employee of the named insured an insured while occupying a vehicle insured for Supplementary Uninsured/Underinsured Motorists (SUM) Coverage. An uninsured vehicle either has no Bodily Injury (BI) Liability Insurance, is unidentifiable, has limits less than the BI liability limits on the employer's policy, has limits that have been reduced by prior losses so that they are less than the employer's limits, or whose insurer denies coverage or is unable to pay.

Since an employee would have recourse against the owner/operator of an uninsured vehicle, he or she would be entitled to benefits under the employer's UM or SUM coverage unless an exclusion applies.