

Compensability of Injuries When Working from Home

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Working from Home – what is different?

- *In a typical on-premises work arrangement, the Employer has substantial control over Employee's work environment.*
- *When Employee works from home, Employer loses control over:*
 - Exactly where the Employee performs the work;
 - Who or what else may be present when the Employee is working;
 - More difficult to control the timing of when the Employee performs the work.
 - Employee may subject him/herself to risks of injury not found in the on-premises work environment or that the Employer may not anticipate.

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Working from Home – what is the same?

- *Same legal tests apply for an injury alleged to have occurred when Employee is working from home.*
- *Injury still must:*
 - “Arise out of” the employment, and
 - Occur “in the course of” the employment.

“Arising out of” test for at-home injuries.

- *The origin of the injury – a causal connection must exist between the conditions of work and the injury. Injury must not have coincidentally occurred while working, but must in some way be caused by the working environment or conditions of employment.*
 - At-home is most likely to involve work on a computer;
 - If the Employer permits working from home, a broad range of injuries/conditions occurring at the home are likely to be found to “arise out of” the employment if Employee was doing work at the time of the alleged injury.
 - Exception is a personal illness/injury that coincidentally occurs while working.

“In the course of” test for at-home injuries.

- *Refers to time, place, and manner of the injury. Injury must occur within the space and time boundaries of the employment and while in the course of an activity related to the employment.*
 - Typical on-premises Employment – injury must occur while on the Employer’s premises (or other designated job site) while Employee is performing the specific work of her job during designated work hours.
 - At-home work is going to expand the space and time boundaries and most work-at-home compensability disputes will probably center on this test.

Defining work-from-home boundaries.

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Place - “remote,” “at home,” or at designated “home work station?”

- *“Remote” is very broad. “Home” is broad. Consider limitations.*
 - Employer may want to:
 - Require Employee to perform remote work at Employee’s own residence, in a dedicated work area separate from rest of household (to the extent possible);
 - Consider requiring a desk or table, adjustable chair, and that the area be free from tripping hazards;
 - Consider furnishing/reimbursing Employee for chair and keyboard or other equipment to make home work area physically comfortable for the work required.

Time – What are the hours when the work is to be performed?

- *If work hours are well-defined, injuries occurring outside hours less likely to be compensable.*
 - For non-exempt Employees, there should be specific and defined clock-in and clock-out times for at-home work.
 - Employer should require appropriate rest breaks and meal breaks.
 - For managerial/exempt Employees, potential work hours may greatly expand or spread throughout the day, potentially expanding the scope of injuries that could occur “while working.”

Exceptions to and extensions of “in the course of” and work-from-home.

- *Extension of “in the course of” with the personal comfort doctrine.*
 - Extends the time, place and circumstance of work to acts necessary to the personal comfort of the Employee, such as using the restroom.
 - For the work-from-home Employee, going to be fact-specific inquiry.
 - Employer/claims examiner should gather very specific information from the Employee via interview/recorded statement about what she was doing when injured, where she was in the home (or out of the home), why was she was doing what she was doing when injury occurred.

- *Coming and going rule and work-from-home.*
 - General rule is that for Employees with fixed place and hours of work, injuries occurring due to hazards encountered going to or returning from work are NOT compensable.
 - Definition of work can be extended to a “zone of protection” when an injury is sustained by Employee who is required or expected to be off the Employer’s premises as part of work duties.
 - The question for work-from-home Employees – when are they “going to” or “returning from” work? What is their “zone of protection?”

- *“Special Errand” and work-from-home.*
 - In the “special errand” exception to the coming and going rule, if an Employee is on a special errand or mission for the Employer, an injury off the work premises may be held to have occurred in the course of employment. (Think “on-call” employees).
 - For work-from-home Employees if the Employee is doing a task to benefit the Employer with Employer’s consent or knowledge, injury is probably going to be in the course of employment and compensable.

Framework to analyze injury to a work-from-home Employee.

- *Did injury “arise out of” the employment?*
 - If injury as alleged was caused by or in some way related to the work the Employee was supposed to be doing, and was not merely coincidental to the Employee being where he was at the time he was when the injury occurred, likely to be found to “arise out of” the employment
- *Did injury occur “in the course of” the employment?*
 - Did the injury occur in the place designated in the Employee’s home for work tasks, during hours designated by the Employer as work hours?

Affirmative defenses apply to work-from-home injuries.

- Horseplay.
- Willful injury.
- Intoxication.
- Notice/Statute of Limitations.

Scenarios:

- “Office” away from home...
- ✓ LOCAL COFFEE SHOP?
- ✓ BEACH?
- ✓ AIRBNB?
- ✓ LIVING ROOM COUCH INSTEAD OF DEDICATED OFFICE LOCATION IN HOME?



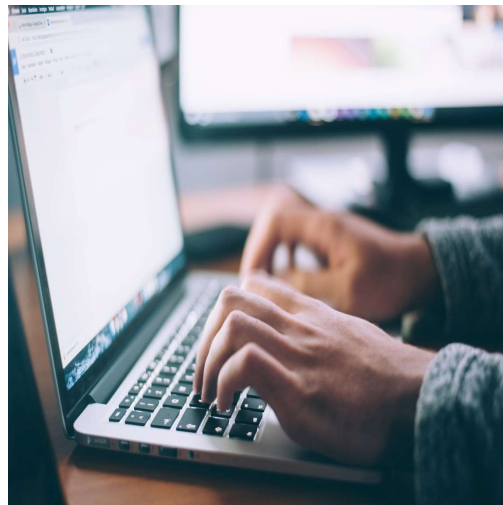
- Stairs?

- ✓ ON THE WAY TO THE WORK AREA
- ✓ TO THE BASEMENT TO PUT LAUNDRY?
- ✓ TO THE BASEMENT TO GET TO BASEMENT WORK AREA?
- ✓ UP OR DOWN TO WALK THE DOG OR ATTEND TO CRYING BABY?
- ✓ AT 10 P.M. WHEN WORK DAY ENDED AT 5...?



- Ergonomic issues?

- ✓ REPETITIVE MOTION OR INJURY DUE TO UNCOMFORTABLE KEYBOARDING POSITIONS?
- ✓ FALLING OFF OF OR OUT OF HOME CHAIR?
- ✓ OTHER NON-OFFICE SETTING DISCOMFORTS.



- Car accident?

- ✓ BETWEEN HOME AND OFFICE ON A “WORK IN THE OFFICE” DAY?
- ✓ ON WAY TO PICK UP A FILE OR SUPPLIES FROM EMPLOYER’S PREMISES TO TAKE BACK TO HOME OFFICE?
- ✓ WHILE RUNNING TO BEST BUY WITH IT DEPARTMENT’S RECOMMENDATION TO BUY REPLACEMENT MONITOR FOR IMPORTANT ZOOM MEETING THAT DAY?



Wave of work-from-home claims in Iowa?

- Not so far...





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