COMMENTARY

Navigating Work-From-Home Claims During COVID-19

Working from home during COVID-19 poses additional challenges for many employees as compared to the traditional work-from-home day before COVID-19.

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Many questions and concerns have been raised by employers during the COVID-19 pandemic, including how to remain in business, maintain productivity and yet promote safety for their employees. Many businesses have risen to the occasion and developed innovative solutions to continue operating during this unfortunate pandemic, with each industry facing its own unique challenges. Probably the most widely utilized tactic by employers across all industries, though, is to allow or require their employees to work from home.

Prior to the pandemic, working from home had already been a growing trend in the United States. According to the U.S. Bureau of Labor Statistics, as of 2019, approximately 24% of employed people have reportedly worked at home in some capacity. The statistics relative to the increase in working from home since the start of COVID-19 vary by source; however, one thing is certain—the number of individuals working from home has dramatically increased. Working from home during COVID-19 poses additional challenges for many employees as compared to the traditional work-from-home day before COVID-19. Many employees who have never worked from home have been suddenly thrust unexpectedly into it and are working without dedicated workspaces. Instead, workstations may have been cobbled together at the dining room table, living room couches, bedrooms and basements. Even if an employee has access to a dedicated workspace, that workspace may also be shared with a spouse or partner. These awkward or nontraditional workspaces, with poor ergonomics, could lead to an increase in cumulative trauma injury claims. Additional challenges exist for employees with children, as many schools, summer camps and daycares remain closed or limited. Numerous employees now find themselves fulfilling the role of a full-time teacher and caretaker, in addition to their normal full-time job. This has undoubtedly led to an increase in breaks and departures from work.

One thing is certain: as people continue to work, injuries will continue to occur. Thus, with the increase in employees working from home, it is inevitable that there will be an increase in home-based work injury claims. The ability to successfully prove and defend against an alleged injury at home poses problems for both employees and employers. There will be decidedly less evidence available to either corroborate or disprove a claim. An injury that occurs on an employer’s premises may have witnesses and security footage, whereas an injury at home is unlikely to have any such evidence. In these cases, the occurrence of the injury and activity in which the employee was engaged in will fall almost entirely on the credibility of the claimant and possibly also his spouse or partner, whose biases can easily be predicted. To defend against these types of claims, questions will certainly arise regarding whether the activity in which the claimant was engaged was an activity that placed the employee in or out of the course of employment. As most of the work being completed from home is sedentary, it is reasonable to assume that a significant number of injuries will occur when employees stray slightly from their specific work duties. Will that foray remove an employee from the course and

scope of their employment? Will an employee injured while using the steps to obtain a snack have a compensable claim? What about an employee injured while lifting their child for a diaper change? Will an employee injured while carrying in a package have a compensable claim? What about an employee who mows the lawn at lunch?

The critical analysis in determining whether an employee is in the course of employment is whether the employee is injured while engaged in the furtherance of the employer's business or affairs. If the injury occurs while an employee is so engaged, and if the injury meets all other requirements of the Workers' Compensation Act (Act), it will be compensable regardless of whether it occurred on or off the employer's premises. See *Scher v. Workers' Compensation Appeals Board (City of Philadelphia)*, 740 A.2d 741 Pa. Cmwlth. 1999). An employee who alleges an injury while working at home is off the employer's premises. When considering a claim where the injury occurred off the employer's premises, the court engages in a preliminary evaluation of whether the employee is a stationary or traveling employee. Whether an employee is a stationary or traveling employee is particularly crucial as traveling employees are generally afforded a much broader interpretation of what is within the course and scope of their employment. The Commonwealth Court has decided two cases that are illustrative of how the court will view injuries incurred by an employee working in a work from home setting.

In *Verizon Pennsylvania v. Workers' Compensation Appeals Board (Alston)*, 900 A.2d 440 (Pa. Cmwlth. 2006), the claimant worked three days per week at the employer's office and at home the remaining two days of the week. While working at home, the claimant received a telephone call from her supervisor while she was upstairs drinking a glass of juice. She then felt that the work issue needed immediate attention and began descending the steps to return to her home office and fell. The claimant filed a claim petition, and the employer denied liability, arguing that the claimant was not in the course and scope of her employment. Preliminarily, the court determined that the claimant was a stationary employee. The court held that the claimant's injury was compensable under the act., reasoning that the claimant was engaged in furthering the business of her employer because, at the time of her injury, she was speaking with her supervisor on the telephone and descending the stairs to address a work matter. Further, the court explained that her act of being in her kitchen to obtain a drink would not qualify as an abandonment of her employment. In support of this rationale, the court cited the "personal comfort doctrine" under which an employee who sustains an injury during an inconsequential or innocent departure from work during regular working hours, such as going to the bathroom, is nonetheless considered to have sustained an injury in furtherance of the employer's business.

However, the Commonwealth Court reached a slightly different decision in *Werner v. Workers' Compensation Appeals Board (Greenleaf Services)*, 28 A.3d 245 (Pa. Cmwlth 2011). In that case, the claimant died after sustaining a massive intracranial hemorrhage. On the date in question, the claimant was working out of his home office. The claimant's spouse testified that she spoke to her husband at 11:30 a.m. She later checked on him at 2 p.m. At that time, she found him in his home office completely incapacitated. She testified that she believed that he fell at the front entryway of the house, where he regularly smoked as she found some blood on the sidewalk. Ultimately, the court denied the claimant's fatal claim petition, finding that it was unclear precisely how the claimant was injured. The court found neither the fact that he was sitting in a chair in his home office when he was discovered nor his wife's speculation he was injured while smoking a cigarette (and thus attending to a personal comfort) enough to prove that he was in the course and scope of his employment.

The aforementioned cases are illustrative of several principles. First, an employee who is now tasked with working from home due to the COVID-19 pandemic will be categorized as a stationary employee. Second, the cases suggest that if the employee were injured due to an innocent departure from work consistent with the personal comfort doctrine, that injury would be compensable. Third, the employee must prove that they were acting in furtherance of the employer's interests to establish a compensable claim successfully.

When revisiting the previous hypothetical questions, the employee injured while taking a break for a snack will have a compensable claim; whereas, an employee who is injured while mowing the lawn will not have a compensable claim. The cases of the employee injured while changing a diaper or obtaining a package from the front porch would appear to be less clear. Reasonable arguments could be made both ways.

While the cases mentioned above are illustrative, what remains to be seen is whether the courts will alter their interpretations in light of COVID-19. Will additional latitude relative to course and scope of employment be given to employees, due to the mandatory nature of many work-from-home situations? Will the closures of schools and the need to attend to children in the home expand the scope of innocent departures from furthering the employer's business? As any workers' compensation practitioner will attest, the Pennsylvania act has humanitarian objectives, is intended to be remedial in nature and is to be liberally construed in favor of the injured worker.

It can reasonably be anticipated that courts are going to be rather liberal in interpreting work-from-home injury claims in the context of the pandemic, especially those involving the personal comfort doctrine and children. Although the act of changing a child's diaper is not necessarily for the parent/employee's "comfort" (although perhaps in an olfactory sense) or in the furtherance of the employer's business, such an act would likely be viewed as an innocent and momentary departure from work to attend to a mandatory task, as contrasted with a situation where someone slips and falls in the yard while mowing the grass at lunchtime. Briefly retrieving a package from the porch, while still a fleeting departure, would be less likely to be interpreted as being for one's personal comfort.

This much is clear: in light of the work-from-home challenges that exist due to COVID-19, employers should anticipate that the claimants' bar will attempt to push or expand the boundaries of the personal comfort doctrine and the concept of what qualifies as an innocent departure from work activities. As such, employers must be prepared to respond to those arguments.

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