

Henderson Brothers, Inc. White Paper

Remote Work Risk and Compensability Considerations

Since the onset of the COVID-19 pandemic, employers and employees alike have continued to adapt to a variety of non-traditional working arrangements with a significant number of employees working exclusively at home. In addition, many of these remote workers will not be returning to the office any time soon. To give some context to the numbers, prior to the pandemic shutdown in March 2020, about 16% of the U.S. workforce worked remotely at least part of the time¹. In comparison, in April 2020 more than half of workers in the U.S. were working from home².

Since employees' homes now double as office space in numbers never before seen, employers must grapple with how their Workers' Compensation insurance may be impacted should an employee suffer an injury while working at home. Some of the most frequent remote work accidents involve slips, trips, and falls. Trips over electrical cords are some of the most frequent claims reported while tripping over pets also number among the most common claim causes. Whether these claims, or other examples discussed below, are ultimately compensable as work-related accidents will be litigated in this burgeoning area of Workers' Compensation Law. In the meantime, this article provides some topics for consideration and suggestions for how to keep employees safe while working remotely.



1 2018 figures from the U.S. Bureau of Labor Statistics.
2 Estimation presented by the Brookings Institute.

Formalize the Remote Working Relationship

Without the boundaries of the traditional office setting, it is imperative that the remote working relationship be formalized so that employees understand the expectations and are educated on how to construct and maintain a safe working environment. Because most businesses transitioned to a remote work scenario quickly and with little time to plan, many organizations are still playing catchup as they try to put policies in place.

The Remote Work Agreement (“Agreement”) is a great place to start as it formalizes the work from home guidelines and will help to prevent miscommunications. The Agreement will advise that remote working is a privilege and a perk of employment that exists so long as the needs of the business are being satisfied and the terms of the Agreement are followed by the employee. However, it is important to note that the employer has the right to rescind the remote work privilege at any time for any reason.

The Agreement will establish boundaries and parameters focused on the employee’s remote work environment. This includes ensuring the employee’s home is safe for business and free of hazards. The employee should create a designated work area, if possible. This area should be free from recognized hazards such as power cords or any other piece of furniture or equipment that could result in an injury-causing incident. In addition, this is a great opportunity to educate employees on the usage of ergonomically designed furnishing and equipment as well as adequate lighting and ventilation. Lastly, the Agreement should designate specific work hours and require taking regular breaks.

The remote work arrangement has made it much more difficult for employers to achieve the same level of vigilance compared to when the majority of employees were in the office. The Agreement not only educates employees on how to operate safely and effectively while at home but also provides the employer with a

tool to try and limit injury-causing incidents as well as a resource to possibly be used as a defense to liability should an injury occur.

Compensability of Remote Working Injuries by Workers’ Compensation

Under the Workers’ Compensation laws of most states, employers are liable for employee injuries that arise out of and during the course of employment, regardless of the location where the injury occurs. Conversely, if an employee deviates from their work duties to do something for a strictly personal or private purpose, any injuries sustained during the deviation are not typically compensable.

Any investigation following an incident will focus not only on what happened but also if the injury occurred during a deviation from the employee’s work duties. For remote work injuries, the Remote Work Agreement will be integral to making a determination regarding a possible deviation. If a Remote Work policy and Agreement are in effect, an analysis will include whether that policy requires work to be performed in a designated area during fixed office hours, whether the injury occurred in that area during the office hours, and if there were any potential deviations.

If an injury-causing incident occurs, the employee must be advised to report such injuries immediately to a pre-designated individual who can then begin to investigate the claim. Information recorded as closely as possible to the incident is usually the most accurate.

Even when deviations are suspected, courts will often still find that the injury is compensable, which is why creating a safe hazard free remote work environment is integral to limiting injury exposure. There is limited caselaw analyzing the compensability of remote work injuries but the following examples provide some insight into how courts evaluate such claims.

Consider a recent New York case in which an employee

was injured carrying boxes of yet-to-be-assembled office furniture that were delivered to his home for work use. The Workers' Compensation board initially denied the claim as "not sufficiently work related" to establish a Workers' Compensation claim³. However, the Appellate Division reversed the state board's denial of the claim and remanded the case with instructions for the board to be mindful that "a short break or some similar momentary deviation from the work routine for a customary and accepted purpose does not constitute an interruption in employment sufficient to bar a claim for benefits."

An Oregon court ruled in *Sandberg v. JC Penny Co, Inc.* that a worker's injuries sustained after she tripped over her dog were compensable since she was performing the requirements of her job when the incident occurred. Contrast that with a Florida court that denied comp benefits to an employee that tripped on one of her dogs while refilling her cup of coffee in the kitchen.

Lastly, in a recent Indiana case, an employee's injury was deemed to be compensable when she woke up during the night to retrieve her cell phone from her dresser after hearing the phone's notification that a work-related text had been received. While walking to her dresser to get her phone, she tripped on her dog and subsequently broke her ankle.

Conclusion

While we are all currently operating in uncharted waters as we deal with a sizable remote workforce, there are many things employers and employees alike can do to make it a productive and safe endeavor on a day-in and day-out basis. Establishing a remote work policy and entering into Remote Work Agreements with employees will set clear expectations and will enable employers to partner with employees to create a mutually beneficial and safe working environment. Communication is the key to any good policy and engaging in frequent clear communication with employees while they are dispersed far and wide from the traditional office setting will provide the greatest opportunity for success for this working arrangement moving forward.

³ See In the Matter of the Claim of Christopher Capraro v. Matrix Absence Management, et al., filed in the Appellate Division, Third Department.

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