

Employee Benefit ■ Plan Review

Navigating Work-From-Home Claims During COVID-19

MARK J. GOODMAN AND TYLER S. CONNOR

With today's technology, working from home is becoming more common throughout all businesses. In 2018, 2.9 percent of the U.S. employee workforce worked from home at least half of the time.¹ Now, with the ongoing COVID-19 pandemic forcing business closures and stay-at-home orders, the number of employees working from home has increased dramatically. According to a recent Gallup survey,² 62 percent of U.S. workers say they are currently working from home.

With this increase, the number of worker's compensation claims by employees alleging an injury will become more frequent.

COMPENSABILITY OF WORKER'S COMPENSATION CLAIMS

An injury that occurs at home while working can be found compensable. In many states, for an injury to be compensable under worker's compensation, the injury "must arise out of and in the course of employment." In Georgia, for an injury to arise out of employment, there must be a causal connection between the employee's work being performed and the injury sustained.³ In the course of employment describes the time, place and circumstances of the accident. An injury occurs in the course of employment when it happens during the period of employment, at a place where the employee reasonably may be in the performance of their

duties and while the employee was fulfilling their duties or engaged in something incidental to their duties.⁴ The burden of proof lies on the employee. If the employee can show both elements, a court may find the injury compensable.

ISSUES RELATING TO WORK-FROM-HOME INJURIES

Proving a work-from-home injury did not occur within the course of employment is often difficult for employers and insurers as, generally, the only witness is the employee who is claiming the on-the-job injury. Many times, whether the injury is compensable or not, the deciding factor will come down to the employer's words.

An injury that occurs at home while working can be found compensable.

For instance, suppose John Doe, a financial analyst at ABC Company, is working from home due to COVID-19. Mr. Doe has just completed a quarter-end report for ABC Company and prints the report to review before submitting. On his way to the printer, he trips over his dog Rufus, falling on his right

shoulder. Mr. Doe reports the injury to ABC Company.

During ABC's investigation, Mr. Doe is asked whether there were any witnesses to the accident, to which Mr. Doe responds with "myself and my dog, Rufus." ABC Company will have a hard time disproving Mr. Doe's accident as ABC essentially has to take Mr. Doe's word on when and how the accident occurred (even if the true circumstances were different, e.g., he tripped taking the garbage out). As such, Mr. Doe would more likely than not satisfy his burden of proof. Even if there are any witnesses, one would assume they have a close relationship with the injured employee and, as a result, would not discredit the injured employee.

Employers and insurers should be prepared for many different types of injuries alleged by employees due to working from home. With COVID-19 affecting all businesses and schools, employees may be sharing their workspace with other occupants in the house. This shared space is leading employees to find unique areas to perform their work. From kitchen counters, beds, couches and dining room tables, employees are adjusting to work situations the best they can. In doing so, workplace ergonomics have been ignored. Without workplace ergonomics, employers and insurers can expect to see a spike in worker's compensation claims for musculoskeletal injuries. Additionally, one can assume the number of trip-and-fall accidents will increase as employees are likely to move more frequently around their house than at the office.

HOW EMPLOYERS CAN REDUCE RISK

There are several measures employers can take to reduce the risks associated with employees working from home during this time. The most important step is implementing a work-from-home policy that all employees must sign. The employer should establish guidelines for a home office, define the

employee's job duties, provide desks and chairs (if possible) and provide training for employees setting up home workstations.

Employers should also set specific work hours and establish regularly scheduled breaks in the policies. Injuries occurring during regularly scheduled breaks do not arise out of or occur in the course of employment if the employee is free to use their time as they choose.⁵

However, there are exceptions to this rule. Take the above example with Mr. Doe, but with a different scenario. It is 2:30 p.m. on a Monday afternoon when Mr. Doe realizes he needs another cup of coffee to make it through the rest of the day. On the way to refill his cup, Mr. Doe falls down the stairs. ABC Company only had a regular scheduled break for work-from-home employees between 12 to 1 p.m.

One aspect employers and insurers will want to consider moving forward is the number of worker's compensation claims filed by employees stating they tested positive for COVID-19.

Courts have found these types of breaks to be compensable as the employee was not performing a personal pursuit; instead, the employee was only taking a "personal comfort" break, returning to work afterward. In *Edwards v. Liberty Mutual Ins. Co.*,⁶ the employee sustained an injury on the way to the bathroom and would return to work shortly thereafter. Courts will look at each case on an individual basis to determine the type of break the employee was taking during the alleged date of accident. If the accident occurred during a scheduled break, courts

will be less inclined to find the claim compensable.

When many employers closed their offices, employees were left to work-from-home with their personal laptops. The use of personal laptops causes employers to lose control in keeping track of employees successfully completing tasks.

To combat this, employers can monitor employees' work activities by providing company-owned laptops equipped with task-monitoring software and requiring employees to clock in and out each day. Task-monitoring software would allow an employee's supervisor to keep track of the employee's activities throughout the day. This information could be beneficial for an employer and insurer establishing a defense that the employee's alleged work injury did not occur during the specified time. When an employee claims to have injured his or her back lifting paper for the printer at 11 p.m., the employer certainly can argue this was not during regular business hours for this employee and they may have been completing a personal activity.

BURDEN OF PROOF FOR COVID-19 WORKER'S COMPENSATION CLAIMS

One aspect employers and insurers will want to consider moving forward is the number of worker's compensation claims filed by employees stating they tested positive for COVID-19. Employers and insurers will be put in difficult situations dealing with these claims, not only because of the sheer number of claims, but also how each will need to be determined on a case-by-case basis. In most states, the burden of proof will fall on the employee. An employee who continues to go into work daily, with no social distancing guidelines, and contracts COVID-19 might be able to succeed on meeting the burden of proof.

However, an employee who contracts the disease while working

from home will have a more difficult time meeting the burden of proof, given their close contact with other family members. An employee must show the employer’s work created the employee’s exposure to the disease and that the disease is not an ordinary disease of life to which the general public is exposed. Meeting this burden of proof will typically be difficult for employees in all states as there have been millions of people throughout the U.S. who have tested positive for COVID-19.

While the chances are slim a work-at-home employee’s claim is found compensable, employers and insurers should investigate the claim diligently and effectively to reduce the number of compensable COVID-19 worker’s compensation claims.

CONCLUSION

There is no doubt employers and insurers are facing challenges with many employees working from home. To stay ahead of the potential work-from-home claims, employers need to be forward thinking and start taking proper measures, if they have not done so already. Specifying work hours, having regularly scheduled breaks, ensuring each employee has a designated workstation and proper ergonomics are just a few measures employers can take to reduce the number of claims. 🌐

NOTES

1. “The State of the Remote Job Marketplace,” available at <https://www.flexjobs.com/blog/post/state-of-the-remote-job-marketplace/>.
2. “U.S. Workers Discovering Affinity for Remote Work,” available at <https://news.gallup.com/>

[poll/306695/workers-discovering-affinity-remote-work.aspx](https://www.gallup.com/poll/306695/workers-discovering-affinity-remote-work.aspx).

3. *Thornton v. Hartford Accident & Indem. & Co.*, 198 Ga. 786, 32 S.E.2d 816 (1945).
4. *Hennly v. Richardson*, 264 Ga. 355-56 (1994).
5. *Wilkie v. Travelers Ins. Co.*, 124 Ga. App. 714, 183 S.E.2d 783 (1971).
6. *Edwards v. Liberty Mut. Ins. Co.*, 130 Ga. App. 23, 202 S.E.2d 208 (1973).

Mark J. Goodman, a partner at Swift, Currie, McGhee & Hiers, LLP, defends self-insured employers, insurance companies, and governmental entities in worker’s compensation claims throughout Georgia. Tyler S. Connor is a worker’s compensation defense attorney at the firm. The authors may be contacted at mark.goodman@swiftcurrie.com and tyler.connor@swiftcurrie.com, respectively.

Copyright © 2020 CCH Incorporated. All Rights Reserved.
 Reprinted from *Employee Benefit Plan Review*, October 2020, Volume 74,
 Number 7, pages 8–10, with permission from Wolters Kluwer, New York, NY,
 1-800-638-8437, www.WoltersKluwerLR.com

