

# Workers' Compensation on the Home Front

*The New Jersey Law Journal*

November 2, 2018

By Elizabeth A. Dietz

As technology continuously advances, the need for employees to come into the office to be able to perform their essential job duties has been substantially decreasing. Many companies now offer flexible work-from-home options for their employees, and some have done away with their physical offices altogether. But what happens when an employee gets injured in the home? Can they still file a workers' compensation claim? The answer is "yes" under some circumstances, and "no" under others.

When determining if an employee is eligible for workers' compensation benefits for injuries arising from incidents that occur when the employee is working from home, it is important to first look at when employment is determined to begin. N.J.S.A. 34:15-36 states in pertinent part that "when the employee is required to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer." The Supreme Court of New Jersey addressed this exact issue in the case of *Jumpp v. City of Ventnor*, 177 N.J. 473.

In *Jumpp*, the petitioner was employed by the City of Ventnor as a pumping station operator whose job was to monitor the systems at six water stations owned and operated by the city. The petitioner used a city-owned vehicle to travel between these

job sites throughout the day. The court noted that because the petitioner was constantly on the road, he had no set time for lunch, a coffee break, to use the restroom, etc., and therefore was permitted to make stops at local establishments when necessary. With the knowledge of his supervisor, the petitioner would additionally stop at the post office every day to retrieve his personal mail.

It was while retrieving his personal mail one day that the petitioner slipped and fell, suffering an injury to his pelvis and leg for which he filed a petition with the Division of Workers' Compensation for benefits as a result of his injury. The Judge of Compensation at the trial level concluded that the petitioner did not suffer a compensable injury because, at the time of the injury, he was "engaged in a personal errand and not in the direct performance of duties assigned or required by [his] employer." *Jumpp*, at 475. The judge's decision was affirmed by the appellate court and again by the Supreme Court of New Jersey. The Supreme Court held that "when an employee is assigned to work at locations away from the employer's place of employment, eligibility for workers' compensation benefits generally should be based on a finding that the employee is performing his or her prescribed job duties at the time of the injury." *Id.* at 482.

The holding of the New Jersey Supreme Court in *Jumpp* is significant for employers who allow their employees to work from home, in that if the employee is performing his typical job duties at the time of the injury, that injury can be compensable so long as it occurs within the course and scope of the petitioner's employment. However, just because someone is performing their typical job duties at home does not always mean that the claim is compensable. In the case of *Renner v. AT&T*, 218 N.J. 435, the petitioner's wife had an agreement with AT&T where she would work from home several days a week. On the date in question, the petitioner's wife had worked from home and continued to work overnight until the next morning in order to complete a project for which she had a deadline. Shortly after sending her last e-mail related to the project, the petitioner's wife called EMS believing that she was choking; however, that was not the case. It turned out she had an embolism that became lodged in her pulmonary artery, which ended up causing her death.

The petitioner's expert testified that the work effort of the petitioner's wife sitting at her desk for so many hours contributed to her deep vein thrombosis and ultimately to her death, opining that the pulmonary embolism had been caused by the deep vein thrombosis and that the clot had formed in the petitioner's wife's leg 12 to 24 hours before her death. The respondent's expert, on the other hand, indicated that the petitioner's wife had other risk factors that contributed to the pulmonary embolism, and that it was not possible "to state within a reasonable degree of medical probability that [petitioner's wife's] cause of death was related to her work effort." *Id.* at 441.

The New Jersey Supreme Court found that the petitioner's wife's "responsibilities did not require her to remain in a seated position for long, uninterrupted stretches of time. She was not confined to a specific space or instructed not to move from her workstation." *Id.* at 449. In this case, although the petitioner was engaged in the direct performance of duties for her employer, the fact that she had the ability to stand up, take breaks, walk around, etc., meant that sitting for an extended period of time in one position was not a component of her work effort or strain. Thus, the court concluded that the petitioner was not entitled to dependency benefits due to the death of his wife, as there was no compensable workers' compensation claim in this instance.

So what happens if an employee does not typically work from home, but gets injured while performing an essential function of their job while at home? The courts in New Jersey have at times found injuries to be compensable when employees don't typically work from home, but are injured at home while performing an action that is necessary for their employment. For example, in the case of *Kossack v. Bloomfield*, 63 N.J. Super 322, the petitioner was a police officer who accidentally shot himself while cleaning his gun at home. It was noted by the court that the petitioner had the duty of keeping his service weapon clean and serviceable at all times; however he was not allowed to clean his weapon while on duty. *Id.* at 324. The court found that the injury happened during the course and scope of the petitioner's employment because he had a duty to clean his service revolver, and it was reasonable to conclude that he would clean it at home since he was not allowed to clean it while on

duty—therefore, the injury was deemed to be compensable.

Another instance where the court ruled in favor of the petitioner is the case of *Benvenuti v. Scholastic Bus Co.*, 2013 N.J. Super. Unpub, LEXIS 740. In this case, the petitioner, a bus driver, was permitted to, and compensated for, cleaning the interior of her bus off-premises. One day while cleaning it, she tripped over a piece of a rubber mat and fell, injuring her ankle. The Judge of Compensation ruled that it was a compensable accident; however, Scholastic Bus Company appealed, arguing that she was at home at the time of the incident, and that she was not working for the respondent at the time the injury occurred. The Appellate Division agreed with the Judge of Compensation, indicating that the judge was correct in concluding that “bus sweeping was an integral part of the petitioner’s job; she was required ‘to clean the bus between runs during the day’ and was ‘compensated for cleaning the bus.’” The appellate court additionally referred to the Supreme Court decision in *Jumpp* indicating that “[n]othing in NJSA 34:15-36 suggests that the Legislature intended to create a higher bar for determining scope of employment for off-premises employees than for those whose regular work location is at the employer’s place of business.” *Id.* at 744. Like in *Kossack*, it did not matter that the petitioner was at home while engaged in an “integral part” of her employment, what mattered was simply that she was engaged in an activity that was

“integral” to her employment with Scholastic Bus Company.

Like most workers’ compensation claims, their compensability is driven by whether or not the employee is considered to be in their place of employment and whether or not the injury arose out of and in the course and scope of their employment. Employers who allow or encourage employees to work from home should remember that they are not absolved from their duty to provide workers’ compensation benefits. Employers should keep in mind their employees’ specific job descriptions, and perhaps even create more specific job descriptions for work-at-home employees, so as to clearly define what is considered to be in the course and scope of employment for those working outside of the traditional office setting. The case law demonstrates that without clear definitions as to what the employee is required to do while working from home, the time of day they are required to do these activities, or the manner in which they are required to complete these activities, there are many instances where the New Jersey courts have found claims to be compensable, so long as the employee was engaged in an action that was directly necessary to their employment.



---

*Elizabeth A. Dietz is an associate in the Workers’ Compensation Department in the Roseland office of Marshall Dennehey Warner Coleman & Goggin.*