

The Implications of Remote Work on Workers' Compensation

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In 2019, the U.S. Census Bureau estimated that 5% of New Jersey's workforce was remote. By 2021, that number had more than quadrupled, jumping to 22%. Even as the COVID-19 emergency is ending and some employees are returning to physical offices, many are remaining at home, either exclusively or in hybrid arrangements. One thing is clear—for a significant number of New Jersey's employees, working from home has become “the new normal.”

As employers consider all the areas that this shift affects, one that rises to the forefront is the subject of work-related accidents. Our state's workers' compensation system was initiated in 1911, and over the next century would develop into a comprehensive body of law premised upon the traditional model of “work” as we understood it. While the court would occasionally consider cases involving travel or working at a secondary work site, these were mostly outliers, and the system primarily involved cases of workplace injury occurring at specific worksites.

Under the traditional model of work, there were strict definitions of space and time. People went to work—and this work occur-

ed at a particular site. Generally speaking, if an employee was present at a job site, it was for the purpose of working. Work also occurred within a set time (cue the Dolly Parton song “9 to 5”). The courts would consider whether an alleged accident occurred between the time when an employee “clocked in” and “clocked out” for the day.

For many working under the new model, those space/time definitions have radically changed. In terms of space, there is often no space solely dedicated to performing the duties of employment. An employee might “go to work” by using the same couch where they play video games or the same table where they share meals with their family. In terms of time, it is not uncommon for remote employees to perform more than eight hours of work, spread out over the course of the day. For example, some working parents describe a typical day as waking up, getting some work done, getting their children ready for school and walking them to the bus stop, resuming work for a few hours, bringing their child to an after-school activity (from which they will periodically check e-mail on their phone), coming home, making dinner, putting their children to bed,

and then getting another hour or so of work in before calling it a night.

As the concrete borders between work and non-work have given way to the amorphous mixture of the two that currently exist, the task of determining whether injuries arise in and out of the course of employment becomes harder.

Specific Accidents

In terms of specific accidents, New Jersey has a dearth of case law on the subject, but we may find guidance by seeing how other states have addressed it. There have been two cases in sister states, each involving a remote employee tripping over a dog at home.

In *Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133 (Fla. Dist. Ct. App. 2019), the employee tripped over their dog while reaching for a cup of coffee in the middle of the workday. While the case was initially found to be compensable, that finding was reversed on appeal. The rationale was that the employee's job did nothing to increase her risk of her injury—it was just as possible that she could have reached for a cup of coffee in her house and tripped over her dog had she not been working.

In *Sandberg v. JCPenney*, 243 Or. App. 342 (2011), the employee tripped when she was going to her garage for the purpose of getting work materials. The Court of Appeals of Oregon found that the accident arose out of the course of her employment and was therefore compensable.

It is likely that compensability for specific accidents at home will be determined on a fact-sensitive basis for each individual case. Accordingly, the best thing that employers

can do is enact policies requiring prompt and detailed reporting of accidents. A recorded statement should be taken from the employee as soon as possible, with specific questions regarding the time, location and mechanism of injury, as well as the work being performed when it happened. Once the claim is reported, it should be analyzed to determine whether the employee was actively engaged in their job duties when the alleged accident took place.

One practical concern regarding evaluation of specific accident claims is that alleged accidents which occur off-site will likely be unwitnessed. While the law has never required that an accident be witnessed for it to be compensable, the regular presence of witnesses has often helped employers in evaluating claims—either by confirming or disputing a petitioner's account of an alleged injury. As a greater incidence of claims will be without such witnesses, employers will need to find new ways to fact-check claims. As stated above, obtaining a detailed statement from the employee memorializing their account is crucial. This statement could then be compared with subsequent statements as a test of veracity. The authorized treating physician should also be asked to verify that the petitioner's presentation and diagnoses are consistent with the alleged mechanism of injury.

Occupational Claims

In addition to claims involving specific accidents, the new “work from home” model also impacts claims of occupational exposure. In the old model, employees would file claims alleging repeated exposure to conditions which were set forth by their employers—often taking the form of chemicals they breathed in, physical movements they were expected to perform,

materials they were expected to lift, or machinery they were expected to operate. The common denominator in these claims was that the employee was directed to the environmental exposures they encountered. In contrast, in the “work from home” model, it is the employee, not the employer, that establishes the environment in which they are operating. It is entirely possible that an employee accustomed to setting up their workspace on their living room sofa, crouched forward to operate the laptop sitting on the coffee table, might one day be filing a claim for orthopedic injuries allegedly brought on by several years of working with poor posture. In 2020, *The New York Times* ran an article titled, “The Pandemic of Work-From-Home Injuries,” which discussed a surge in chiropractic cases based upon employees working from home with poor ergonomics.

These occupational claims will also likely have significant issues of causation. If an employee is alleging exposure from their home environment, how do you determine whether this exposure occurs while performing work duties or just living there? If an employee uses the same home office to work as they do to play “World of Warcraft,” how do you identify whether cumulative back problems originated from the time working or the time spent playing video games? These questions should be considered and explored carefully in every occupational claim involving employees working from home.

Reasoning that an ounce of prevention is worth a pound of cure, some employers have determined that it is in their best financial interest to consult with ergonomic experts and provide their employees with workstations (including desks and ergonomom-

ically correct seats) to lessen the chance of such problems going forward. Employers should also provide proper training in employee wellness (taking appropriate breaks to stand and walk, having proper posture, proper placement of hands, etc.).

One tool that can be utilized for both specific accident and occupational claims is documenting the home workspaces being used by remote employees. Questionnaires can be issued to employees opting to work from home soliciting details regarding the workspace, pertinent measurements, etc. Employees should be asked whether this space is used solely for work or whether it is also used for personal purposes. Photos of the work area can also be requested and kept on file. Employers should not have to wait until a claim is filed and then be in the position of requesting information from the claimant regarding the work area (information they would have ready access to under the traditional model). This is even more important in occupational claims where a worker may be claiming injuries developed over the course of years, over which time they have moved or discarded keyboards, chairs, or desks which may have been part of the alleged exposure.

While the workforce has undergone a significant paradigm shift in the last few years, we are operating within the parameters of workers’ compensation law that was developed in reliance upon the traditional model of work. As practitioners know, the workers’ compensation system is largely “no fault.” It does not hold employees to the same stringent standards as plaintiffs in personal injury cases. This seemed an appropriate trade-off—since the employer held so much control (determining where the employees worked, when they they worked,

what materials they used, etc.)—the employees had a relatively low threshold to establish a compensable claim for work injuries. The Workers' Compensation Act acknowledged a disparity in control between employers and employees and addressed it by enacting a system which strongly benefits the employees. But with employees assuming greater and greater control over how they perform the duties of their employment, should they still reap the benefits of a system erected to correct a disparity that (in some cases) has significantly lessened?

While this is a matter for the legislature and the courts to decide, the best tools for employers are information and prevention. As an increasing percentage of the workforce opts to work from home, employers, insurers, and practitioners should continue to evaluate their practices to adapt to this growing trend.



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