

Professional Perspective

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Defending Workers' Compensation Claims by Remote Employees

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The Covid-19 pandemic greatly increased the number of remote employees in the workplace. As a result, the number of workers' compensation claims being reported by these employees have increased. Although the basic tenants of workers' compensation law apply to remote employees, these employees' claims do present unique challenges to the employers, adjusters, and attorneys involved in them.

In handling workers' compensation claims involving remote employees, we need to address five specific areas: the work environment; the reporting of the injury; the investigation, the employee's treatment after an injury; and the employee's "return to work" issues.

Work Environment

First, determine whether the employer needs workers' compensation insurance. In general, most employers need workers' compensation insurance. However, in some jurisdictions, small employers may not fall under their jurisdiction's workers' compensation act and others have "opt out" provisions where employers are not required to have workers' compensation insurance.

You need to check your jurisdiction's law to determine whether the employer is required to have workers' compensation insurance based on their number of employees and the type of work involved or opt out of the workers' compensation system entirely. For example, in Georgia, an employer must carry workers' compensation insurance coverage if it has three or more employees regularly in service. See [O.C.G.A. §§ 34-9-121](#) and [34-9-126](#).

Next, the employer should clearly define the remote employee's normal working hours, including lunch, and if necessary, other breaks per your state's laws. Strict adherence to normal working hours may help to exclude claims occurring outside the remote employee's set hours. Also, the employer can monitor activities during those normal working hours by providing company owned laptops equipped with task monitoring software.

Third, the employer should require the remote employee to designate and define the physical location of his or her home workspace. For some, this may be a laptop at the kitchen or dining room table, or at a desk in a room with a door. Defining the physical location where the remote employee is to perform tasks may help to exclude claims for injuries occurring elsewhere in the home.

The employer may want to inspect this workspace for privacy, hazards, and other safety concerns. This can be accomplished through an in-person inspection, through photographs, or through videos of the work area in conjunction with a safety survey. At home, these hazards may include pets and children. There could also be issues with extension cords or plug-ins for lights and computers, as well as issues with proper lighting and ventilation. The inspection should also include any stairs, the bathroom, and kitchen areas to confirm the employee's safety in those areas.

Additionally, the employer needs to determine whether the employee has the appropriate equipment to work efficiently and safely from home. For example, inquiries should be made about an appropriate workstation including desk, chair, and computer set-up, and that they are ergonomically correct.

Since the beginning of the pandemic, the number of claims reported for injuries associated with workstations which are not ergonomically correct have significantly increased. Sitting for long periods of time at a kitchen table, or on a bed or sofa, can cause musculoskeletal pain to an employee's neck, back, leg, wrist, arm, and shoulder. In that regard, several employers have provided ergonomically correct equipment for their employees who are working from home.

Last, the employer should clearly define the remote employee's job responsibilities and tasks. Presumably, remote work will be accomplished at a desk or a table with a computer and that circumstance, alone, potentially limits the scope of injuries alleged later.

It may be advantageous to draft a work from home or teleworking agreement for remote employees. These agreements may outline specific work hours, a designated workspace, safety requirements for the workspace, and inspections both at the beginning of the agreement and after any work injury claim. They may also contain specific provisions on what a remote employee is prohibited from doing while at work.

An employer should provide remote employees with information on what they should do in the event of an injury while working remotely. Your jurisdiction may require your workers have access to specific documentation in case of a work-related accident. Such items may be posted on a website or incorporated into a teleworking agreement.

Reporting an Injury

When an employer has remote employees, the employer needs to make clear they must immediately report any injury which may be related to work. Failure to properly notify an employer of a work injury can be a defense to a workers' compensation claim. However, state laws vary as to how much time an employee has to report a work injury. For example, in Georgia, notice of a claim is timely if reported within thirty days of the accident, whereas in Alabama, timely notice can be as long as ninety days. [O.C.G.A. § 34-9-80](#). [Ala. Code §§ 25-5-78, 25-5-79](#).

An employer should have a specific person to whom an injury should be reported, such as the employee's supervisor, as well as alternative contacts, like a human resources representative or risk management representative. Similarly, the means and manner of the report should be clearly defined, such as an email to multiple individuals as opposed to a single telephone call or email to the immediate supervisor.

Upon receiving the report of injury, the proper contacts, whether a supervisor, human resource representative, or risk management representative, should know how to start investigating the injury. The usual and customary inquiries should be made, including how the injury occurred, where the injury occurred, when it occurred, the body parts injured, and the identification of witnesses.

Those persons responsible for taking injury information should also know how to report injuries to the insurance company as well as how to direct medical treatment. There may be a list of medical providers from which the injured remote employee may choose. The injured remote employee should also be provided information on how the medical bills should be submitted to the insurer or third-party administrator in cases of injury.

It may be appropriate for the employee to be sent for a post-accident drug and alcohol screen. If so, the employer, insurer, or servicing agent should timely obtain the test.

Investigation

Since there are usually no witnesses to a remote employee's injuries, obtaining a clear statement from the remote employee is going to be pivotal in determining whether the injury is related to work, and whether there are any defenses for the employer. For example, if the remote employee was teleworking from a coffee shop rather than the designated remote workplace when the accident occurred, the change in location may operate as a defense to a claim. Similarly, if the remote employee was working in the designated remote workplace alone with small children that required supervision, the lack of a third-party childcare may operate as a violation of the work from home policy or teleworking agreement in place with the employer.

Also, determine whether there is any video of the accident, particularly from the employee's home security cameras or a neighbor's security camera. Further, a post-accident site inspection may be appropriate. If so, the inspection should occur as soon as possible after the injury.

Under varying jurisdiction's workers' compensation laws, the question of whether the injury arose out of and in the course of employment is pivotal. "Arising out of" relates to what the employee was doing at the time of the injury. *Frett v. State Farm Employee Workers' Compensation, et al.*, 309 Ga. 44, [844 S.E.2d 749](#) (Ga. 2020). "In the course of" relates to when, where, and the circumstances of how the injury occurred. Most of these determinations will be extremely fact specific.

'Arising Out Of'

An injury arises out of employment when it is linked to, originated from, or is the result of, in whole or in part, an activity or action undertaken because of an employee's employment. *Murphy v. ARA Services, Inc.*, 164 Ga. App. 859, [298 S.E.2d 528](#) (Ga. App. 1982); *Hennly v. Richardson, et al.*, 264 Ga. 355, [444 S.E.2d 317](#) (Ga. 1994).

In order to determine if an injury arose out of employment, you must first ascertain whether the employee was performing a function of the employee's job at the time of the injury. If the employee was making dinner for family, or doing laundry, or taking out the dog at the time of the injury, the injury will likely not be compensable.

However, a more problematic case arises when an injury occurs through a blend of work-related and personal activities—e.g., while wearing loose-fitting sweat pants and pacing during a work-related, conference call via Zoom, the remote employee trips and falls to the ground.

'In the Course of'

An injury arises in the course of employment when it occurs within the period of employment and at a place where the employee may be in the performance of duties, while fulfilling or doing something incidental to those duties.

If the employer has a designated time when the employee is supposed to be working, an injury will be more likely to be compensable if the injury occurred during the designated time frame. However, if the employer permits the employee to work outside of the designated timeframe, a challenge arises in delineating whether the employee was injured in the course of employment or during personal time.

One way to combat this hurdle is having the employee to clock in and out of work. If the employee was not clocked in at the time of the injury, it provides evidence the injury did not occur "in the course of" employment.

Personal Comfort Doctrine

Another factor that must be considered is whether the employee was engaged in activities incidental to work at the time of injury. Incidental activities include the employee attending to routine personal needs. An example of this type of claim is when an employee goes upstairs to get a drink, comes back downstairs to the designated work area, and falls down the stairs. Many states have a personal comfort doctrine which could easily make this a compensable injury. Under a personal comfort doctrine, the course of employment is not interrupted by certain acts relating to the employee's personal comfort such as short breaks for eating, drinking, using the restroom, and smoking.

Ingress & Egress

Going to and from the designated work area can create the most difficult situations for determining whether an injury should be compensable. For example, in Georgia, injuries occurring while the employee is traveling to or from work are not generally compensable. *Wilcox v. Shepherd Lumber Corp.*, 80 Ga. App. 71, [55 S.E.2d 382](#) (Ga. App. 1949). There are many exceptions to this basic rule. For example, an injury is more likely to be found compensable if the employer provided transportation for the employee or if the injury occurred in an employer-controlled parking lot. *Indemnity Ins. Co. of North America v. Bolen*, 106 Ga. App. 684, [127 S.E.2d 832](#) (Ga. App. 1962); *West Point Pepperell, Inc. v. McEntire*, 150 Ga. App. 728, [258 S.E.2d 530](#) (Ga. App. 1979).

When working from home, the question becomes when the employee is going to or coming from work. If the employee went out for breakfast before work, and is injured when going from their car to their home office, the injury arguably did not arise "in the course of" employment. However, if we simply change the facts to include after the breakfast, the employee was bringing in a client's or office paperwork, the injury arguably then arose "in the course of" employment because the employee was performing a work function.

A thorough initial investigation will keep a non-compensable claim from being accepted. It will also ensure a compensable claim will be properly handled to limit exposure and return the employee to work.

Treatment

Prompt and proper medical treatment is the key to limiting workers' compensation injury exposure. Having and maintaining a list of quality medical providers is imperative to providing the proper medical treatment and limiting the amount of time an employee may be off-work due to their injury.

The problem with providing medical treatment for remote employees starts with the fact they may live far from the workplace. Unless the jurisdiction allows an employee to go to the doctor of their choosing, prior to the pandemic, an employer would usually have one workplace for which they would need a list of medical providers for workers' compensation injuries. The employer may need to have different lists of medical providers for different employees based on where they live.

Furthermore, if a remote employee lives in another jurisdiction, it will raise an issue under which jurisdiction the claim should be handled, and whether there is "dual jurisdiction" and the effects of each jurisdictions' laws on the work injury. This goes beyond the scope of this article, but should be considered.

Once an injury is reported and accepted, there is little difference in providing medical treatment whether the employee is in-person or remote. You still want to provide quality medical treatment and make every effort to return the employee to work as soon as possible. You also need to stay in close contact with your remote employees while they are being treated for a work injury. When working on the employer's premises, an employee performing light-duty work would likely be observed and spoken with on a regular basis. The injured employee's co-workers and supervisors would be able to hear any complaints and observe any limitations the injured employee may have. Staying in contact on a regular basis with both the injured employee and the employee's medical providers can limit problems as they arise.

Return to Work

Since the injured employee is remote and working from home, generally, it will not be difficult to return to the home office. However, there can still be problems.

First, stairs to the home office could be problematic with a leg or low back injury. If the injury is carpal tunnel syndrome, an employee's use of a computer will be limited while the treatment is ongoing. In either situation, it may be beneficial to explore whether light-duty work may be available in the employer's workplace.

Nonetheless, you may need to again inspect the employee's home office prior to their return to work at their home office, to make sure the work environment meets any light-duty restrictions.

Conclusion

Current statutes and case law do not specifically address home workspaces. Until state legislatures address home workspaces, it is incumbent upon both the employer and insurer to implement strategies to lessen remote work injuries, decrease claims by remote employees, as well as mitigate the exposure for claims by remote employees. To that end, employers should have clearly defined policies and parameters for remote work, designated work hours, workspace inspection and disclosures, and permitted work activities.

The investigation of a remote work injury by employers and adjusters must be different as well. The shift to the home workspace has removed the employer's control over the work environment, so clearly defined reporting requirements must be communicated to the remote employee. In turn, the employers and the adjusters must have a clear procedure to follow when investigating such reports and referring a remote employee for medical care.

Additionally, adjusters must take thorough statements, preferably recorded statements, from injured remote workers which include questions on the nature of the task being performed at the time of the injury, when the injury occurred, the specific location in the residence where the injury occurred, and whether others were present in the household at the time of the injury to ensure non-compensable claims are not accepted. The defense attorney's job is to guide the employers and adjusters through this process.