

Protect Yourself from Telecommuters' Workers' Compensation Claims

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With the increased prevalence of technology, combined with employees' desire for a more flexible schedule and companies' goal for less overhead, many employers are now allowing their workers to telecommute or work from home. While telecommuting can provide both a benefit to the employer and the employee, it can also raise issues, especially in the area of workers' compensation.

Defending claims from employees injured at home becomes a challenge, because those employees are likely unsupervised and the accident does not have witnesses. In addition, the employer has little-to- no control over the home work environment.

In all claims, an injured worker must show that his injury occurred within the course of and arising out of his employment to be compensable. It is no different with the employee who telecommutes. The "arising out of" prong refers to the causal connection between the employment and the injury. The "in the course of employment" requirement pertains to the time, place and circumstances of the accident. This requirement limits participation in workers' compensation programs to those workers engaging in a duty or activity consistent with their employment contract and logically related to the employer's business. The courts have also held that an employee on a personal errand when the accident occurred is not entitled to participate in the workers' compensation fund even if they were "on the clock."

This analysis becomes more complicated when the employee is working from home when injured. Take the example of the employee who trips over the family dog while going to the printer to retrieve a work document. He files a claim alleging that the injury resulted from his employment. His argument is that if he was not working, he would not have been on his computer or using his printer. However, if he had not been working at home, there would not have been a family dog over which to trip on the way to the printer. Is this a compensable workers' compensation claim?

The answer is a definite "maybe." In examples like the above, the specific facts surrounding the injury in question will be crucial. The factors to consider will include the time and accident location. Specifically, did the trip and fall occur during work hours or in a designated work area such as a home office? Second, what was the employee doing when the accident occurred? Was he involved in a work-related task or a personal errand? Using the above example, how would the analysis change if the employee tripped over the dog on the way from the computer to get a cup of coffee in the kitchen? The credibility of the worker will obviously be crucial in determining whether the accident occurred while performing a work task as it's more than likely that the accident was not witnessed if it occurs at home.

Then how can an employer minimize risks associated with the employee who works from home? There are several steps companies can take:

1. Identify Appropriate Employees as Telecommuters

Given the lack of supervision of the telecommuter, it's clear that not all workers are suited to work from home. If possible, select employees who are known to be responsible and have a longstanding history and commitment to the company.

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2. Set Defined Work Hours

The company should set forth in a written job description the hours the employee is to be working, including when breaks, such as lunch, will be taken.

3. Establish Specific Work Areas

In that same job description, the company should specify the location in the home in which the employee will perform his or her work duties. A well-defined work area with the appropriate office equipment is a must. It may be a good idea for the employer to also perform a safety inspection of the work area to eliminate any hazards.

4. Detail in Writing Employee's Job Duties

In the written job description, detail the job duties required of the telecommuter. Be specific about which activities are and are not allowed.

5. Monitor Your Telecommuter's Work Activities

Provide the telecommuter with a work computer and a work cell phone. This way his or her activities can be monitored and tracked by the company if a question arises about work related activity at the time of the injury. Log-on and -off times are also appropriate.

6. Communicate Your Telecommuting Policy

Companies should establish a policy which applies to telecommuting with language in the employee handbook stating that the telecommuting employees are subject to and must comply with all procedures and policies that apply to all company employees. All employees who telecommute should be provided a copy of the policy and should sign an agreement acknowledging its terms.

7. Investigate Reported Work-Related Injuries Thoroughly

If a telecommuting employee reports a work-related injury, a thorough investigation needs to be conducted as to the credibility and causal connection to job duties. Medical records are needed to establish the connection with first report of an injury.

As telecommuting increases, so will the uncertainty surrounding accidents that occur at home. Following the above steps will put the employer in the best position to defend workers' compensation claims stemming from this workplace practice.

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