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Workers' Compensation and the Telecommuter

I. The Spike in Telecommuting

The COVID-19 pandemic has created a massive spike in telecommuting, and for some companies, the increase has led to experimentation with their remote working situation. Some experts believe that up to half of all American workers are currently working from home, which is more than double the fraction who worked from home in 2017-2018. Because of the pandemic, the telecommuting trend has been accelerated. The pandemic has caused many corporations to experiment more with technology, and to change habits, some of which may never be changed back even after the pandemic.

Benefits to Telecommuting.

Telecommuting has several obvious benefits. Many employees prefer to work from home. Emissions are reduced as are the costs associated with office space. Certain studies have shown that working from home creates a better balance between work and family roles, particularly for women. Many argue that it makes telecommuters more productive, particularly due to fewer interruptions than an office setting.

In addition to the above, advocates of telecommuting argue that there is an increase level of flexibility, which allows employees to give their best at working at the most convenient time, furthering the work life balance indicated above. Finally, experts argue that there is an improved rate of employee retention when employees can work remotely, which decreases the challenges associated with locating qualified employees.

Telecommuting Trends

Pre-pandemic, many employers believed that employees could be too easily distracted at home, particularly when there was no daily face-to-face interaction between managers and direct reports. In fact, in many situations, telecommuting was only available as a special arrangement in very specific situations.

Post-pandemic, employers have progressed as it relates to the remote working environment and adopted teleconferencing and telework technology which has allowed remote employees to thrive.

II. Employer Challenges

Challenges Previously Limited to Traveling Employees

Prior to the COVID-19 pandemic, exposure for worker's compensation claims outside of the workplace was generally limited to situations involving traveling employees. Generally, claims were seen in the context of employees with occupations where work travel was routine. If traveling employees are injured, the employer and the insurer must decide as to whether the injury is compensable for purposes of worker's compensation benefits. Typically, this requires an analysis as to whether the injury arises out of and in the course of employment.

The "arise out of" language requires a causal connection between the work accident and employment. The "in the course of" component requires that the injury must have occurred at a time and place where the employee may be performing the work-related job requirements. For a claim to be compensable, both requirements must be met.

Employee Homes are Becoming an Extension of the Workplace

Employees are now traveling less and working from home more, and their homes are becoming an extension of the employers' premises. Because of this, employers can face exposure for work-related claims even though they have no control of the remote work area. The lack of control over the work area often makes investigations much more difficult due to the lack of eyewitnesses or security footage.

III. Risk Varies by State

States are divided relative to the assessment of risk when determining whether a claim is compensable. Some states adhere to the "increased risk" standard. Under this standard, the claimant must be able to prove that the accident and injury (1) occurred in the course of the employment and (2) that it arose out of the employment. Both parts of the test must be satisfied.

Other states adhere to a "potential risk" standard and use a "but for" analysis. Under this test, there is no "arising out of" requirement. Essentially, "but for" the claimant being at work, he would not have been injured. If the employee is "in the course of the employment" at the time of the injury, then the claim is compensable.

Types of Risk

There are three types of risk to be assessed when deciding regarding the compensability of a claim relative to a telecommuting situation. Risks that are peculiar to the employment are

the first type of risk to consider. These are hazards caused by materials, equipment, or work processes that the employer provides to the employee or requires that the employee utilize. These risks are typically compensable.

Second, there are risks that are peculiar to the person. Examples of these types of risks include idiopathic injuries and/or conditions, or perhaps a physical altercation over something personal in nature. These types of risks are generally not compensable except in very limited circumstances.

Neutral risks are the third type of risk and the type of risk that most often leads to controversy and litigation and will be more fully discussed in the caselaw discussion.

IV. Caselaw Discussion

Utah

The claimant was a district sales manager for his employer and his home was his base of operations. He often received deliveries from his employer at his home. On the date of the injury, he noticed that his driveway was icy. He saw the letter carrier approaching and went out to salt the driveway, suffered a fall and was rendered a quadriplegic. The carrier denied the claim on the basis that the employer did not direct or encourage the claimant to salt the driveway, and because the claimant was not in an employer-controlled area when the injury occurred. The Utah Labor Commission agreed with the employer and denied the case. Subsequently, the Utah Court of Appeals reversed, finding that the act was motivated, in part, by a purpose to benefit the employer and was, thus, considered reasonably incidental to the employment.

Pennsylvania

The claimant was drinking a glass of juice in the kitchen when she received a call from her supervisor. While on the phone, she fell down the stairs as she made her way back to her home office, sustaining injury to her head and neck. The claim was initially denied by the carrier. However, the claim was eventually found to be compensable. The Court recognized that the home office was an extension of the employer's premises, and she was "in the course of" her employment due to being on a "personal comfort" break.

Tennessee

The claimant was an executive for the American Cancer Society, and her employer approved of her home office space, providing equipment and a phone line. While at home, she opened the door to a neighbor and was brutally assaulted and injured. The Tennessee court found that the case was not compensable. While the claimant was "in the course of" her work for the employer (preparing lunch as covered by the personal comfort doctrine), the court found that there was no causal connection with the employment.

Oregon

The claimant worked out of her car but was required to maintain certain job-related items at her home. She walked out of her home toward her garage to obtain fabric samples for work the following day. She was then tripped by her dog, causing her to fall and break her arm. The claim was initially denied by the Administrative law judge on the basis that tripping over a pet is personal. The Oregon Court of Appeals eventually reversed on the basis that the claimant was performing work activities at her home and thus, the home was an extension of her employer's premises. Because of this, the hazards of the home became workplace hazards and the injury resulted from a work environment.

New Jersey

The claimant had a telecommuting agreement with her employer and worked from home three days a week. She routinely worked all hours, though the employer indicated the job was 9-5. The night prior to her death, she worked until midnight. The following morning, she was found in the office area with difficulty breathing. She subsequently died from a pulmonary thromboembolism. The claim was initially found to be compensable based on the doctor's testimony that the sedentary nature of her work was the precipitant for her pulmonary embolism. However, the New Jersey Supreme Court reversed on the basis that the claimant's job did not require her to remain seated, and she was free to take breaks, stand and stretch as needed.

Florida

The claimant worked from home in an arrangement approved by her employer. She tripped over her dog while in the kitchen reaching for a cup, suffering multiple injuries. While the claim was originally denied by the employer, it was later found to be compensable by the Administrative Law Judge ("ALJ"). The ALJ held that the work from home arrangement meant that the employer "imported the work environment into the client's home and the client's home into the work environment". In a very controversial opinion with two dissents, the Florida District Court of Appeals reversed, finding that the question was not whether the claimant's home became her work environment, but instead, whether the employment conditions substantially contribute to the risk of injury.

Maryland

The claimant was a customer service representative departing his home to see clients. He slipped on ice in his driveway and injured his leg. Importantly, he was planning to take his son to daycare on the way to see the clients. The employer denied the claim, and the workers' compensation commission agreed on the basis that dropping of the son for daycare was a personal errand. The circuit court judge reversed and found that the claim arose out of the employment because the claimant was working from home before departing the house. The Court of Special Appeals vacated the judgment on the basis that the material facts remained in dispute as to whether the claimant's home qualified as a homework site and there was also a dispute as to whether he had commenced his workday and was fulfilling his work duties (or something incident thereto) at the time of the injury.

V. Investigating the Telecommuter Claim

Telecommuting claims should be adequately investigated prior to accepting compensability. As a practical matter, these claims will either be unwitnessed, or witnessed by family members of the employee, which will invariably make the claim more difficult to investigate. Prior to initiating benefits, the claim should be reviewed for a determination as to whether the alleged injury was pre-existing in nature, unrelated to work, or whether there are any other potential defenses.

All employees should be encouraged to promptly report any work accidents, allowing employers to initiate their investigation timely. Ambulance run sheets should be obtained, where applicable, as well as medical records to determine the specifics of the alleged injury.