

Remote Work - A Flash in the Pan or Here to Stay?

Tips for Minimizing Workers' Compensation Liability from Remote Workers

Even with the aspiration that widespread vaccination distribution may allow for more in-person activities, some of the changes in workplace operations that were placed at the forefront by the pandemic are likely to continue including the prevalence of remote work. Telecommuting is not a new concept, yet pre-pandemic it was, by and large, limited to those in sales or executives. Now many employers realize office and administrative employees can also be productive working remotely.

The public health climate compels flexibility. When folks ask "how are you doing?", can your response be summed up in one word—"adapting"? That is, if you are able to work remotely, you might feel there are significant benefits to your new work environment, such as a decreased commute times, lower wardrobe costs, and a better work-life balance. For business owners, they might benefit from lower rent, utilities, and expenses associated with a smaller physical plant. On the other hand, some employers might be wary of the potential pitfalls remote work might present. Consequently, employers should learn to manage these potential risks.

A large potential for liability arises from workers' compensation claims - and that is true whether employees are in the office, on a job site or working from home. While state laws vary somewhat in determining when a work-from-home injury is compensable, the general consensus is that, regardless of location, to be compensable the injury must arise out of and occur in the course of employment. The determination will invariably turn on the particular facts of the case.

A recent Florida case illustrates how courts are likely to approach the issue. In *Sedgwick CMS v. Valcourt-Williams*, 44 Fla. L. Weekly D906 (Fla. 1st DCA April 5, 2019), the court of appeal held that a claimant who injured herself after tripping over her dog while reaching for a cup of coffee during work hours did not suffer a compensable injury. The court reasoned that the risk of the claimant tripping over her dog existed regardless of her work. In other words, the claimant's employer did not contribute to the risk, and therefore was not liable for the injury. The court suggested that if the claimant had suffered an injury from a risk that her employment introduced, such as a repetitive stress injury from typing all day, then such an injury would be compensable.

Below are tips for employers that might help minimize workers' compensation and vicarious liability from a remote workforce:

- Maintain a remote work policy that details the employer's expectations for remote work as follows:
 - The need to report workplace accidents immediately

- That employees are not permitted to host business guests at the alternate workplace
- That the employer is not liable for any injuries to family members, those working for the employee, visitors and others in the employee's home workspace
- Establishes standards for a home office, such as requiring a designated and dedicated work area
- Provides training on workstation setup, cybersecurity, and safety measures, including ergonomic best practices
- Details the equipment used by each employee, outlines the permissible use of the employer's equipment and computers, and requires strict compliance with the employer's computer resource policies
- Defines each employee's scope of work via the employee job description
- If possible, sets fixed work hours and meal and rest times for remote workers to better define "in the course of employment"
- Encourages employees to participate in meetings in real-time video feed where employers can assess the employee's engagement to their work
- Require employees to read and sign an acknowledgment of the policy

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