

# WHITT & DEL BUENO

## E-NEWSLETTER

March 31, 2020

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### **TELEWORKING INJURIES: THINGS YOU SHOULD KNOW**

**COVID-19 is forcing a lot of workers throughout the country to “telework” or “work from home.” This may result in an increase in claims by workers who sustain injuries while working from home. Here is what you need to know:**

- There is not much case law regarding teleworking injuries. However, the elements of a compensable injury occurring at home are the same as those occurring at the employer’s place of business. The worker must prove:
  - 1) an injury by accident;
  - 2) arising out of the employment; and
  - 3) in the course of the employment.
- With injuries occurring while teleworking, the central questions will likely be whether the accident arose out of the employment and whether it occurred in the course of employment.
- An injury arises out of the employment when it was caused by an actual risk of the employment; where there is a causal connection between the conditions under which the work is required to be performed and the resulting injury.
- An accident occurs in the course of the employment if it takes place within the period of the employment, at a place where the worker is reasonably expected to be, and while he is reasonably fulfilling the duties of his employment or is doing something which is reasonably incidental thereto.
- The personal comfort doctrine, which states that an injury is compensable if sustained while engaging in the performance of an act essential to the workers’ personal comfort and convenience, but is ultimately for the benefit of the employer, is likely to apply to injuries at home, but it is unclear whether the standard will be modified under these unique circumstances.
- **Case law:** In *Ashe v. Department of State Police*, 66 OIC 39 (1987), the Commission awarded a claim by a trooper who was working from home. The trooper was on call at his home and preparing for a court appearance when he walked to his car to obtain court documents and slipped on ice in his driveway. This case suggests that if the employee is performing a work-related task at home at the direction of the employer, and is injured due to a unique risk present in his home, the claim may be awarded.

#### **TIPS**

- ✓ Most of these types of accidents will be unwitnessed, so fact gathering will be critical. When investigating these claims, try to get as much information as possible about the accident and what the worker was doing when the accident occurred.
- ✓ Employers should evaluate whether the worker was “on the clock” at the time of the accident. It may be helpful to have the worker log in to the computer when they begin their work and log out when they take a break and complete their work at the end of the day. If possible, a worker should only work during their usual business hours.
- ✓ Employers should have protocol in place addressing how workers should report injuries to the employer and how the employer can promptly facilitate medical treatment, if necessary.
- ✓ Employers should discuss with workers who plan to work from home the importance of maintaining a safe working environment.

Some of our attorneys and staff members are working from home, but we are available to assist with any questions or concerns you may have about teleworking issues. Please feel free to email any of our attorneys at the addresses referenced below or call our office. We are here to help during this challenging time, and we hope you and your families stay safe and healthy!

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