

Workers' Compensation Issues for Employees Working from Home and Other Remote Work Locations

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Prior to 1912, when an employee was injured during the course of his or her employment, the employee could sue his or her employer in a civil action, just like any other person injured due to someone else's negligence. These lawsuits clogged the courts and did not provide an adequate remedy for an employee who was injured while performing his or her employment, though not due to the fault of his or her employer. The employer could escape liability by establishing that the employee was negligent, the employee was comparably negligent, a co-employee was negligent, or that the employee assumed the risk of injury.

The vast majority of employees suffering on-the-job injuries were not compensated at all. If an employee was successful in establishing that his or her injury was a result of the employer's negligence, the employee could receive compensation including loss of wages, medical expenses, pain and suffering, loss of companionship, and any other damages a jury might award. This exposed employers to enormous liability for those employees that were seriously injured.

The Michigan Employees' Compensation Act (the predecessor of the Workers' Disability Compensation Act), enacted in 1912, was a compromise between employers and the injured employees. The employee gave up the right to file a civil action and the employer would only be responsible for certain specific damages. The Michigan Employees' Compensation Act created a modified no-fault system under which the employee was not required to prove negligence. The employer's damages were limited to wage loss benefits, reimbursement of reasonable and necessary medical treatment, and, in some circumstances, vocational rehabilitation services. Additionally, the claims would be handled administratively rather than by a jury.

Today, if an employee suffers an injury during the course of employment, the employee is entitled to potential lifelong wage loss and medical benefits. To establish disability the employee must prove a limitation of the employee's wage earning capacity in work suitable to the employee's qualifications and training. An employer can mitigate its damages by providing an employee with work within whatever restrictions are necessary or by assisting the employee in finding work with a new employer.

I. Overview of work related injuries- not all injuries that occur at work are "work-related"

In order to be compensable, an employee's injury must arise out of and be in the course of employment. The employee has the burden of proof of all elements of the claim. An employee's accident report is evidence that an accident and injury occurred. At one time, the phrase "arising out of and in the course of" merely referred to the fact that the injury occurred at work during normal working hours. Recently the Michigan courts clarified that these are two

distinct concepts and have looked carefully at the “arising out of” requirement. “Arising out of” requires that the injury involved the circumstances of employment that participated the injury.

Disputes often arise when an injury occurs on the employer’s premises, but the employee is involved in activities that do not directly relate to the employee’s job duties. Generally, an employee going to or from work, while on the premises where the employee’s work is to be performed, and within a reasonable time before and after the start of the employee’s shift, is presumed to be in the course of employment. However, an injury that occurs in the pursuit of an activity, the major purpose of which is social or recreational, is not covered.

Generally, if an employer derives a benefit from the employee’s activity, it is more likely to be considered “arising out of the employment.” Many cases deal with the issue of injuries occurring during an employee’s scheduled break. If, during the break, the employee is engaged in personal business, the injury is not compensable. Some activities which may seem personal, such as consuming food or using the restroom, are not considered social or recreational activities since these activities are a necessary feature of employment.

Several cases have dealt with injuries occurring during an employee’s lunch hour. Generally, if the employee is away from the employer’s premises and engaged in personal business, the injury will not be compensable, unless the employment created a special risk during the lunch hour. Injuries occurring on the employer’s premises during a lunch hour are generally compensable. Recently, the Michigan Workers’ Compensation Appellate Commission ruled that an employee who bent over to put out a cigarette on her smoking break and suffered injury to her back, did not suffer a compensable injury because the incident occurred while the employee was on a cigarette break, which was a social or recreational activity. Clearly the employee’s cigarette break did not benefit the employer. In another case, the Commission held that an employee who was injured while walking to an employee break room suffered a compensable injury.

When an employee is injured due to a “positional risk” such as climbing stairs or ladders, or performing work-related bending or crouching, these injuries have been found to be within the employee’s employment and compensable. However, when the injury is the result of something intrinsic, or “idiopathic” to the employee, the injury is not compensable. For example, if an employee becomes lightheaded due to low blood sugar and the employee falls and suffers a concussion when his or her head hits the floor, this would not be a compensable injury even if it occurred on the employer’s premises during regular work hours because the fall was due to something intrinsic to the employee. If the employee became lightheaded and fell into a piece of moving machinery, causing injury, this would be a compensable injury because the moving machinery increased the risk of injury.

II. A work injury must produce a medically distinguishable change in pathology to be compensable

An injured employee does not have to establish that the injury was the sole or proximate cause of the disability. The employee must establish that the injury or his or her day-to-day work activities caused or contributed to a disability by aggravating the underlying condition.

Symptoms such as pain, are not sufficient to establish disability. The employee must show that the injury or activities caused, contributed to, or aggravated the underlying pathology in a manner so as to create pathology that is medically distinguishable from any pathology that existed prior to the injury or activities.

Mental disabilities and conditions of the aging process, such as heart and cardiovascular conditions, are compensable only if the injury or employment activities contributed to or aggravated the condition in a significant manner.

III. Definition of disability

Not all injuries that result in limitations establish a disability. Disability is defined as a limitation of the employee's wage earning capacity in work suitable to his/her qualifications and training. A limitation of wage earning capacity only occurs if the personal injury leaves the employee unable to perform all jobs paying maximum wages in work suitable to that employee's qualifications and training. For example, an accountant who retires from his or her firm and gets a part-time job at a hardware store and suffers a work-related injury, will only establish disability if the employee can prove that the work-related injury prevents him or her from performing his or her previous work as an accountant (assuming the previous work as an accountant paid more than a part-time job at a hardware store).

IV. Injuries that occur at home or at another remote location

Nothing in the Workers' Compensation Act that addresses injuries that occur at home or another remote work location. Furthermore, there are very few case laws that address this issue. The same rules apply to injuries that occur at the employee's home as injuries that occur on the employer's premises. However, employers should see far fewer work-related injuries for employees working from home because the nature of the work performed at home is less likely to be the type that produces physical injuries. Employees working from home are unlikely to perform heavy manual labor or work with dangerous machinery.

Many activities that are performed at home or from a remote location may have a dual purpose. For example, when a remote employee is checking the mail, this may include work-related mail as well as personal mail. If receiving mail is part of the employee's normal duties and the employee is injured performing this activity, it will be a compensable injury. When the employee is at home or working remotely, injuries that occur shortly before or after working hours, are not compensable. The employee still has the burden of proving all elements of his or her claim. However, since there is no direct supervision and the employee is not working with co-employees, there could be issues with proof. Employees should still be expected to promptly report any injuries.

V. Coverage issues with out-of-state injuries

The topic of this presentation is limited to an employer's liability under the Michigan Workers' Compensation Act. However, there may be circumstances where an employee working from home or remotely is working in different state. This can present jurisdiction issues since every state has jurisdiction of work-related injuries occurring within its borders. Therefore, an employee who suffers a work-related injury while working remotely from California, could file a claim for benefits under the California Workers' Compensation Act and the laws of California would apply to the claim.

VI. Questions