

## Employees Working from Home: PA Workers' Comp Law

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While everyone works through this anything-but-normal time in our country, it is important for employers to note that Pennsylvania Courts have generally included work-from-home injuries as compensable claims. However, there are some exceptions to this blanket protection that can help protect employers in denying and defending a claim based on an injury occurring during “normal working hours.”

For those workers whose office jobs have been relegated to home work stations, their work days, while obeying a “stay home” order, can be somewhat similar to their usual office work. But breaks and interruptions throughout the day can take the employee outside the scope of actual work. According to PA law, a brief break – using the bathroom or grabbing a snack – will not interrupt the “on the clock” designation, as long as it is for the employee’s “personal comfort.” Arguing the reverse would be a losing proposition for employers.

One of the most basic tenets of The Pennsylvania Workers’ Compensation Act is that benefits are to be paid to an employee who is injured while “acting in furtherance of the employer’s interests.” The scope of this protection for injured workers extends beyond the walls of an employer-owned workplace. For decades, Pennsylvania Courts have awarded benefits regardless of whether the employee is on or off the employer’s premises when an injury occurs...provided the injury occurred while the employee was “acting in furtherance of the employer’s interests.” See *Acme Markets, Inc. v. WCAB (Purcell)*, 819 A.2d 143 (Pa. Cmwlth. 2003); see also, *WCAB (Slaughaupt) v. United States Steel Corp.*, 31 Pa.Cmwlth. 329, 376 A.2d 271 (1977).

It is worth mentioning that the law treats work-from-home employees much differently than traveling employees. There is expansive protection for employees who travel as part of their job. For employees who travel, Workers’ Comp benefit recovery extends to wherever they go, and to virtually whatever they do, while traveling for work. See *Roman v. WCAB (Dept. of Environmental Resources)*, 616 A.2d 128 (Pa. Cmwlth. 1992)(car accident while DEP employee traveling to site); *Baby’s Room v. WCAB (Stairs)*, 860 A.2d 200 (Pa. Cmwlth. 2004)(furniture deliveryman injured while jumping to touch the rim of a customer’s driveway basketball hoop – Commonwealth Court Opinion set forth: “intervals of leisure activity during the work day are deemed inconsequential departures from the act of delivering furniture for the employer.”); *Evans v. WCAB (Hotwork, Inc.)*, 664 A.2d 216 (Pa. Cmwlth. 1996)(PA contractor on remote job site on Emerald Isle, NC, fatally injured while bodysurfing at the end of a work day); *LenzerCoach Lines v. WCAB (Nymick)*, 158 Pa. Commw. 582, 632 A.2d 947 (1993)(an employee’s non-work activities – a slip in the bathtub on overnight stay in Atlantic City – during the wait for resumption of actual duties, do not break the employment relationship).

By contrast, work-from-home employees are not given the same blanket protections as traveling employees. Work-from-home employees are also not afforded the same protections as those injured in the workplace...where “relatedness” is all but assumed because the injury occurred on the employer’s premises. The millions of Pennsylvanians who are now working from home must prove that they were “acting in furtherance of the employer’s interests” in order to recover benefits in the event of an injury.

Of course, each case is determined on its own facts, but the following examples and case references – both involving injuries sustained at home, with very different outcomes – can serve as a guide for employers in assessing whether a reported work-from-home injury is compensable through Workers’ Comp:

? Employee trips and falls down the stairs after leaving her basement computer work station, to get a drink of juice in the kitchen. Yes, it's compensable. See *Verizon Pennsylvania, Inc. v. WCAB (Alston)*, 900 A.2d 440 (Pa. Cmwlth. 2006).

? Employee sustains head injury when he trips and falls while outside the house – getting the mail, during a smoke break. No, not compensable. See *Werner v. WCAB (Greenleaf Serv. Corp.)*, 28 A.3d 245 (Pa. Cmwlth. 2011).

*Werner* best illustrates the employee's burden of proving "acting in furtherance" at the time of an injury. *Werner* involved a fatal head injury to an employee who was injured while going to get the mail during a smoke break; it was determined that he had been either on his front porch or driveway – away from his computer work station. In defending the claim, the employer sent an investigator to the home, to do a sort of "CSI" investigation. The investigation revealed the presence of blood in the driveway, from Claimant/decedent's head injury. During litigation, at a hearing, the Claimant/decedent's widow admitted that he had gotten the mail that day, and that he took frequent smoke breaks, standing on the front porch and/or in the driveway. Because there was insufficient proof that his injury occurred while "acting in furtherance," the claim was denied...and the Commonwealth Court upheld the denial on appeal.

By contrast, *Alston* is the best example of the Court applying the "personal comfort doctrine" to uphold an award of Workers' Comp benefits to a work-from-home employee, despite the fact that the employee had briefly interrupted her work at the time the injury occurred.

If you have questions regarding a work-from-home employee injury, please call (412) 445-3563 or email Ken Scholtz. Thank you. Be safe.