

## What Happens if an Employee is Injured While Working From Home in New York?

Given the COVID-19 pandemic, more people have been working from home, due in no small part to the Executive Orders issued by Governor Andrew Cuomo in response. These include, among other things, a directive that all non-essential employees stay home, as of March 20, 2020.

The Workers' Compensation Board has previously addressed the issue of when injuries sustained when a claimant works from home are compensable.

Primarily, the Board relies on the "home office exception." The residence becomes part of the employer's premises, only applies where: (a) claimant regularly performed work at home; (b) there was work equipment regularly present at the home; and (c) it is necessary, and not merely convenient, to work at home. *IBM Corporation*, 2015 WL 3922648 (June 23, 2015).

The Appellate Division, Third Department addressed this issue in 2016: *Pittner v. St. Gobain Corporation*, 144 A.D.3d 1348 (3d Dep't 2016). In that matter, claimant rented an apartment in Erie County, New York, from where he would perform work from home, but he passed away on those premises. The Court applied the home office exception and held that where claimant did not produce evidence sufficiently demonstrating that claimant was working at the time of his passing, or that claimant so regularly performed work for the employer at the residence that it had become "part of the employer's premises," the claim was correctly disallowed.

More recently, the Full Board, addressed this issue in the matter of *Matrix Absence Management*, 2019 WL 2071919 (May 3, 2019). The claimant in *Matrix* was, ironically, a claims adjuster for a third-party administrator. He had been hired as a telecommuter, and at the time he sustained injury, he was moving office furniture in his home. The employer did not provide claimant with this furniture or pay for it, and claimant elected to purchase this furniture himself in order to work for the employer from home. The Law Judge did not even wait for the conclusion of cross-examination of the claimant to find that the claim was not compensable.

On Full Board Review, it was noted that different standards were applied to analyze whether injuries were compensable depending on the location where a claimant was working. When they work from home, the scope of compensable injuries is to be limited to only those that "occur during the employee's regular work hours and while the employee is 'actually performing her employment duties.'" Injuries that arise out of "purely personal activities," however, are not compensable. Accordingly, the disallowance of this claim was affirmed.

In conclusion, claims are only compensable for claimant working from home when:

- It is necessary for work, and not merely a personal convenience, to work from home, and claimant has done so on such a regular basis that the residence is actually an extension of the employer's premises.
- Claimant has work-related equipment in the home that has actually been provided by or purchased by the employer; and
- Claimant is actually engaged in work-related duties at the time of the accident.

**Please contact us should you have any legal questions or require advice related to COVID-19's impact on New York workers' compensation cases:**



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