

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

With the economy in shutdown for the COVID-19 pandemic, many workers are performing their usual jobs remotely, generally at home. This raises question whether an injury suffered in the at-home work can be compensable, and, if so, in what circumstances. The answer to the first question in Massachusetts is clearly in the affirmative. The answer to the second question requires a consideration of all of the facts of the accident.

The Massachusetts Workers' Compensation Act requires compensation for injuries "arising out of and in the course of" employment. G.L c. 152 sec. 26. The courts have long interpreted the "arising out of" requirement as: "An injury arises out of the employment if it arises out of the nature, conditions, obligations or incidents of the employment; in other words, out of the employment looked at in any of its aspects." Koziol, et al., Workers Compensation, 29 Mass. Practice Series, Section 10.2 (2019). The words "'in the course of' refer mainly to the time, place, and circumstances of the injury. Did the injury occur within the hours of work? Was the place where the injury occurred closely enough related to the employment so as reasonably to be included within its risks? Were there any attendant circumstances which would enlarge or restrict the ordinary time or place covered by the employment?" Id., Section 12.1. The prime example in case law of the application of these principles to at-home work is Butterworth v. Town of Winchester, 22 Mass. Workers' Comp. Rep. 225 (2008). The claimant was a high school tennis coach whose duties included telephoning match results to the newspapers. Finding it easier for a number of reasons, and with no prohibition from his employer, the claimant at times made these calls from his "home office." He suffered a knee injury in a fall down the stairs to his home office while going to make these calls. The injury was held compensable. The Reviewing Board disposed of the "arising out of" element by quoting the "in any of its aspects" language, above. For the "in the course of employment" element, the Board stated that an injury "arises 'in the course of employment' '[e]ven though [it] occurs off the employer's premises or outside normal working hours ... if the employee at the time of the injury was engaged in the furtherance of his employer's business or in pursuit of some benefit to his employer.'" "When the employee fell down the stairs on the way to make the required work-related calls, he was undoubtedly acting in furtherance of his employer's interests, and for his employer's benefit."

Where Mr. Butterworth was engaged at home in only a small part of his work which was otherwise performed outside the home, it is obvious that an employee assigned to work entirely from home will be entitled to compensation should the employee suffer an injury at home that meets these "arising out of and in the course of" employment tests. The devil will be – as always – in the factual details. Mr. Butterworth's case was relatively easy, but a few possible scenarios (there can be as many of these as the imagination of workers) can show the possible issues: If Mr. Butterworth had waited until the morning and fell on his way to the kitchen for coffee before going to the home office to make the calls? If the at-home employee leaves the "home office" to make a sandwich for lunch? If the at-home employee takes a break for a cigarette? To take a walk around the neighborhood? To take the dog for a walk? If the at-home employee made a personal phone call and fell walking back to the "home office?" Usual principles regarding personal errands would seem to apply equally to the at-home situation as to the employer's premises, e.g., cases such as leaving work to cash a paycheck (not compensable), or to answer calls of nature (compensable). Further, these scenarios consider discrete physical injuries from falls or the like.

Working at home could lead to myriad other kinds of injuries such as repetitive strains from non-ergonomic home furniture in the home office, eye injuries from personal computers not properly outfitted for office use, or mental/emotional stresses caused by isolation (which carry serious causation issues given that the non-work stay-at-home situation can be equally mentally stressful). As with the possible scenarios of injury, the nature of injuries claimed can be as many as the imagination of workers.

The complete dependence of these situations on the detailed factual circumstances sought to tie the injury in to the work are to a large extent exacerbated in the in-home context because, especially in the current age of social distancing, the employee claiming a work-related injury at home will in the vast majority of cases be alone at the time of the injury or with family members who have an evident bias in the matter (or in the case of a spouse may be disqualified as a matter of evidence law from testifying to communications with the injured spouse). Mr. Butterworth's case was deemed compensable by the Reviewing Board as a matter of law because the trial judge had found credible his version of the happening of the accident and the work-relationship. In another Reviewing Board case, Langadinos v. One Stop Business Centers, Inc., 14 Mass. Workers' Comp. Rep. 268 (2000), the trial judge had specifically found the claimant's evidence of his working at home to be lacking in credibility. Further, the time and activities of many employees working at home will be difficult to trace given the absence of time clocks, although the employee's work may be able to be traced and confirmed (or disputed) based on log-in records for remote computer work, phone-text-email records (which may have to be subpoenaed if using personal equipment), methods utilized by the employer to track productivity, or the like. In addition, the technical defenses of late notice, etc. will apply perhaps even more strongly given the solitude of the worker and the remoteness of supervisory personnel to whom an injury would be reported, making reporting difficult -- although it is at least equally likely that judges will allow a degree of slack to COVID-era at-home employees without a well-developed chain of reporting. Indeed, judges may allow a degree of slack in many aspects of working at home in the current pandemic situation: Even if the employee was injured when checking on children also forced to stay at home, it can be argued that, given the circumstances, the employee was in a place the employer would reasonably expect them to be, and working while caring for kids is in the best interest of employers because, if not, then the employee would not be able to work at all.

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



**John F. Burke**  
Partner



**John C. White**  
Partner



**Austin T. Powell**  
Partner



**Meredith P. Rainey**  
Partner



**Justin P. Starr**  
Associate

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