

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

COVID-19 continues to shape the fabric of everyday life, including how, when, and where people work. While most employees' homes have now also become their full time work spaces, the effect of that arrangement on what qualifies as a compensable, work-from-home injury is far less clear.

In New Hampshire, a compensable injury must arise out of and in the course of one's employment. RSA 281-A:2, XI, XIII. The "arising out of" requirement means that an employee must be able to show that the injury was the result of a risk created by his or her employment. *Anheuser-Busch v. Pelletier*, 138 N.H. 456, 458 (1994). An injury arises "in the course of employment" if it occurred in principally work-connected circumstances. *Whittemore v. Sullivan County Homemaker's Aid Service*, 129 N.H. 432 (1987). The New Hampshire Supreme Court has further articulated that "although employment may occur anywhere and anytime, it does not occur without a call or a requirement to perform some activity integrally related to the object of the employment relationship." *Murphy v. Town of Atkinson*, 128 N.H. 641, 646 (1986).

Like many other jurisdictions, New Hampshire has established a "going and coming rule", which forbids an employee from receiving compensation for injuries that occur while the employee is going to or coming from work. *Donnelly v. Kearsarge Telephone Co.*, 121 N.H. 237 (1981). However, multiple exceptions to this rule exist. *See Cook v. Wickson*, 135 N.H. 150 (1991). New Hampshire also recognizes deviations (i.e., acts that temporarily take an employee out of the course of his or her employment). How, why, and when an injury occurs are critical to making a deviation determination. For instance, lunch breaks do not necessarily constitute a deviation. *See Whittemore*, 129 N.H. 432. What matters is "whether the cause of the injury can properly be considered a hazard of the employment." *Heinz v. Concord Union School District*, 117 N.H. 214, 217-18 (1977).

With respect to the course of one's employment, going, coming and deviation injuries should be less common under current work-from-home orders. However, the lines between the home and the workplace have been considerably blurred. With that, risks of the home becoming risks of the workplace is a new reality for all, which poses obvious ramifications regarding what injuries actually arise out of the employment.

Therefore, when assessing a work-from-home injury for compensability, employers should ask the following questions: (1) What activity was the employee completing when he or she was injured; (2) Was that activity truly and fundamentally related the employee's job responsibilities; and (3) If the activity was related to the employment, did the employment create the risk for that injury, or was the risk created by something else (e.g., a risk of the home unrelated to the employment)? If the answer to either of the last two questions is "no", in most cases, the injury will not be compensable because it did not arise out of and in the course of the employment.

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



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