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Labor and Employment Update: Telecommuters May Be Entitled To Workers' Compensation Coverage

By Ronald J. Stolkin

In Arizona, workers suffering an injury by accident arising out of and in the course of employment are entitled to receive certain medical and compensation benefits. But do these workers' compensation benefits extend to employees who telecommute or work at home? Although the Arizona courts have not decided this issue, a recent case from Tennessee may signal what is to come for Arizona employers.

On November 16, 2007, in *Wait v. Travelers Indemnity Company of Illinois*, the Tennessee Supreme Court held that the coverage of Tennessee's workers' compensation statutes includes employees who work from home or maintain home offices. In that case, the plaintiff's home office functioned as her work place "in all respects" because there was a lack of space at her employer's offices. For several years, the plaintiff performed her daily work at her home office. Although there were no designated work hours or other rules controlling the nature of her work space, the plaintiff's work did not require her to open her house to the public. On Sept. 3, 2004, however, the plaintiff opened her door to a neighbor who brutally assaulted and severely injured her.

Appealing the denial of benefits, the plaintiff argued that her injuries arose out of her employment. Specifically, plaintiff contended that her work arrangement placed her in a position that facilitated the assault, and the injuries occurred in the course of her employment because she was engaged in a permissible incidental activity – taking a lunch break. The workers' compensation insurer argued that plaintiff's injuries were not compensable because she was not "fulfilling a work duty" in admitting her neighbor into her kitchen.

The Tennessee Supreme Court found that this case required it "...to apply the [Workers' Compensation] Act to a new and growing trend in the labor and employment market: telecommuting." In so doing, the court applied the basic principle that in Tennessee, like many other jurisdictions, for an injury to be compensable under workers' compensation, it must both "arise out of" **and** occur "in the course of" employment.

"The Court found that the plaintiff's injuries did occur "in the course of" employment, **because** plaintiff was in a "period of the employment" and at a "place where the employee reasonably may be." The court, however, denied plaintiff's claim for benefits because her injuries did not "arise out of" her job duties. "Arising out of" requires a causal connection between the employment conditions and the resulting injury. In this case, the assault by the neighbor was not a risk related to her employment. The plaintiff's job did not expose her to the risk of assault. Rather, the risk arose from plaintiff knowing the attacker from her neighborhood, which was not related to her employment.

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Therefore, “Under these narrow facts, this injury occurred in the course of the plaintiff’s employment...[but] did not arise out of the plaintiff’s employment.”

While the employer prevailed in this particular case, the Tennessee Supreme Court clearly recognized workers’ compensation coverage to home offices and telecommuting. Arizona courts may not be far behind.

Ronald J. Stolkin is co-chair of the firm’s labor and employment law practice. Mr. Stolkin counsels management on personnel practices, employee discipline and labor relations. He defends employers in litigation alleging employment discrimination, breach of contract, wrongful discharge and other employment related torts. He has represented clients in connection with a broad range of employment related issues before government agencies such as the EEOC, the Department of Labor, the Arizona Civil Rights Division, and the Department of Education, and has counseled clients on a wide range of employment issues including employment handbooks and personnel policies, employment-at-will issues, wage/hour issues, drug and alcohol policies, sexual issues, employee disability issues, and leave of absence issues. He earned his B.A., (1967) and his J.D., (1970) from The University of Arizona.



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