



# How to address Washington workers' compensation claims from telecommuters

By Shawna G. Fruin ■ April 9, 2020

Given Washington's stay-at-home orders, many employers made quick arrangements to have a significant amount of their workforce "telecommute" from home. While this change to remote work is generally positive (allowing workers to keep jobs, assist the economy and keep vital work functions moving despite the COVID-19 impact on the world at large), employers may struggle to assess what constitutes a compensable workers' compensation claim for their remote workforce.

For Washington, the general rule is that workers injured in the course of employment are entitled to workers' compensation benefits.<sup>1</sup> "Course of employment" means the worker is acting at the employer's direction or in the furtherance of the employer's business.<sup>2</sup> Washington does not have an "arising out of employment" rule, and therefore a worker can be in the course of employment even if the worker is not doing his or her usual work at the time of the injury.<sup>3</sup> Because Washington is one of only a few states that does not have an "arising out of employment" rule, cases from other states are generally not helpful for understanding course of employment in Washington.<sup>4</sup>

There are very few Washington cases expounding on the course of employment rules in Washington. What we know so far is:

- *Location:* The specific parameters of a telecommuter's jobsite will of course vary for each worker, but at least in one case, the Board held that the jobsite is probably just the location of the desk and phone.<sup>5</sup>
- *Hours:* As long as the employer does not require the telecommuting worker to work all hours, the telecommuting employee will not get "continuous, 24-hour a day, 7-day a week" workers' compensation coverage.<sup>6</sup> However, if a remote worker is required to work, be available or be on call for all hours, then he or she could be covered by the Industrial Insurance Act at all times he or she is at the jobsite.<sup>7</sup>
- *Activities covered:* Just because a telecommuting worker is injured during work hours does not necessarily mean he or she is in the course of employment and has a compensable claim. The relevant inquiry for purposes of workers' compensation is whether the injury is related to a risk of employment, or is incidental to the course of employment.<sup>8</sup> The

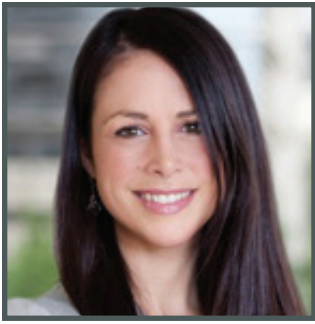
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## Washington telecommuting workers' compensation claims (continued)

Washington Court of Appeals held that when determining compensability, the decision maker should “focus narrowly” on the activity that caused the injury.<sup>9</sup> The Court of Appeals denied a workers' compensation claim for a telecommuting worker who was injured during work hours, but was not acting at the employer's direction or in the furtherance of the employer's business.<sup>10</sup>

- *Personal comfort:* One general exception to the course of employment definition is that injuries that occur within the time and space of employment, during “personal comforts” (incidental, minor deviations from work duties) are generally compensable.<sup>11</sup> Examples of personal comforts are eating, drinking, using the restroom and smoking.<sup>12</sup> Personal comforts are different from work departures that are so great that an intent to abandon the job temporarily may be inferred.<sup>13</sup> An example of a non-compensable deviation is when a telecommuting worker logged off her computer, left her home job location and job duties, went for a walk on a public street with her dog, and sustained an injury.<sup>14</sup>
- *Lunch break:* In addition to injuries in the course of employment, the Industrial Insurance Act applies to lunch breaks on the jobsite (the premises that are occupied, used or contracted for by the employer for the business or work process in which the employer is then engaged), or lunch breaks off the jobsite if the worker left the jobsite under the employer's direction, control or request.<sup>15</sup> For telecommuting workers, the “jobsite” may only mean their desk or work station, but the law is not developed on this issue.<sup>16</sup> Injuries during the lunch break may be compensable even if they are unrelated to eating lunch, so long as the decision maker finds that it was not an “unreasonable deviation” from the course of employment.<sup>17</sup>

To aid in future compensability determinations, we recommend developing a Telecommuting Policy and Contract with your Human Resources Department and general counsel. This contract should outline your company's telecommuting rules. You should review the contract with your employees so they understand the policy, and obtain the remote workers' written acknowledgement. Your policy should define the jobsite, hours and duties of the employee's remote work. You should consider including the employer's option to rescind telecommuting privileges, consent for the employer to enter the home for post-accident investigation and guidelines for a safe working environment. You may want to ask workers to send pictures of their jobsite so you can ensure compliance with safety protocols and document the parameters of the jobsite.

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## Washington telecommuting workers' compensation claims (continued)

If a remote worker files a workers' compensation claim in Washington, the case law above and a good telecommuting policy should help guide to determine whether the injury is compensable. Please do not hesitate to reach out to one of the Reinisch Wilson Weier PC Washington attorneys if you have any questions about compensability of a telecommuter's claim. ■

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<sup>1</sup> RCW 51.32.010.

<sup>2</sup> RCW 51.08.013.

<sup>3</sup> *Id.*

<sup>4</sup> *Dep't of Labor & Indus. v. Johnson*, 84 Wn. App. 275, 277–78, 928 P.2d 1138, 1139 (1996).

<sup>5</sup> See *In re Christine Haywood*, Dckt. No. 07 14465 (Sept. 3, 2008) (“By working at home, the jobsite goes to the worker, rather than the worker going to the jobsite”; “Absent specific instructions from an employer to the contrary, an office worker who works at home ... is expected to work at a desk or at a computer, make telephone calls, and review written materials.”)

<sup>6</sup> See *id.* (telecommuting worker who went on a walk during a break was not covered).

<sup>7</sup> See *In re Christine Maier*, BIIA Dec., 18,224 (1963) (a resident apartment manager who was required to live on the premises, be continuously on call, had no fixed hours of work, and was injured on the jobsite would be considered in the course of employment at the time of her injury, even if her injury had not been related in any manner to the duties of her contract of employment).

<sup>8</sup> *In re Christine Haywood*, Dckt. No. 07 14465 (Sept. 3, 2008).

<sup>9</sup> *Johnson*, 84 Wn. App. at 279.

<sup>10</sup> See *id.* (on call worker injured during work hours at home, when he was using a machine for a personal project, was not in the course of employment); *In re Christine Haywood*, Dckt. No. 07 14465 (Sept. 3, 2008) (an office worker who works at home would not be expected to operate chain saws, rebuild automobile transmissions, or tame horses).

<sup>11</sup> *In re Janise Dial*, BIIA Dec., 01 17217 (2003).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, citing 2 A. and L. Larson, *Larson's Workers' Compensation Law* § 21 (2002).

<sup>14</sup> *In re Leeann Starovasnik*, Dckt. No. 16 19483 (June 28, 2018) (claim denied because Starovasnik was not in the course of employment).

<sup>15</sup> RCW 51.32.015.

<sup>16</sup> See *In re Christine Haywood*, Dckt. No. 07 14465 (Sept. 3, 2008) (“By working at home, the jobsite goes to the worker, rather than the worker going to the jobsite”; “Absent specific instructions from an employer to the contrary, an office worker who works at home ... is expected to work at a desk or at a computer, make telephone calls, and review written materials.”).

<sup>17</sup> See *In re Vince Polmanteer*, BIIA Dec., 88 0362 (1989) (a worker injured as a result of friendly horseplay initiated by his supervisor during their lunch period on the jobsite was entitled to industrial insurance benefits because the activity did not constitute an unreasonable deviation from the course of employment).

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