

# WHEN IS A WORKER AT WORK?

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The employer required its workers to arrive 10 minutes before their shift to ensure continuity of work. The claimant sustained an injury in the 10 minute period before starting work.

## IN ISSUE

When is a worker at their 'place of employment' and when are they on an 'ordinary recess'. If they are on an ordinary recess, employment need not be a contributing factor for an injury to be accepted for workers' compensation.

## THE BACKGROUND

The claimant worked at McDonald's Richlands, arriving 10 minutes before her shift was to commence, as required by her employer. In that 10 minute period she climbed a ladder to the roof to smoke a cigarette. She sustained an injury to her right leg when climbing down the ladder.

The *Workers' Compensation and Rehabilitation Act 2003* relevantly states in section 34(1)(c);

*'34 Injury while at or after worker attends place of employment*

*(1) An injury to a worker is taken to arise out of, or in the course of, the worker's, employment if the event happens on a day on which the worker has attended at the place of employment as required under the terms of the worker's employment -*

...

*(c) while the worker is temporarily absent from the place of employment during an ordinary recess if the event is not due to the worker voluntarily subjecting themselves to an abnormal risk of injury during the recess.*

*(2) For subsection (1)(c), employment need not be a contributing factor to the injury.'*

WorkCover Queensland rejected her compensation claim.

## THE DECISION IN THE QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

The claimant appealed the rejection in the QIRC. The appeal was dismissed.

The Vice President found that the rooftop and the ladder were within the appellant's place of employment and that the incident did not occur during an ordinary recess.

## THE DECISION ON APPEAL TO THE INDUSTRIAL COURT OF QUEENSLAND

The Industrial Court disagreed with the Vice President on both issues. The Court found:

*'place of employment'* - The Vice President erred by concluding that the rooftop and the ladder were within the appellant's 'place of employment'.

and

*'ordinary recess'* - '...the period of time during which an employee was required to attend at the place of employment before a shift commenced should properly be regarded as an 'ordinary recess' for the purposes of s34 of the Act.'

The claim therefore fell within s34(1)(c) and the claim was allowed.

## IMPLICATIONS FOR YOU

The *'place of employment'* is not necessarily everything within the employer's premises. It will vary depending on the work being performed by the worker. See for example *Teys Australia Food Solutions Pty Ltd v Q-COMP & Polichronis* [2013] QIRC 8 where a claimant was sexually assaulted in the employer's car park, after already having passed through security gates on her way to work. In that case, the claim was upheld on the basis that it was a journey claim.

Similarly, 'ordinary recess' may not necessarily be determined by a break occurring between when work officially starts and stops.

[\*Mandep Sarkaria v Workers' Compensation Regulator\* \[2019\] ICQ 001](#)

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