WORKERS’ COMPENSATION AND COVID-19 SERIES – PART 2 – ENTITLEMENT TO WORKERS’ COMPENSATION FOR INJURIES SUSTAINED WHILST WORKING FROM HOME

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During the COVID-19 crisis, many industries have directed or urged large portions of their workforces to work from home. Our second update considers the question of whether a worker is entitled to statutory workers’ compensation payments for an injury sustained while working from home.

The short answer is that generally speaking, if an employer encourages or directs a worker to work from home and the worker is injured whilst doing so, the worker will be entitled to compensation if the injury occurred whilst the worker was undertaking an activity sufficiently connected with the worker’s employment.

LEGISLATIVE TEST

As noted in our previous alert, in Queensland, workers’ compensation is payable to a worker who sustains an ‘injury’. Section 32 of the Workers’ Compensation and Rehabilitation Act 2003 (WCRA) relevantly provides:

(1) An injury is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

What is required is that:

- The personal injury arose out of, or in the course of, employment;
- Employment was a significant contributing factor to the personal injury.

RELEVANT PRINCIPLES

The following relevant principles can be gleaned from decisions relevant to this question:

1. There is nothing in section 32 that restricts an injury to having to be sustained at the premises occupied or controlled by the employer.

2. Where an employer encourages or requires an employee to be present at a particular
place away from their usual place of work, an injury the employee suffers whilst present there can arise in the course of employment. However, it is also necessary for the worker to demonstrate that the circumstances of the injury, that is the activity which the worker was engaged in when the injury was sustained, correspond with what the employer induced or encouraged the employee to do.\[1\]

3. The exigencies of the employment, what the worker in fact does in the course of employment and the requirements of the role, must contribute in some significant way to the occurrence of the injury, in order for employment to be considered a significant contributing factor.\[2\]

4. Therefore, in most cases if a worker is authorised by the employer to work from home, and is injured whilst undertaking their actual employment duties at home, the legislative tests will be satisfied.

5. A worker who is injured whilst working from home but undertaking some form of private activity, such as going for a run during a lunch break, is unlikely to establish that his or her injury arose out of, or in the course of, employment (Demasi and Comcare (Compensation) [2016] AATA 644). A worker who had logged off for the day and did not intend on returning to their work station would similarly be unlikely to satisfy the test.

6. A contentious area is where an injury arises during an interval or break, during an overall period of work from home. Section 34 of the WCRA deems an injury to arise out of, or in the course of, employment in various circumstances including a temporary absence from the place of employment during an ordinary recess, however for the section to apply the worker must have attended at the ‘place of employment’ on the day the injury was sustained. ‘Place of employment’ is defined in Schedule 6 of the WCRA to mean:

\[
\text{the premises, works, plant, or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed, and in, on, at, or in connection with which the worker was working when the worker sustained injury.}
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7. As per Farnham v Pruden & Anor [2016] QCA 18, the mere fact that a worker does some work at home does not turn the home into a ‘place of employment’ under the WCRA. Therefore, section 34 could not apply to a work from home arrangement.

8. An injury could be found to arise out of employment if it arose during an interval or interlude during an overall period of work, such as a tea or lunch break (Hatzimanolis v ANI Corp Ltd [1992] 173 CLR 473). In Hargreaves v Telstra [2011] AATA 417, the Administrative Appeals Tribunal found that a worker who was injured descending her internal stairs leading from her workstation to go to her refrigerator was injured in the course of her employment as there was a need for an absence from her workstation. However, that decision was made under the Safety, Rehabilitation and Compensation Act 1988 which does not contain the additional ‘significant contributing factor’ requirement. ‘Interval cases’ really need to be looked at case by case, with the outcome heavily dependent upon all the facts of the particular case.


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