

What Happens When an Employee is Injured Whilst Working at Home?

Miriam Browne and Corinna Cook | March 2020 | Employers Liability

This TurkAlert looks at how NSW workers compensation legislation applies in such situations.

What does the law say?

Workers compensation is not payable unless:

1. The worker has sustained a personal injury **arising out of or in the course of employment** (Section 4 of the *Workers Compensation Act 1987*);

AND

2. Employment is a **substantial contributing factor** to the injury (Section 9A) or in the case of a disease, the main contributing factor to the development of the disease, or to an aggravation of an existing disease (Section 4(b)).

What is “arising out of employment”?

The test for “arising out of employment” is: **did the particular job in which the worker was employed cause or contribute to the injury?** (*Nunan v Cockatoo Docks & Engineering Co Pty Ltd* (1941) 41 SR (NSW) 119).

What is “arising in the course of employment”?

The words “in the course of employment” were considered by the *High Court in Comcare v PVYW* [2013] HCA 41. This case indicates that the tests to be applied are:

1. If the worker is injured by an **activity**: Did the employer induce or encourage the activity?
2. If the worker was injured by reference to a **place**: Did the employer induce or encourage the worker to be there?

What constitutes a “substantial contributing factor”?

If the worker proves that the injury “arose out of employment”, the worker will likely establish substantial contributing factor.

However, a worker will have more difficulty proving substantial contributing factor if the worker can only prove “in the course of employment”

This is best explained by examples, set out below.

Real life examples of what is, and what is not, compensable

Crawford v American Express Australia Ltd (2012)NSWWCC367

- The worker worked from home full-time. She had a log-on time. The worker made an iced coffee in her kitchen before starting work. She then rushed downstairs from her kitchen so as to not miss her log-on time. In doing so, she fell and injured herself.
- OUTCOME: Her injury was compensable. Crucial to this finding was the fact that the worker was rushing to log on, meaning that her employment was a substantial contributing factor to her fall.

Vaughan v Symbion Laverty Pathology WCC 1443/2011

- The worker answered sick leave calls from other staff members at her house between 6:30am and 7:30am, and then would leave to attend her normal workplace.
- The worker received a call at 6:50am to attend her normal workplace by 7:30am. She rushed down the stairs from her home office carrying her mobile phone, and fell.
- OUTCOME: It was held that the worker was in course of employment and her employment was a substantial

contributing factor to her injury. She was still on her 'sick leave call shift' when injured, had mobile with her and had to rush.

Van Wessem v Entertainment Outlet P/L (2011) NSWCA 214

- The worker was a mortgage broker. He was 'on call' to respond to enquiries via phone and email 9am-5pm Saturdays and Sundays. The worker went for a bike ride on a Sunday and took his phone. He often took work calls during breaks on his ride. During the course of his ride he lost control of his bike and tragically died.
- **OUTCOME:** The worker was in the course of his employment, however his employment was not a substantial contributing factor to his accident. This is because the nature of his work 'played no role in the accident. It did not require him to go bike riding.

Palucci v Best Excavation & Drilling Pty Ltd (2011) NSWSC4010/11

- The worker was a working director of a company. His daughter lived at home and did the accounts. One evening he spoke about the company's accounts with his daughter, and then had an unrelated conversation for 45 minutes. During this time the worker drank alcohol. The worker then left the house to obtain a work diary from his ute for his daughter. He fell whilst on his verandah. At the time, his blood alcohol level was 0.22
- **OUTCOME:** It was held that the worker was in the course of employment and employment was a substantial contributing factor – retrieving his work diary was a work activity. In this regard, it was important that it was found that his blood alcohol level not causative of the fall.

Conclusion

The practical effect of the above cases is that where a worker can show that the nature or requirements of their work played a substantial role in an injury that occurred whilst they were either at home or at any other location where they worked remotely, then their injury will be compensable.

Accordingly, employers need to, as far as practicable, encourage workers to create a safe work environment whilst working remotely. Where workers are working from their

home, this includes (but is not limited to) ensuring as much as possible that workers have an ergonomically appropriate workspace, in an area which is free of trip hazards with adequate lighting. Workers should also ensure that they have adequate power outlets / power boards to safely run their computer and other necessary equipment without overloading.

Employers also need to encourage workers to take extra care for their personal safety whilst at home, including not rushing or running, and to keep a proper lookout for any general hazards just as they would in a more formal work environment.

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