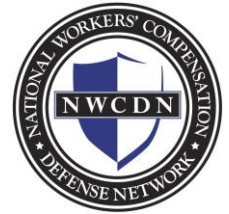


## Covid-19

### Employees Working Remotely/Telecommuting: Compensability Issues

As of 05.20.2020



State	Contact	Resource
Alabama	Michael I. Fish <a href="mailto:mfish@fishnelson.com">mfish@fishnelson.com</a>	Alabama does not yet have a high court opinion concerning telecommuters as workers' compensation claimants. It is likely that an employee will be able to recover for an accident at home if the employee can establish (1) that he/she was working at home pursuant to a telecommuting agreement, (2) that the accident occurred in the course of the employment (i.e. in the designated work office during designated work hours), and (3) that the accident arose out of the employment (i.e. that the injury was the result of increased risk presented by the employment). Issues regarding reasonable breaks and the Personal Comfort Doctrine will need to be addressed on a case by case basis. While it is impossible to completely eliminate the risk of accidents in the home, it is possible to manage it by implementing a thorough telecommuter agreement that emphasizes that working from home is a privilege and not a right. Such a policy should address eligibility, establish defined work hours, identify a specific work area within the employee's home, include a list of office equipment, outline safety practices such as eliminating tripping and lifting hazards; and outline the accident reporting procedures. A detailed policy may help reduce the likelihood of a work related injury occurring at home. In the event that an accident does occur, the telecommuter agreement will become an important evidentiary exhibit for the judge to consider when determining the existence of a telecommuting arrangement and causation.
Alaska	Michelle Meshke <a href="mailto:mmeshke@akwcdefense.com">mmeshke@akwcdefense.com</a>	If someone is injured while working at home it would be compensable if it occurs in the course and scope of employment. I don't think a COVID exposure at home would be likely to be compensable (i.e. by a family member).
California	Ericka Dunn <a href="mailto:edunn@hannabrophy.com">edunn@hannabrophy.com</a>	This is evolving. No definitive word yet. The analysis will likely consider whether working remote was a choice v a requirement. Otherwise, I anticipate the query will be the same regardless of Covid 19, specifically, the home is considered the office for purposes of WC claim-if it happened during work hours, while performing work duties, then its compensable This is somewhat of a simplistic analysis, and there will be some grey, but generally speaking, the location would be irrelevant.
Colorado	Kim Starr <a href="mailto:kim.starr@ritsema-lyon.com">kim.starr@ritsema-lyon.com</a>	Working from home is evaluated the same as in the office for Colorado employees. The question is going to be whether the injury occurred in the course and scope of employment and arises out of the job duties.

Delaware	Maria Paris Newill <a href="mailto:mnewill@hfdel.com">mnewill@hfdel.com</a>	It is still the claimant's burden to prove to establish that their injury was sustained by accident arising out of and in the course of the employment while the employee is engaged in, on or about the premises where the employee's services are being performed, which are occupied by, or under the control of, the employer (the employee's presence being required by the nature of the employee's employment) or while the employee is engaged elsewhere in or about the employer's business where the employee's services require the employee's presence as a part of such service at the time of the injury...(see 19 Del. C. section 2301)
Florida	Robert Grace, Jr. <a href="mailto:rgrace@bbdglaw.com">rgrace@bbdglaw.com</a>	There was a recent case in 2019 addressing telecommuting. Interestingly enough it involved an adjuster. See: <u>Sedgwick CMS v. Valcourt-Williams</u> , 2019 Fla. App Lexis 5350 (Fla. 1 <sup>st</sup> DCA 2019) In this case the adjuster while working from home tripped over her dog while reaching to obtain a cup of cappuccino and suffered injury. A workers' compensation claim was filed and Sedgwick defended based on the claimant's injuries not arising out of employment. The judge of compensation claims awarded benefits and an appeal was taken. The First DCA reversed the award stating that "regardless of the type of injury, compensability always turns on whether the employment led to the risk—whether there was occupational causation." The court found no such risk and instead found that the claimant's "non-employment" life caused the accident.
Hawaii	Kenneth Goya <a href="mailto:kenneth.goya@hawadvocate.com">kenneth.goya@hawadvocate.com</a>	If a claim is made by an employee for an injury working from home, Hawaii law will likely find the injury to be compensable if there is any relationship between employment and the claimed injury. Stated another way, there is no statutory exception to compensability just because an employee is telecommuting.
Illinois	Robert Maciorowski <a href="mailto:rmaciorowski@msulaw.com">rmaciorowski@msulaw.com</a>	The rule is the same in Illinois for injuries that occur at the workplace or to employees working remotely/telecommuting. The employee has to show that the injury arose out of and in the course of employment.
Indiana	Diana Wan <a href="mailto:dlwann@wmlaw.com">dlwann@wmlaw.com</a>	Indiana has the same requirements for telecommuting as for any other worker's compensation claim. The employee would have to prove the injury arose out of and in the course of the employment. There has not been time to allow case law to develop which may change that analysis in the current COVID 19 remote work context. The Indiana legislature is not inclined to re-write statutes for any short-term issues.
Iowa	Steven Durick <a href="mailto:steved@peddicord.law">steved@peddicord.law</a>	The injury would be treated as compensable. COVID-19 has not impacted this analysis.
Kansas	Kim Martens <a href="mailto:Kim@martensworkcomplaw.com">Kim@martensworkcomplaw.com</a>	The Kansas Workers Compensation Act does not specifically address telecommuter/home based worker compensability issues and there are not currently any higher appellate court opinions in Kansas directly answering the telecommuter injury compensability issue. There is an older administrative agency Workers Compensation Appeals Board decision involving an over-the-road trucker that was employed by a transport company and claimed work injury while allegedly working at his

		<p>home property. Clifford Johnson injured his right shoulder when he fell from his semi-tractor while it was parked on his driveway at home. At the time, he was packing clean clothes and clean bedding in preparation of traveling to Hillsboro, Kansas, to pick of a load of honey. The Kansas Workers Compensation Appeals Board denied his work injury claim finding that the injury at home <i>did not arise in the course of his employment</i> because his home should not be construed as the employer's work premises at the time of the accident. Furthermore, the accidental injury <i>did not arise out of his employment</i> because his activities at the time of injury were of a personal nature and did not arise out of the nature, conditions, obligations or incidents of his employment. <i>Johnson v. Skillet &amp; Sons, Inc.</i>, Docket No. 208,642 (WCAB June 1996). In spite of this old Appeals Board decision, if the employee can prove that the home injury occurred arising out of and in the course of employment and that the home premises where the injury occurred was designated by the employer as the employer's work premises, compensability is possible under the Kansas Workers Compensation Act.</p>
Kentucky	Doug Jones <a href="mailto:djones@joneshowardlaw.com">djones@joneshowardlaw.com</a>	<p>Kentucky has no published cases or any statutory provisions specifically addressing working remotely/telecommuting. So, those claims would be handled the same as any other claim. If the claimant has an injury during the "course and scope of employment," albeit remote, that claim would be compensable. Any such claim would require a detailed factual analysis to determine compensability.</p>
Louisiana	Sidney W. Degan, III <a href="mailto:sdegan@degan.com">sdegan@degan.com</a>	<p>To recover compensation benefits under the Louisiana Workers' Compensation Act, a claimant must suffer a personal injury by accident arising out of and in the course of employment. Thus, a claimant in a workers' compensation case must prove: 1) an accident; 2) an injury; and 3) a causal connection between the two. Assuming the claimant can meet this initial burden, compensation benefits are payable for disability and all necessary medical and surgical treatment, including reimbursement of medical expenses according to the maximum allowed reimbursement schedule for all necessary chiropractic treatment, prescription drugs, durable medical equipment and/or mileage expenses.</p> <p>While we expect to see a rise in work injuries occurring at home during the COVID-19 pandemic, the analysis for compensability remains the same. The employee should still have to meet his/her burden and show the accident arose out of and in the course of employment. These claims will be fact-intensive and should be evaluated on a case-by-case basis. Injuries occurring at home will likely be unwitnessed or witnessed only by the employee's immediate family members. We do expect the liberal OWC will give deference to the employee's testimony regarding how the injury occurred absent evidence to rebut the employee's allegations.</p>
Maine	Elizabeth Smith	<p>Maine would treat an injury that arises out of and in the course</p>

	<a href="mailto:esmith@verrilldana.com">esmith@verrilldana.com</a>	of employment the same regardless of where the injury occurs, so if the employee can meet his or her burden of proof on the issue of arising out of and in the course of employment from home, the injury would likely be found compensable. See <i>Estate of Sullwold v. Salvation Army</i> , 2015 WL 268051, 108 A.3 <sup>rd</sup> 1265. I don't see any real impact on that generally liberal rule due to COVID-19.
Massachusetts	Thomas O'Reilly <a href="mailto:TReilly@cmopc.com">TReilly@cmopc.com</a>	An injury at home is compensable if it was an incident of the employment. See <i>Butterworth v. Town of Winchester</i> , 22 Mass. Workers' Comp. Rep. 225 (2008), a copy of which is attached. I am not aware of anything about the COVID-19 pandemic that would change the analysis followed by the board in the past regarding injuries while working from home..
Michigan	James Ranta <a href="mailto:James.Ranta@crh-law.com">James.Ranta@crh-law.com</a>	<p>In order for a workers' compensation claim to be compensable in Michigan, it must occur in the course of and arising out of one's employment. This concept applies to individuals working remotely/telecommuting just as it would if he or she were working on a company's premises. There haven't been any specific changes in the law since the start of the COVID-19 pandemic, other than the fact that many more individuals are working at home than ever before.</p> <p>It is far too early in the process for any data to have developed regarding whether injuries are occurring more frequently at home versus the workplace. The analysis is largely the same, although the definition of when a person is "in the course of" his or her employment could potentially be more expansive for a remote employee. Usually, the rule in Michigan is that an individual is considered "in the course of" employment when he or she is on the premises during a reasonable time before or after work hours. At home, that person could be "on premises" for a longer period of time if he or she is living and working in the same location. There is almost certainly going to be litigation arising out of the pandemic down the road that may further clarify this definition for remote employees. Also, please always keep in mind that the injury must also "arise out of" employment (a wholly separate and distinct consideration), and occur during work activities, not during social/recreational pursuits.</p>
Minnesota	Parker T. Olson <a href="mailto:Parker.Olson@cwk-law.com">Parker.Olson@cwk-law.com</a>	In Minnesota, an injury sustained while working from home during the actual performance of a work activity is compensable. However, there must be a connection between the demands of the employment and the injury itself. For example, if someone was simply doing household chores not related to their employment while an injury occurred, it would likely not be compensable. However, in Minnesota, there is also a "personal comfort" doctrine, which has been extended to working from home. Under this doctrine, injuries that occur during working time while the employee is attending to personal needs or comforts are within the course of employment. For example, this includes getting a drink of water, using the restroom, and other brief break activities to relieve personal discomfort. It was also held that the personal

		<p>comfort doctrine could also extend to trips to a local coffee shop frequented during a normal workday. These will be very fact-specific situations.</p>
Missouri	<p>Katherine E. Anderson  <a href="mailto:kanderson@simongrouppc.com">kanderson@simongrouppc.com</a></p>	<p>In Missouri, an individual working remotely at home can sustain a work-related injury. For that injury to be compensable it has to arise out of and in the course of the employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. RSMo §287.020.3(1)</p> <p>An injury arises out of and in the course of the employment only if it is reasonably apparent, upon the consideration of all the circumstances, that the accident is the prevailing factor in causing the injury and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life. RSMo §287.020.3(2)</p> <p>If this criteria is met than the injury will be deemed compensable.</p>
New Hampshire	<p>Kevin Stuart  <a href="mailto:Kevin@Bernard-Merrill.com">Kevin@Bernard-Merrill.com</a></p>	<p>The compensability analysis is the same whether an employee works at home or at job site.</p>
New Jersey	<p>Nicholas Dibble  <a href="mailto:ndibble@capehart.com">ndibble@capehart.com</a></p>	<p>The starting point on the issue of compensability for employees who work from home is N.J.S.A. 34:15-36, which provides that employment commences when one arrives at the employer's place of employment. However, the statute continues that when an employee is required by the employer to be away from the employer's place of employment, that employee is in the course of employment when engaged in the direct performance of duties assigned or directed by the employer. With this in mind, <i>one can safely state that under New Jersey law, injuries that occur in the course of working at home are on equal footing with injuries that occur in the course of working in the traditional office.</i> However, one important exception to note is the particularly strong premises rule here in New Jersey. This rule provides that if an employee suffers an injury in a part of the home where he or she does not normally work, the claim may not be compensable. Accordingly, it is important that the employer designate whether there are specific hours and locations in the home where the employee is to work and whether the employee is responsible to repair equipment such as printers in the home. Additionally, employers should make clear that all the normal reporting requirements must be followed when an injury occurs to a telecommuting employee arising out of the employment. Same day notice is recommended so that the employer can contact its third party administrator or carrier for investigation and, if appropriate, direction of care. While we</p>

		do anticipate many more employees who will work from home in the coming months, there has yet to be any changes to the rules governing compensability for telecommuting as a result of COVID-19.
New York	Susan Duffy <a href="mailto:sduffy@hwcomp.com">sduffy@hwcomp.com</a>	New York has long recognized the home as a potential worksite where the work-at-home is performed with the employer's knowledge, approval or for the employer's benefit. The claimant must still establish that the accident or occupational disease arose out of and in the course of employment. The WCB tends to apply a slightly stricter standard in assessing whether an accident arose "out of" the employment for a remote worker, recognizing that the employer has little control over the employee's movements.
North Carolina	Bruce Hamilton <a href="mailto:BHamilton@teaguecampbell.com">BHamilton@teaguecampbell.com</a>	In North Carolina, there are no special rules regarding the compensability analysis of an employee working remotely or telecommuting. Those cases are analyzed exactly like every other case. The plaintiff has to prove an injury by accident arising out of and in the course of their employment. The issues that come up with these cases have to do with problems of proof. In other words, there is virtually no way to independently verify what the claimant says happened to cause the injury or when the injury occurred. We don't have any video in the employee's home, we can't conduct an immediate investigation of the area where the accident supposedly took place, we don't have any coworker witnesses etc.... The other unique problem with telecommuting cases is when does the workday start and end? In other words, when are they in the course of their employment. We recommend that employers give their telecommuting employees specific work hours if at all possible. In fact, if they can have the employees clock in and clock out of the work, that is helpful in establishing their actual hours of employment.
Ohio	Donald Lampert <a href="mailto:DLampert@Calfee.com">DLampert@Calfee.com</a>	Nothing new in Ohio re telecommuting...Have made several presentations over the last few years under the title: "Will Telecommuting Destroy the Going and Coming Rule?" My Answer is "No" because various states decode these cases based on Work Comp principles as if the home were the workplace Pa, NJ, Tenn...An interesting but minor recent trend is a telecommuting female who trips over her own dog in her garage get comp.
Oklahoma	John Valentine <a href="mailto:john@lottvalentine.com">john@lottvalentine.com</a>	In Oklahoma, the analysis to determine if a work injury is compensable, remains the same for someone working from the office or telecommuting. For a claim to be compensable, the claimant has to satisfy a two-prong test. The first prong is that the injury arise out of the employment and the second prong is the injury occurred in the course and scope of employment. Any telecommuting claims would be very fact specific. The claimant would have satisfy the two-prong criteria in order for a claim to be found compensable. There is nothing about the current Covid-19 pandemic that has changed this analysis. The only change is that we may see a few

		telecommuting claims since more people are working from home. Currently, these type of claims are extremely rare.
Oregon	Matthew F. Denley <a href="mailto:MFD@cumminsgoodman.com">MFD@cumminsgoodman.com</a>	In Oregon, Worker's working remotely are subject to the same AOE/COE requirements of establishing compensability, regardless of covid-19/pandemic issues.
Pennsylvania	Kevin Connors <a href="mailto:kconnors@connorsodell.com">kconnors@connorsodell.com</a>	<p>In Pa., telecommuting injuries have been recognized for years, obviously subject to almost certain litigation to prove that the alleged injury actually occurred in the course and scope of employment, which will depend not only on job type, but the alleged occurrence.</p> <p>A Covid-19 claim would require proof that the exposure and infection were work-related, easy to prove with a visiting nurse, probably difficult to prove for someone working remotely from home on a full time basis, with no requirement for working outside the home, as transmission and exposure issues would cloud compensability.</p> <p>I do not believe that Covid changes the analysis of this type of claim as to compensability.</p>
Rhode Island	Linda Oliveira <a href="mailto:LOliveira@cmopc.com">LOliveira@cmopc.com</a>	Rhode Island treats individuals who work from home in the same manner as if that person were sitting in their office. The problems arise where the employee is injured when, for example, in the middle of the day the employee is injured as they run from their laundry room to answer the phone for a work call. In that circumstance, the Rhode Island Workers Compensation Court would award benefits to the employee. They have not made a determination as to compensability where an employee while on the clock trips over the family dog (or any other non-work related item) and receives an injury.
South Carolina	Nick Haigler <a href="mailto:nhaigler@robinsongray.com">nhaigler@robinsongray.com</a>	The same compensability elements apply to telecommuting that apply to general alleged work injuries, and nothing has changed statutorily on this as of yet either. However, we have seen such injuries become more frequent of the past year or so. We also just authored a blog on this issue, which is here: <a href="https://robinsongray.com/covid-19-telecommuting-and-workers-comp-claims-how-can-employers-minimize-risks/">https://robinsongray.com/covid-19-telecommuting-and-workers-comp-claims-how-can-employers-minimize-risks/</a> .
South Dakota	Laura K. Hensley <a href="mailto:lkensley@boycelaw.com">lkensley@boycelaw.com</a>	SD's analysis for the compensability of a WC injury by an employee who is working remotely/telecommuting is the same as it would be if they were working at the employer's location. SD still undergoes the analysis of determining if the work injury arose out of and in the course of the employee's employment activities and if they work injury is a major contributing cause of the employee's condition and need for treatment. We have found that the incidence of work injuries from injuries at home due to non-ergonomically friendly workspaces has increased, but our analysis remains the same. Frankly, I think both employers and insurers are more likely to pick up some claims they may have otherwise not picked up due to the issues surrounding COVID and my clients feel like they just need to "get through this" and then

		reassess. I disagree with that thought process because I think that they are buying problems they maybe should not be, but that is what we have found.
Tennessee	Fred Baker <a href="mailto:fbaker@wimberlylawson.com">fbaker@wimberlylawson.com</a>	In <i>Wait v. Travelers Indemnity Company of Illinois</i> , the Tennessee Supreme Court found that an injury sustained by an employee working from home did occur in the course and scope of her employment. So assuming the other elements of compensability are established, injuries sustained while an employee is telecommuting or working remotely can be compensable under the Tennessee Workers' Compensation Law. No change to that doctrine has been made as a result of COVID-19.
Texas	James Loughlin <a href="mailto:jloughlin@slsaustin.com">jloughlin@slsaustin.com</a>  Jane Stone <a href="mailto:jstone@slsaustin.com">jstone@slsaustin.com</a>	<p>The legal standards for compensability are the same whether the injury is alleged to have occurred on the employer's premises or at the employee's home. An injury is compensable if it "arises out of and in the course and scope of employment." This requirement has two elements. First, the injury must "relate to or originate in ... the employer's business." Second, the injury must "occur in the furtherance of the employer's business."</p> <p>Facts relevant to whether an injury at home is in the course and scope of employment include whether the employee had permission to work from home or conversely was specifically prohibited from doing so. If an employer has restrictions on working from home, the question is whether those restrictions merely relate to the manner of work or if they limit the scope of employment. It has been held that where a state statute prohibited state employees from working at home, the statute limited the scope of employment.</p> <p>Because of the COVID-19 pandemic, employers have not only given employees express permission to work from home but have required them to do so because of state and local stay-at-home orders. Therefore, one of the main considerations in analyzing the compensability of an injury at home prior to the pandemic, whether the employee was prohibited from working at home, is not likely to be a consideration in most cases for the foreseeable future.</p> <p>Employers may attempt to limit their exposure for injuries at home with strict work-from-home policies that require a separate work space or work times. Employees are likely to argue that these types of restrictions merely go to the manner of work rather than limiting the scope of employment. Therefore, a violation of such a policy does not prevent the injury from being compensable. This also assumes the carrier can prove a violation of the employer's work-from-policy, which may be difficult.</p> <p>Carriers should also focus on whether the injury involved a hazard inherent in the employment or an instrumentality of the employer. If the employee trips and falls while walking across</p>



		their living room, it may be argued that the injury does not involve an instrumentality of the employer and therefore, it does not arise out of employment. The Texas Supreme Court has stated, "Injuries that involve an employer's instrumentality are more likely to arise out of employment than to arise by chance."
Utah	Ford Scalley <a href="mailto:bud@scalleyreading.net">bud@scalleyreading.net</a>	In Utah workers who sustain injuries while working at home are entitled to workers comp benefits as long as the injury arises out of and in the course of employment. The Covid-19 pandemic does not change the analysis other than it likely causes more workers to work from their home resulting in much greater exposure to liability from offsite work related accidents.
Vermont	Keith J. Kasper <a href="mailto:kjk@mc-fitz.com">kjk@mc-fitz.com</a>	Nothing has changed with telecommuting injuries which are compensable if claimant can show the injury arose out of and during the course of employment.
Virginia	Lynn Fitzpatrick <a href="mailto:lfitzpatrick@fandpnet.com">lfitzpatrick@fandpnet.com</a>	If someone works from home, there still must be a <b>risk</b> of the employment to find a claim compensable. Nothing about Covid-19 changes that analysis so far.
Washington	Andrew H. Graham <a href="mailto:AHG@cumminsgoodman.com">AHG@cumminsgoodman.com</a>	Remote/telecommuting workers are entitled to workers' compensation benefits for injuries that occur in the course of employment ( <i>i.e.</i> , when acting at the employer's direction or in the furtherance of the employer's business) just like any other employee. Although minor fact-specific differences may exist, there is no significant difference in workers' compensation coverage for employees working at an employer-controlled jobsite versus employees telecommuting or "working from home." Nothing about the COVID-19 pandemic has changed the analysis, to date.
West Virginia	H. Dill Battle III <a href="mailto:hdbattle@spilmanlaw.com">hdbattle@spilmanlaw.com</a>	In West Virginia, there is no specific statutory or regulatory definition for telecommuting or working remotely. The question is whether the employee was injured in the course of and resulting from employment. Older cases dealing with traveling employees would be relevant for the analysis in circumstances where an employee is working from home due to the COVID-19 pandemic. If the employee is performing his or her job duties in a telecommuting setting and is injured, the analysis for compensability is whether the injury occurred in the course of and resulting from the employment.

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