

## WCB IMPLICATIONS OF TELECOMMUTING

A good employer has a natural and genuine interest in the safety and wellbeing of its employees, as well as an investment in the skills and knowledge of its employees. An employer will also have a financial stake in the safety of its employees, as the employer's Alberta Workers' Compensation Board ("WCB") assessment is directly affected by the occurrence of compensable injuries in the workplace. Accordingly, an employer has a financial interest in managing its employees' exposure to workplace injuries. The workplace is not as easy to define when work is performed at home rather than in a traditional office. This article is intended to help employers to understand the dynamics of WCB coverage in the telecommuting workplace.

The Alberta workers' compensation program provides compensation to a worker injured in an accident that *"arises out of and occurs in the course of employment"*. As part of its mandate, the WCB has developed a set of Policies to guide its officials, employers and employees as to what circumstances fall within the ambit of work. These policies broaden the definition of *"course of employment"* to include circumstances that do not fit in the traditional model of employment. The governing principles are these: *"An accident arises out of employment when it is caused by some employment hazard. ... An accident occurs in the course of employment when it happens at a time and place consistent with the obligations and expectations of employment."* Examples of workplace situations that are considered to be in the course of employment include injuries that occur while performing an errand for the employer outside of regular work hours, or while participating in a sporting event that is part of the job function, such as a promotional event.

With the development of the virtual office and telecommuting, it is inevitable that workers' compensation will develop in parallel. The fact that a worker does not normally work in a conventional office environment does not mean that the worker does not enjoy workers' compensation benefits or that the employer no longer has responsibility to ensure a safe workplace.

There are few reported administrative or court decisions that directly consider the telecommuting scenario. However, recent decisions by the WCB Appeals Commission and by the Courts indicate a trend to interpret WCB policies generously to encompass situations that would not, on their face, appear to be work-related injuries. This trend is likely to have a significant impact in the context of telecommuting, as illustrated by the examples below:

- The WCB does not consider routine daily commuting to be in the course of employment. However, travel to off-site meetings or on business is usually considered WCB-covered work, and the Policies specifically state *"This is the case whether the worker leaves from the worksite or from home (for example to attend an early morning offsite meeting)"*. A recent decision of the Alberta Court of Appeal suggests that WCB coverage in relating to commuting can be interpreted very broadly indeed. In that case, an employee who was commuting home from work fell asleep at the wheel and died in a single vehicle crash. He had given a co-worker a ride home. The crash occurred after the co-worker had been dropped off. The co-worker had in his possession a small sample that he was carrying at the request of the employer. The fatally injured employee did not know that his co-worker had the work-related materials with him. It was ruled that the employee was in the course of employment at the time of the fatal crash by virtue of the unknown materials in the possession of his former passenger.

- Psychological injuries, most commonly stress, are subject to WCB coverage as a workplace injury. While telecommuting may provide the employee with relief from the stresses of the conventional workplace, it also isolates the employee from his co-workers and supervisors, with the risk that the warning signs of stress may go unnoticed by the employer. Similarly, early warning signs of a heart condition that is caused or aggravated by psychological stress may go unnoticed. Chronic stress may lead to long-term disability that can translate into significant increases in WCB assessments.
- Carpal tunnel syndrome, a condition often associated with repetitive keyboarding tasks, is a type of injury to which WCB coverage applies. Similarly, back pain associated with poor ergonomics is a type of injury to which WCB coverage applies. These types of injuries can be prevented with an ergonomically correct work station. However, with telecommuting, the employer may have no opportunity to create an ergonomically correct work station or to monitor or manage how the employee works. In the result, the employee may be creating a risk without any opportunity for the employer to intervene and manage the work environment. These chronic injuries may lead to long-term disability that can translate into significant increases in WCB assessments.

As the workplace changes, the legal responsibilities of the employer and the role and repercussions of workers' compensation will evolve. However, the responsibility of an employer for the wellbeing of its employees remains constant, regardless of how the workplace changes. Similarly, the financial impacts of workplace injuries will land, indirectly, upon the employer. A prudent employer will take steps to reduce the risk of injury in the virtual office.

Philip Carson is a lawyer at Miller Thomson LLP. His practice is focused on commercial litigation, including employment matters. He has been involved in several appeals of workers' compensation decisions.