

## Telecommuting and Workers Compensation in the Age of COVID-19

California is operating under a statewide shelter-in-place order to limit the spread of the COVID-19 virus and workplaces around the state that are able have rapidly shifted operations to have employees work remotely. The shift is intended to keep workers and the public safe, but it does expose employers to liability for accidents and injuries that occur outside of the normal workplace.

State officials note that workers compensation policies cover injuries arising out of and in the course of employment (AOE/COE) and are not site-dependent.

“There is no situs requirement, so long as the injury results from an activity contemplated by the employment, even though it occurs in a location not directly owned or controlled by the employer,” CDI officials told Workers’ Comp Executive. Therefore, they say employers that have shifted employees to remote worksites do not have to update their workers’ comp policies to list the addresses where the employees are working.

The workers’ comp industry has not escaped the impact of the shelter-in-place orders and is adapting to the current realities. The governor’s order exempts employers providing essential services from the shutdown order, and this includes insurance services. Still, many are working to limit the number of employees that come into the usual worksite. The State Compensation Insurance Fund (SCIF) and the Workers Compensation Insurance Rating Bureau are just two organizations in the industry that are altering their operations to keep critical elements functioning via a dispersed workforce and/or are delaying processes that are deemed too risky at this point in time.

“WCIRB is complying with the shelter-in-place order. All staff are working remotely from their homes and the Oakland office is closed,” says WCIRB president and CEO Bill Mudge. “The good news is that we are running our full operations remotely as we have been preparing our disaster and business continuity readiness for unforeseen events – admittedly not a pandemic – for the last couple of years and tested remote working so we knew we could do it, including our Call Center, on a distributed basis.”

Mudge notes that field operations are being curtailed in light of the exposure risk. “Employers do not wish them to go to their workplaces for inspections, and our people are concerned about that as well – so we have a timeout for 30 to 60 days on inspections, depending on how long the COVID-19 issues are present,” he says.

Jonathon Tudor at State Fund says it was already moving the portions of its workforce that could work remotely to home worksites when Gov. Newsom's shelter-in-place order came down. He notes that some employees who were impacted by the school closures were some of the first to transition to working from home.

### Is It Covered?

While employees claiming injury at a remote worksite must still show that the injury arose out of the employment and during the course of employment (AOE/COE), experts note that existing case law dating back to the 1980's support findings of compensability in these types of cases.

The Fourth District Court of Appeal in early 1980 upheld a workers' compensation Appeals Board decision that awarded benefits to a college professor that injured his hip when he slipped on his papers and fell while working from home.

State Fund was the carrier on the claims and challenged the award to the Fourth District. It argued that extending coverage to the home worksite would create a coverage exception that would benefit professional workers but not blue-collar workers. The court rejected this reasoning.

"It is not manifestly unfair to cover both classes of employees during actual job performance. It hardly matters whether that performance occurs at factory or at home. The only possible unfairness would be to extend coverage to slips and falls at home occurring other than during actual work performance," the Fourth District wrote in *State Fund v. WCAB/Kinnon*. "The problem is not really discrimination between the two classes of workers, both of whom should be covered while working, but rather is an unfairness to the employer because of his lack of control over safety conditions in the home. The law does not, however, expressly preclude coverage in that situation, if the injury arises out of employment."

State Fund's Tudor says the carrier is preparing for claims filed by employees who were injured while working remotely as more companies implement remote work, but says it does not expect any wholesale changes to result. As with other claims, there may need to be an investigation, and he says if it is needed, the carrier could inspect the employee's home but maintains that something like that would be fairly unusual.

See the following [Telecommuting Policy](#)

### Telecommuting Policy

Kevin Thompson at our sister publication *Cal-OSHA Reporter* has been covering the safety and health issues associated with telecommuting and here are the tips he has gathered for creating a telecommuting policy:

- **Expectations:** Employees' performance in a telecommute situation should be measured and monitored according to established performance measures, or key performance indicators. "Work should be prioritized by identifying those results that are most crucial and those that can be deferred," according to HR Services, Inc., a Sandy, Utah, human resources firm. A sample policy should state, "All employees are to maintain the same work schedule, days, and work hours, making sure you are available and accessible to your customers, team members, and supervisor during regular business days and hours," the company says.
- **Safety:** At-home work areas should be set up and located in an area that is free of distractions, such as other family members, guests, or friends. Telecommuters also are responsible for abiding by all applicable safety and health regulations. Remote workspaces are considered an extension of the company workplace, and the designated space should be maintained in a safe condition and free from hazards. Ergonomics is probably the main hazard in at-home workplaces. Employees should be educated regarding proper ergonomics.
- **Cal/OSHA:** "Cal/OSHA does not conduct inspections of employees' home offices and does not hold employers liable for employees' home offices," according to Department of Industrial Relations spokesman Frank Polizzi. "Employers are not expected to inspect employees' home offices, but employers can establish and implement a telework policy that covers health and safety requirements." Polizzi adds that the agency will conduct inspections of home-based manufacturing operations based on complaints or referrals of a violation of a standard that threatens physical harm or imminent danger. The same goes for fatalities in such settings, of course. Overall, employers are responsible for in-home worksites for hazards caused by materials, equipment, or work processes which the employer provides. ▲