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# Not returning to the office?

## Tips to limit work-from-home injuries and employer liability



By Chris West

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Many employers with workforces primarily working from home during the pandemic are now deciding whether to bring employees back to the office or to make the remote workplace a permanent arrangement. For those who wish to have employees work at home exclusively or on a part-time basis, health and safety considerations should be top of mind.

In Canada, federal and provincial legislation provide the legal framework for health and safety standards at the workplace. The extent to which this legislation applies to an employee working from home is an important consideration for an employer when deciding how to best develop, apply, and maintain its health and safety workplace policies and practices.

An employer may still be held liable for workplace injuries suffered while an employee is working from home. For example, recently in Quebec, an Air Canada employee working from her home office slipped while walking down the stairs during her lunch break. The Quebec Administrative Labour Tribunal held that the employee was eligible for worker's compensation as the injury occurred in the course of work: see *Air Canada and Gentile-Patti*, 2021 QCTAT 5829.

While serious and unexpected at-home workplace injuries are rare, repetitive strain injuries are more common for individuals who perform routine tasks such as typing and sitting at a desk for long periods of time.

There are proactive measures an employer can take to minimize liability for an at-home injury, including implementing or updating its work-from-home policy and guideline materials, providing employee training, and securing applicable insurance coverage.

## **Legal framework**

In this article, we use Ontario legislation as an example. However, parallel considerations under similar legislation apply in other Canadian jurisdictions.

**Occupational Health and Safety Act (OHSA):** In Ontario, the OHSA provides the legal framework for the duties and responsibilities of employers and employees to promote and maintain health and safety standards at the workplace. However, the OHSA generally does not apply to an employee working from home. It is explicitly stated in the OHSA that it does not apply to work performed “in or about a private residence.”

An at-home injury claim may be difficult to assess – did the injury arise in the course of employment or some other way? However, there is still potential exposure to the employer if it can be shown that the injury is connected to the performance of the employee’s work. If so, the injury claim will be evaluated in the same manner as an injury that occurred onsite.

Under the WSIA, an employer could also be required to provide modified duties to an injured employee, which might include assigning alternative duties that do not risk an aggravation of the workplace injury.

Ontario Human Rights Code: The code protects an employee against discrimination on the basis of protected grounds such as sex, religion, family status, and disability. This protection applies to an employee working from home.

From a workplace injury perspective, an employer must provide reasonable accommodation to an employee with a disability, to the point of undue hardship. For example, an employer could be expected to provide an ergonomic chair or speciality keyboard, or routine breaks and opportunities to enable an employee to get up from their desk to promote routine movement.

## **Best practices**

If an employer intends to allow employees to work from home, whether permanently or intermittently, it is important to prepare or update the work-from-home policy to include guidelines, expectations and recommendations as to how to avoid workplace injury. An employer should also review its written accident reporting protocols to ensure it collects important information such as the type of injury, its severity, and how it occurred.

For Ontario organizations, the implementation or review of work-from-home policies provides an opportunity to ensure compliance with the province's Employment Standards Act, 2000 (ESA), in particular the hours-of-work provisions and the recently passed disconnecting-from-work policy requirement.

The ESA requires an employer with 25 or more employees – including those working from home – to have a written policy on “disconnecting from work”, meaning to not engage in work-related communications such as emails, telephone calls, video calls or the sending or reviewing of other messages. The policy does not need to provide an employee the ‘right’ to disconnect from work or create any new entitlements for employees. However, an employer should ensure that it complies with the existing hours of work, vacation and public holiday provisions of the ESA, all of which provide for time away from work.

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