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www.rawle.com

Philadelphia, PA
215. 575. 4200
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New York City, NY
212. 323. 7070
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Long Island, NY
516. 294. 2001
Fax 516. 294. 2006

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856. 596. 4800
Fax 856. 596. 6164

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Fax 412. 261. 5710

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Workers' Compensation Liability and the Remote Employee

Historically, employees either drove or commuted into work five days a week. As the digital age has advanced, remote work has become a standard practice for many companies in various types of industries.

According to a report by the Bureau of Labor and Statistics published in 2010, nearly 24 percent of American workers reported doing some or all of their work from home. Due to the continued advances in technology, a 2018 study found that more than 60 percent of the world's work force works at least one day a week away from the office location and that almost 50 percent of all employees work half the week remotely. This means that almost 3.7 million employees work from home at least part time.

This trend allows employees the flexibility to avoid long commutes, spend more time with family and avoid the geographical limitations that have been minimized by technology over the last few decades. While some people work remotely only a few days each week, others work solely out of a home office. These employees, despite being at home more, are still at risk for work-related injuries. It is not uncommon for remote employees to suffer injuries within the scope of their employment duties for their employer.

The decision to employ a remote workforce can bring enormous benefits to an employer, like attracting top talent and saving on overhead expenses that usually accompany a location-dependent workforce. Increasingly, employers are seeing the value of offering remote work options to employees.

However, employing remote workers also comes with its own set of legal implications, issues and potential liability. While there are benefits both to the employees and employers for this type of work arrangement, remote workplace options must be adopted with care to avoid any legal liability by the employer. Since more companies are allowing employees to work remotely from home, there is certainly an increased potential workers' compensation risk for employers under a state's workers' compensation statute since the employer has very limited to no control over the home premises of its employee. Before an employer ships off employees to a distant home



Zachary M. Rubinich

location, it is essential for employers' to clearly understand that "an out of sight employee" is not necessarily "out of mind."

Remote working also raises many questions, including how to manage remote staffers and who is covered under the Pennsylvania Workers' Compensation Act. A major question that arises when a remote worker is hurt is whether the injury actually took place within the course and scope of employment. For workers' compensation insurance benefits to apply, the injury must arise from the job duties. There may be a sudden accident or it may be an injury that manifested itself over time. Either way, it must have occurred during work hours and from an activity related to the job.

Remote workers often have a more difficult time proving an injury was a result of the job because there is usually less evidence available in these remote work situations. An accident at a business or job site may have witnesses or be caught on security footage. Many telecommuters are home alone while they work, so there is often no one present to corroborate a sudden injury or accident.

The Commonwealth Court of Pennsylvania has addressed the issue of whether a worker is eligible for benefits under the Pennsylvania Workers' Compensation Act if the injury occurs at home. In *Verizon Pennsylvania, Inc. v. WCAB (Alston)*, 900 A.2d 440 (Pa. Cmwlth. 2006), an employee was working from home when she fell down the stairs to her home office and injured her neck. She was working from her home basement office that day and left her home office to go upstairs to the kitchen to get a drink. She fell while returning to her home office in the basement to answer a ringing telephone. She filed a Claim Petition seeking benefits under the Pennsylvania Workers' Compensation Act alleging that she was injured while furthering her employer's business interests, despite the fact that she had briefly departed from her work duties to attend to her own person comfort. The employer argued that the claimant was clearly not furthering their business interest by getting a drink and falling down her own stairs at home. In *Verizon*,

the Workers' Compensation Judge, Workers' Compensation Appeal Board and the Commonwealth Court disagreed and all found for the injured worker. The Commonwealth Court reasoned that the employee was authorized by her employer to work from home, she was actually working prior to leaving her home office to get a glass of juice and that she only deviated briefly from her work activities at the time of her injury. The Commonwealth Court focused on the term "injury arising in the course of his employment" to include all injuries sustained while the employee is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere. The Commonwealth Court determined that the home office was an approved "secondary work premise" so claimant was injured in the course and scope of her employment and benefits were awarded.

Interestingly, Pennsylvania Courts have routinely held that minor deviations from work activities which result in an injury may still qualify for benefits under the Pennsylvania Workers' Compensation Act. The Courts have found that such deviations, including going to the bathroom or getting a quick lunch, are designed to administer to the employee's personal comfort enabling him or her to perform the job more effectively. This has been referred to as the "personal comfort doctrine" in *US Airways v. WCAB (Dixon)*, 764 A.2d 635 (Pa. Cmwlth. 2000).

Companies must ensure to establish clear telecommuting policy, review it with employees so they understand it's serious and have them sign an acknowledgment of receipt document. A telecommuting policy outlines the obligations of both parties and lets each know what is required and what is expected. A sound telecommuting policy will include considerations such as: 1) work hours; 2) equipment used; 3) time management; 4) reporting or milestones; 5) designated work area and 6) proof of presence in the work area. An employer can attempt to enact check-ins, geo-tracking, equipment tracking or other milestone reporting that proves where your employee is working. If they get injured, but have not checked in or equipment is somewhere outside a

designated area, an employer may not be responsible for the injury.

It is also critical to establish Home Office Guidelines for remote workers such as an ergonomically correct desk set up with a computer and printer. Employers should also consider, where permitted by law, periodic home office checks to ensure telecommuters' home offices are safe, to identify hazards and any other issues of concern to prevent potential accidents or injuries from occurring.

It's important for employers to closely consider, scrutinize and have a plan in place to navigate the practical and

legal challenges when employing a remote workforce. It is evident that employees hurt at home while working for their employers may be eligible for benefits under the Pennsylvania Workers' Compensation Act. A telecommuter who suffers an injury because of his or her job duties, may have a right to workers' compensation benefits in Pennsylvania depending upon the unique facts of the remote work place situation.

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Zachary M. Rubinich is a partner in our Philadelphia office. He focuses his practice on the defense of insurance carriers, self-insured entities and third-party administrators against workers' compensation claims in Pennsylvania. Based on his extensive experience, the Pennsylvania Bar Association Workers' Compensation Law Section has certified him as Specialist in the practice of workers' compensation law. Zach has handled all aspects of litigation before workers' compensation judges, the Workers' Compensation Appeal Board, the Commonwealth Court and the Pennsylvania Supreme Court. He routinely counsels employers, insurance carriers and third party administrators on claims management, workplace safety, return-to-work programs, employment practices and risk management. Zach has been appointed the Chair of the American Bar Association's Tort Trial and Insurance Practice (TIPS) Workers' Compensation and Employers' Liability Law Committee for 2018-2019. He served as Vice-Chair of the ABA TIPS Workers' Compensation and Employers' Liability Law Committee for 2015-2016, 2016-2017 and 2017-2018. In addition, Zach has been appointed as Vice-Chair of the 2017-2018 American Bar Association Standing Committee for Diversity and Inclusion. Zach has been rated AV Preeminent by Martindale-Hubbell for the seventh consecutive year for 2019. He has been selected as a Pennsylvania Rising Star by Super Lawyers from 2010 to 2014.

Zach can be reached directly at: (215) 575-4340 • zrubinich@rawle.com

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WORKERS' COMPENSATION SEMINAR



Zachary M. Rubinich

Rawle & Henderson Partners **Delia A. Clark** and **Zachary M. Rubinich** presented a Workers' Compensation seminar to claims professionals in suburban Philadelphia in October 2018. The two-hour seminar focused on a variety of topics, including handling of a Delaware Workers' Compensation claim, filing deadlines, litigation of various Petitions and the Utilization Review process. The seminar also addressed ethical claims management practices, injury reporting, claim and accident investigation, communication with an unrepresented injured worker and accepted Standards of Conduct for claims professionals.



Delia A. Clark

Delia A. Clark is a partner in the New Jersey and Delaware offices of Rawle & Henderson LLP. She graduated from the Widener University School of Law in 1988 and received her undergraduate degree from Ohio State University in 1984. She focuses her practice on the defense of trucking companies and their insurers, casualty, premises liability, and workers' compensation matters. She is admitted to practice in Delaware, New Jersey, Pennsylvania and the District of Columbia, as well as the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey, the District of Delaware, the District of Columbia, and the U. S. Court of Appeals for the Third Circuit.

Delia can be reached directly at (856) 797-8919 • dclark@rawle.com

Zachary M. Rubinich is a partner in our Philadelphia office. **See his bio on previous page.**

Zach can be reached directly at: (215) 575-4340 • zrubinich@rawle.com

NEW YORK CITY

Thomas P. Ryan, Jr., has joined Rawle & Henderson LLP as Of Counsel to the Firm in the **New York City** office. He focuses his practice in the areas of medical professional liability, product liability, premises liability, construction and insurance coverage.

Tom earned his J.D. from Fordham University School of Law in 1993 and a B.A. in History from Fordham University in 1988.

He is admitted to practice in New York, and also in the United States District Courts for the Southern and Eastern Districts of New York.

Prior to joining Rawle & Henderson LLP, Tom was an attorney with an insurance defense law firm in New York City.



Thomas P. Ryan, Jr.

Tom can be reached directly at (212) 323-7088 • tryan@rawle.com