

BELOW THE RED LINE

WORKERS' COMPENSATION UPDATE "WE'VE GOT YOU COVERED!"

APRIL 2022

A WORD FROM THE PRACTICE CHAIR

It seems we are still waiting for spring to, well, spring upon us here in Illinois. Statistically speaking, I am very confident it is going to happen, but after a long, cold, nasty, and snowy winter, I have really been looking forward to an idyllic spring for 2022. So, here I sit and wait while I am left to wonder if I am going to fit into my shorts from last year. I do hope you had a wonderful Easter with friends and family. We are now in the homestretch for the end of this school year. And we know what that means: kids out of school and summer vacations. I might be getting ahead of myself here, but I am looking forward to having my family back under one roof, even if it is just for a few months.

I wanted to provide all of our friends out there with the multifaceted work and services we provide at Heyl Royster. You may have noticed in the time you have been working on workers' compensation claims the interplay with employment-related issues. The Heyl Royster Employment Law Practice Group, headed by my partner [Brian Smith](#), will always be available to assist clients with their needs in this area. Do you want one of our incredibly talented employment attorneys to review your current employee handbook that may be out-of-date, or produce one for your company? Do you have issues with employee benefits pertaining to leave, compensation, fair labor, or civil rights? What about training your team on the complicated subjects of harassment, discrimination, or other topics that can bring about workplace lawsuits? Please do not hesitate to contact either myself or Brian Smith. We understand and appreciate not every problem you are facing will fit into one box, and if there is carry over into the Employment Law arena, we are here to help.

[Jim Manning](#), from our Peoria office authored this month's article focusing on the practical impact COVID and the pandemic have had on how we handle workplace injuries. More to the point, injuries will be happening more and more outside the brick-and-mortar office or plant as we see a shift in where employees conduct business. The remote workplace is becoming an accepted norm in today's world, and we, of course, need to address how to properly analyze and defend claims where an injury occurs at home (physically or mentally). These cases are going to be cropping up regularly as remote work is not going away. The future is here, and now we just need to be prepared to investigate and defend it on behalf of our clients. Take a look at the article and don't forget to contact me, Jim Manning, or any of our workers' compensation attorneys with questions or fact patterns that require our help.



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FEATURE ARTICLE

EFFECT OF THE SHIFT TO A WORK-FROM-HOME SOCIETY ON THE ANALYSIS OF “ACCIDENT” IN WORK COMP

By Jim Manning

For a claimant to be entitled to workers’ compensation benefits under the Illinois Workers’ Compensation Act, the injury must “arise out of” and occur “in the course of” the claimant’s employment 820 ILCS 305/1(d). Both elements must be present at the time of the accidental injury in order for the claim to be compensable.

With the rise of America’s labor force working remotely and, therefore, off the employer’s premises, the ability to determine whether an injury “arises out of” and “in the course of” employment becomes more difficult. A couple of scenarios come to mind:

(1) Petitioner has a home office in the basement of her split-level home, which requires her to go up and down two flights of stairs to get to and from her office. If she trips and falls on the stairs in her home during her workday, does that give rise to a compensable accident? What if there is a defect on the stairs? Does that defect become part of the “employer’s premises” for which the employer would be responsible for a trip and fall on a defective staircase, even though the employee has no knowledge or ability to remedy the defect?

(2) What if an employee who is required to work from home develops severe anxiety and/or depression as a result of their isolation?

Whether either of these scenarios would provide for a potentially compensable claim,

the analysis will need to center around whether the injury occurred “in the course of” claimant’s



employment and whether the injury “arose out of” claimant’s employment. Whether an injury arises “in the course of” employment refers to the time, place, and circumstances of the injury. *McAllister v. Illinois Workers’ Comp. Comm’n*, 2020 IL 124848, ¶ 34. A compensable injury arises “in the course of” employment when it is sustained while a claimant is at work or while he performs reasonably foreseeable activities in connection with his employment. *Wise v. Indus. Comm’n*, 54 Ill. 2d 138, 142 (1973). In other words, “an accidental injury is received in the course of the employment when it occurs within the period of employment at a place where the worker may reasonably be in the performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto.” *Chmelik v. Vana*, 31 Ill. 2d 272, 278 (1964).

The “arising out of” component of the analysis is primarily concerned with a causal connection which is at the heart of the two aforementioned scenarios. For the purposes of this article, it is assumed that the employee was “in the course of” her employment at the time of the injury (i.e., doing something work-related). To satisfy the requirement of “arising out of,” a claimant must show that the injury arose out of some risk connected with, or incidental to,

employment so as to create a causal connection between the employment and the accidental injury. *McAllister*, 2020 IL 124848; *Sisbro, Inc. v. Indus. Comm’n*, 207 Ill. 2d 193 (2003); *Caterpillar Tractor Co. v. Indus. Comm’n*, 129 Ill. 2d 52 (1989). A risk is deemed incidental to employment when it belongs to or is connected with what the employee has to do to fulfill their job duties. *McAllister*, 2020 IL 124848; *Orsini v. Indus. Comm’n*, 117 Ill. 2d 38 (1987).

In determining whether a claimant’s injury “arose out of” his or her employment, we must look to the type of risk to which the claimant was exposed at the time of the injury. The Illinois Supreme Court in the *McAllister* case



provides a great analysis of the three types of recognized risks that must be evaluated to determine whether a claim may be a work-related injury: (1) risks that are distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment

or personal characteristics. *McAllister*, 2020 IL 124848 ¶ 38.

Straight forward examples of distinctly employment-related risks include accidental injuries incurred from falling on uneven or slippery ground at the construction worksite, tripping on a defect on the employer’s premises, getting one’s hand stuck in a piece of machinery on the factory floor, or performing some specific work-related task which directly contributes to the risk of injury. These injuries can easily be determined to be from a risk distinctly associated with one’s employment.

The second category of risks involves risks personal to the employee. Personal risks may include falls sustained due to a pre-existing weak knee which gives out from time to time or resulting from periodic bouts with dizziness caused by low blood pressure or some other medical condition personal to the employee. These types of injuries resulting from personal risks typically do not arise out of employment and are generally not compensable. An exception to this general rule exists when the employee’s workplace conditions contribute in some fashion to the injury or expose the employee to some added or increased risk of injury (for example, the employee who has an onset of dizziness while up on a ladder to

perform work). An employer in that scenario may have provided an increased risk of injury, rendering such a claim compensable.

The third category of risks, which we will focus on in this article, pertains to neutral risks that bear no relationship to either employment or personal characteristics. Examples of neutral risks may include (1) an employee who simply tripped over a curb going from the parking lot to the building entrance at work; (2) a teacher who missteps walking up or downstairs at school or simply walking on a tiled hallway or gymnasium floor and tripping and falling; or (3) the extreme example of someone getting hit by a stray bullet or a tornado hitting the manufacturing facility while workers are present.

So, let’s go back to the first example of the employee working from home who trips while walking upstairs to get to or from her home office in the lower level of her home. Suppose that same employee, pre-pandemic, worked on the main floor of an office building that did not require her to traverse stairs as a regular part of her employment. In that case, she may be exposed to a heightened risk of injury if her work at home requires her to make multiple trips up and down the stairs to and from her home office (which she would not ordinarily do

if she was not working from home). However, before that claim could even be considered compensable, she must be engaged in some activity related to her employment. If she was simply between phone calls and carrying laundry up a flight of stairs and fell, that obviously would not be work-related. However, if she was carrying a printer down to the basement that she uses for work or was in a hurry to get on a Zoom conference and fell, those types of facts could potentially make the injury work-related.

If we changed the fact pattern and added that the employee was not required to work from home but was simply given the option to work remotely from home and elected to do so, would that change the outcome of the analysis? If the employer permits the employee to work from home, the accident analysis is probably the same. It will focus on what the employee was doing at the time of the accident, and whether it was related to the work, she was performing for her employer. Imagine being secluded in your home working from your basement office with very little personal interaction for eighteen months. Deprived of the camaraderie of your friends and colleagues at work and the clients you see regularly leads to the development of severe anxiety or depression.

On the one hand, the employer could claim a “personal risk” peculiar to the employee. However, the employee will likely argue that her anxiety and depression arose directly from her isolation caused by her employer’s requirement to work remotely from home, separated from her friends and colleagues with little to no personal interaction other than Zoom conferences. Assuming she can prove that remote work from home was a cause in her mental condition and injury, this could potentially be a compensable accident.

Covid has done quite a number on our society in the last couple of years, and the remote work environment only adds to problems that could arise for employers. When presented with a work from home accident question, don’t hesitate to reach out to one of our attorneys for assistance in navigating these waters.



ABOUT THE AUTHOR



Jim Manning

Jim dedicates his practice to the world of real estate law. Chairing the firm’s Real Estate and Title Services Practice Group, he represents buyers, sellers, and builders, providing closing services on residential real estate transactions. He believes that transactions don’t have to be complicated or adversarial. When things come up that aren’t typical, Jim is the voice of reason.

He has practiced in all areas of civil litigation, commercial litigation, workers’ compensation, real estate litigation (including the defense of realtors in E&O claims and Ethics hearings), and construction litigation.

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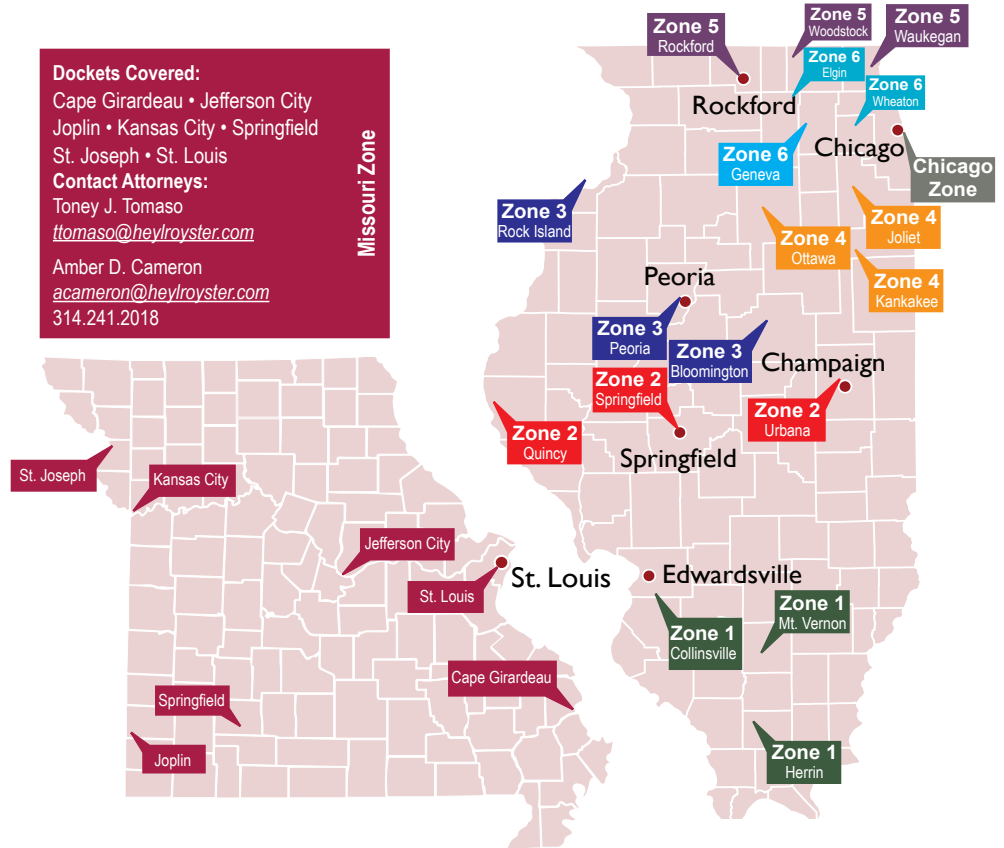
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