



CLAIMS FOR INJURIES AND DISEASES ARISING FROM HOME-BASED WORK

PURPOSE

To provide scheme guidance about the relevant considerations when determining liability for an injury or disease under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) that occurs as a result of home-based work.

BACKGROUND

Due to an increase in home-based work during the COVID-19 pandemic, many employers have established permanent formal working from home arrangements. As the scope of activities undertaken in the home extends beyond those occurring in the office environment, the connection between an injury or disease and the employee's employment may be unclear. There is also a decreased level of employer control and oversight of the workplace and prevention of injuries.

These circumstances give rise to numerous considerations that decision makers may need to take into account when determining whether an employee sustained an injury that arose out of, or in the course of employment, or developed a disease that was significantly contributed to by their employment while working from home.

This guidance outlines what decision makers should consider when assessing claims for injuries and diseases that occurred during a period of home-based work, including the circumstances in which an employee's home may be considered a place of work. This guidance also references examples and judicial decisions regarding home-based work. However, these examples and decisions are for guidance only and are non-binding. As the circumstances of each claim will differ, each claim needs to be considered on its own facts.

GUIDANCE

Injuries arising out of, or in the course of employment

When claims for injuries arise from home-based work, liability to pay compensation is conditional on the connection between the injury circumstance and employment. For injury claims, the 'arising out of, or in the course of, the employee's employment' test under section 5A(1) of the SRC Act is the connection required between the injury and employment. If the injury test under section 5A(1) is satisfied, there is no need to refer to any other provisions under the SRC Act as the employee has suffered an injury in circumstances connected to their employment.

An injury may arise 'out of employment' if there is a causal relationship between the injury and employment (i.e. completing actual work duties).¹ For an injury to arise 'in the course of employment' there needs to be a temporal connection between the injury and employment. This means that the injury has occurred while the employee is undertaking work-related activities or activities incidental to their work. This includes doing something the employee is reasonably required, authorised or expected to do in order to carry out their duties.

¹ See *Scheme Guidance Definition of injury and disease*.

Home-based work does not mean that employees are continually in the course of employment while at home, and decision makers will need to consider whether the employee was completing actual work duties or duties related to employment at the time of the injury.

Example one – Injury arising out of, or in the course of employment

An employee has an informal working from home arrangement that allows them to work from home on an as needed basis. On the day of the injury, the employee called their manager to advise that they were expecting a delivery and would be working from home. The employee fell down the stairs on the way to make a coffee during a short break. The employee submitted a claim for compensation for a fractured leg.

The decision maker sought evidence from the employee's manager confirming that the employee was permitted to work from home on the day the injury occurred. The decision maker also determines that an injury that occurs while an employee is taking a short break from duties for refreshment or necessities is an activity that is reasonably expected to occur during the workday, and therefore satisfies the injury test under section 5A(1) for an injury arising out of, or in the course of employment.²

Injury sustained during an interval or interlude during an overall period or episode of work

In the usual place of work (e.g. an office or work site), an employee's incidental work activities are generally limited to lunch breaks and short breaks throughout the working day to use the amenities or communicate with colleagues.

While working from home, an employee may also from time to time, undertake other activities that they cannot undertake while working from the office, such as:

- > undertaking general household chores such as washing and cleaning
- > household maintenance
- > supporting/assisting other household members (e.g. assisting their child with lessons)
- > exercising (in or out of the home)
- > shopping for essential bathroom or kitchen supplies that would normally be provided and available in their usual place of work.

Where an employee sustains an injury during an interval or interlude in an overall period of work, assessment of whether an employee was induced or encouraged by their employer to carry out an activity, or be at a place, should be made on a case-by-case basis. Evidence such as communication or agreement between the employer and employee may assist in determining liability in these circumstances, however inducement or encouragement may also be implied.

An injury sustained between two discrete periods of work, such as the end of one workday and the start of the next, is unlikely to arise out of, or in the course of employment.

² *Hargreaves and Telstra Corporation* (2011) AATA 417.

Example two – injury sustained during an interval or interlude during an overall period of home-based work

An employee was working from home as permitted by their employer and took a break at 10.00am to mow the lawn. The task took 20 minutes to complete, and the employee injured their shoulder while putting the lawn mower away in the shed. The employee saw their GP and submitted a claim for a sprained shoulder.

The decision maker confirms that the employee had a formal agreement to work from home on the day of the injury. However, the decision maker notes that the employee did not take a regular break at 10.00am and the break did not constitute an ordinary recess. The decision maker concludes that the employee was injured during an interval or interlude in an overall period of work. The decision maker notes that the activity of lawnmowing was not incidental to the employee's employment, did not form part of the employee's working from home agreement, nor was the activity induced or encouraged by their employer. The decision maker finds that the injury did not arise out of, or in the course of the employee's employment.

For further information on these provisions, see Comcare's scheme guidance – [*Injury in an interval or interlude during an overall period or episode of work*](#).

Injuries arising out of, or in the course of employment – Section 6(1) of the SRC Act

If the connection to employment is unclear or decision makers are uncertain whether the injury circumstances satisfy the provisions under section 5A(1), section 6(1) of the SRC Act provides clarification of additional injury circumstances where workers' compensation coverage under the SRC Act is deemed to 'arise out of, or in the course of, the employee's employment'.

Injury sustained at a place of work: section 6(1)(b)

Section 6(1)(b) of the SRC Act provides coverage for an injury sustained while an employee was at their place of work for the purposes of that employment. Section 4(1) of the SRC Act defines 'place of work' as any place an employee is required to attend for the purpose of carrying out their duties.

The employee and employer may establish a formal working from home arrangement that sets out expectations such as:

- > working hours and breaks (including shift work)
- > on call arrangements
- > daily work activities and output
- > mitigating health and safety risks such as ergonomic office set up.

Where there is no formal working from home arrangement in place, decision makers should consider whether there was an informal written or verbal agreement between both parties for the employee to work from home.

An employee's 'place of work' may extend to include the work area used in the home and those areas where the employee undertakes activities reasonably incidental to their employment. Decision makers will need to assess whether an employee's home meets the definition of place of work at the time of injury to determine if an injury arises out of, or in the course of employment. Relevant considerations include agreed work hours, patterns of work and IT access records when determining whether the employee was at their place of work for the 'purpose of employment' when the injury occurred.

Temporary absence from a place of work during an ordinary recess: section 6(1)(b) continued

Section 6(1)(b) also provides coverage for an injury sustained while an employee was temporarily absent from their place of work during an ordinary recess.³ 'Ordinary recess' is not defined in the SRC Act and has been taken to mean a regular and expected break taken during a workday, such as a lunch break or meal break during overtime and shift work periods. Considerations for injuries sustained during an ordinary recess include:

- > whether the employee took their break at a consistent time each day
- > whether there was an agreement between the employee and manager to take breaks at certain times of day on a regular basis
- > whether there is an agreement for shift workers to take their breaks after a certain number of hours worked, regardless of the time of day.

Example three – AAT matter – *Demasi and Comcare* (2016) AATA 644

The employee worked as a producer and presenter for a television program and completed her duties from her employer's offices, on filming location, and at home. On the morning of the injury, the employee started her day working from home because she was preparing for a telephone interview. The interview was rescheduled, and she decided to take an early break to go for a run. While running the employee slipped and injured her hip. The employee's time sheets showed her breaks regularly occurred around lunch time, rather than the morning. The employee contended that her time sheets did not accurately reflect her work habits and her manager was aware she would take sporadic recess breaks whilst working from home between work commitments.

The Tribunal found the employee's home was her 'place of work' despite the lack of a formal working from home agreement. While the Tribunal noted it was difficult to determine the precise meaning of 'ordinary recess' it found it must be a short, regular break in the workday. The Tribunal did not consider taking a break for the specific purposes of going for a run at an irregular time of the day was an 'ordinary recess'. The injury was therefore not compensable.

Temporary absence from a place of work undertaking an activity associated with employment or at the direction or request of the employee's employer: section 6(1)(c)

Where an employee is temporarily absent from their place of work, but not on an ordinary recess, consideration should be given to whether the employee was undertaking an activity associated with employment or at the direction or request of their employer. This may include activities such as offsite meetings, conferences, or seminars. This section may also apply to employees participating in sporting, cultural, health and wellbeing or team building activities which may or may not be 'associated with employment'. For home-based work, this section may include activities such as buying equipment at an office supply store.

Considerations include, but are not limited to:

- > whether the employee was on paid work time at the time the activity took place
- > whether the employee had express written or verbal permission or encouragement to undertake the activity
- > whether the employee was required to participate in an activity.

³ See Scheme Guidance *Travel and Recess Provisions*.

Example four – Undertaking an activity at the direction or request of the employee’s employer

The employee was working from home when they received an email from their manager advising that a stakeholder urgently required a hard copy of a contract. Lacking the resources at home, the employee went to the post office to print and mail the document when they tripped and fell on the curb outside the shop. The employee submitted a claim for a sprained ankle.

The decision maker seeks evidence to assess the circumstances of the claim and receives a copy of the manager’s request. The decision maker concludes that the employee’s home was their ‘place of work’ on the day of the incident. They have sufficient evidence to suggest that the employee was temporarily absent from their place of work undertaking an activity that was associated with their employment and undertaken at the direction of their employer. Therefore, the injury has arisen out of the employee’s employment.

While travelling, at the direction or request of their employer, for the purposes of their employment: section 6(1)(d)

Travel between an employee’s ‘place of residence’ and usual ‘place of work’ is not compensable under the SRC Act.⁴ There have been periods where journeys to and from work were covered under the SRC Act.³

Where an employee’s home is their place of work, this provision will not operate to exclude travel coverage between places of work. Travel between places of work must be at the direction or request of the employer for injury liability to exist.³ Liability may also exist for injuries sustained on a journey from the employee’s place of residence to a place of work that is not their usual place of work (e.g. working at a different office location). The home does not remain the employee’s place of work 24 hours a day, rather the home is considered a place of work during the hours an employee is completing work-related activities.

Example five – Travel between home (place of work) and another place of work

An employee has a formal agreement in place that permits them to work from home three days a week. The employee’s manager arranges a meeting on a day where the employee usually works from home and requests the employee attend the meeting in person. The employee seeks permission from their manager to work part of the day from home before travelling to the office to attend the meeting. The journey is one from the employee’s place of work to another place of work, taken at the direction or request of their employer. Therefore, an injury sustained during the journey is likely to arise out of, or in the course of employment under section 6(1)(d) of the SRC Act.

Example six – Travel between home (place of residence) and usual place of work

The employee went to their place of work on their designated ‘office day’, as per their working from home agreement. The employee did not complete any work-related activities at home before departing their place of residence. The employee sustained injuries in a car accident on the way to the office and submitted a claim for compensation.

Upon review of the evidence, including the employee’s working from home agreement, the decision maker notes that the employee’s home on this day, did not meet the definition of ‘place of work’. The decision maker denies liability for the injury, finding that the journey from the employee’s home to their usual place of work was not taken at the direction or request of the employer.

⁴ Section 6(1C) of the SRC Act specifies that, for the purposes of paragraph 6(1)(d), travel between the employee’s residence and usual place for work is taken not to be at the direction or request of the employer.

While travelling to or at a place of education (section 6[1][e]and [ea]), or for medical or rehabilitation purposes under the SRC Act (section 6[1][f] and [g]).

Employees travelling from a place of work to a place of education or attending a place of education (as a condition of employment, or at the direction or request of their employer) may also be covered for compensation if they suffer an injury.

Where an employee:

- > has an accepted injury
- > is intending to make a compensation claim or
- > is undergoing workplace rehabilitation.

and is required to travel from their place of work to a place for the purpose of obtaining a medical certificate, receiving medical treatment, undergoing a rehabilitation assessment or program, or undergoing a medical examination under the SRC Act, compensation for an injury will most likely exist in this circumstance.

The provisions under these sections apply to travel from the employee's home, where the home meets the definition of 'place of work' at the time of injury.

Diseases significantly contributed to by employment

A 'disease' is defined under section 5B of the SRC Act as an ailment suffered by an employee, or an aggravation of such an ailment, 'that was contributed to, to a significant degree, by the employee's employment'. Ailments can be contributed to by both employment and non-employment factors. However, the employment factors must have contributed to the development of the ailment 'to a significant degree' for that ailment to constitute a 'disease' within the meaning of section 5B. Relevant considerations when assessing causation for ailments attributed to home-based work include:

- > environmental factors (e.g. heat, noise, toxins)
- > work-related factors (e.g. workload, customer aggression, management support, ergonomics)
- > non-work-related factors (e.g. pre-existing conditions, contribution of non-work activities to the development of a condition).

Example seven – Disease significantly contributed to by employment

An employee started working from home during the COVID-19 pandemic. After moving to working from home arrangements, the employee felt isolated due to lack of contact with their team and no team meetings. The employee also had difficulty with an increased workload due to the pandemic. The employee attempted to contact their manager on several occasions, however the manager did not return their calls. The employee consulted their GP and was diagnosed with generalised anxiety disorder. The condition resulted in time off work, and the employee submitted a claim for workers' compensation.

The decision maker notes that the claimed condition meets the definition of disease under section 5B of the SRC Act. Medical and factual information suggests that in general the isolation and stress experienced due to the pandemic were contributing factors in the employee's condition, however the GP also states that the employee's workplace difficulties compounded the severity of their symptoms to a significant degree. The employee provides evidence of the attempted calls made to their manager and lack of team meetings. The employer also confirmed this was the case. Having regard to both work and non-work-related factors, the decision maker finds that employee is suffering from a disease that was significantly contributed to by their employment.

General exclusions

If an employee is injured while working from home, the general exclusions for liability still apply. Under the SRC Act, compensation for an injury is not payable where:

- > the injury is a result of reasonable administrative action, taken in a reasonable manner, in respect of the employees employment: section 5A(1).
- > the injury is intentionally self-inflicted: section 14(2).
- > the injury is caused by the serious and wilful misconduct of the employee, unless the injury results in death, or serious and permanent impairment: section 14(3).
- > section 6(1) of the SRC Act is relied upon and the employee sustains an injury as a result of voluntarily and unreasonably submitting to an abnormal risk of injury while at a place referred to in section 6 or during an ordinary recess: section 6(3).⁵

Evidence to assist claim determination

When deciding a claim for injury or disease sustained as a result of home-based work, the following evidence may assist the decision maker with their determination:

- > Contemporaneous statements and/or reports from the injured employee and any employees who might have communicated with the employee before the injury or disease developed to establish how, why and where the injury or disease occurred.
- > Documents detailing job descriptions, terms of employment and working from home arrangements.
- > Where a workplace computer is supplied, work logs, emails and phone records to confirm the employee's work activities.
- > Photos of the physical environment where the injury occurred.
- > If the employee was injured while travelling, the travel itinerary and workplace approval to travel, to validate the journey taken aligns with the injury circumstance.

FURTHER INFORMATION

For further guidance on assessing claims for initial liability determinations see the [scheme guidance](#) on:

- > Injury arising out of or in the course of employment
- > Injury in an interval or interlude during an overall period or episode of work
- > Injury 'suffered as a result of' reasonable administrative action
- > Definition of injury and disease
- > Travel and recess provisions
- > Boundary claims.

For more information, please contact Comcare's Scheme Policy team on 1300 366 979 or email: SchemePolicyandDesign@comcare.gov.au.

⁵ See scheme guidance on *Injury arising out of or in the course of employment*.