

# Workplace Injuries In The Age Of Remote Work



A decision of the Administrative Labour Tribunal recognizing an employment injury that occurred in the course of remote work recently made headlines because of the particular nature of the circumstances that led to the worker's injury.<sup>1</sup>

In this case, an Air Canada customer service agent was performing her work duties from home, i.e., working remotely. To do so, she had to log into her employer's computer system to receive calls. She could take breaks during her shift, including a lunch break.

On the day of the accident, the worker disconnected from the computer network to get her lunch. Her office was upstairs; as she started to walk down the stairs to the main floor, she lost her footing and fell on her left side. After her father helped her, she contacted her supervisor to inform them of the accident.

The employer did not dispute that the worker's fall was a sudden and unforeseen event within the meaning of the definition in the *Act respecting industrial accidents and occupational diseases* (AIAOD),<sup>2</sup> nor that it was as a result of this event that the worker suffered injuries. However, according to the employer, this fall did not occur 'in the course of work,' but instead arose from the worker's personal sphere. Air Canada also claimed that the fact that the worker was working remotely created a presumption of privacy for her, preventing the employer from exercising effective control over the management of the workplace.

The Tribunal began by noting that in the context of remote work, the private residence becomes the workplace, mainly in terms of the limited environment in which the worker performs their duties. This reasoning of the Tribunal is consistent with the purpose of the new provisions of the *Act respecting occupational health and safety* (OHS), which came into force on October 6, 2021, and which expressly provide that the place from which a person works remotely constitutes a workplace.<sup>3</sup>

The Tribunal emphasized that in the case of a worker who performs their duties remotely from home, the transition from the professional sphere to the personal sphere, and vice versa, is more frequent during a work shift. However, the AIAOD does not distinguish between a worker who works at home and one who works on the

employer's physical premises; the objective of the law remains the same, namely compensation for employment injuries.

In its reasons, the Tribunal relied on the analytical framework developed by the case law in relation to the notion of an event occurring 'in the course of work,' which includes the following criteria:

- the location of the event;
- the time of the event;
- the remuneration for the activity carried out by the worker at the time of the accident;
- the existence and degree of authority of the employer or the subordinate relationship of the worker;
- the purpose of the activity carried out at the time of the event, whether it is incidental, accessory or optional to the working conditions;
- the relatedness or relative utility of the worker's activity in relation to the performance of the work.

The Tribunal noted that none of these criteria is paramount and that they must be considered together. With regard to the relatedness criterion, the Tribunal focused on the context in which the accident occurred. In this case, the fall occurred during a lunch break, which is permitted by the employer and is therefore part of the work arrangement determined by the employer. The Tribunal found that this was therefore within the worker's professional sphere, since the activity was in line with the employer's activities, expectations, concerns and objectives. The Tribunal also noted the temporal concomitance between the worker logging out from work and her fall. It accepted the worker's claim, noting that the event occurred not while she was eating lunch, but just a few minutes after leaving her work area to go to lunch.

Remote work increased significantly in 2020 due to the COVID-19 pandemic. Over the past year, many companies have implemented remote work arrangements. While this decision has received a great deal of attention, it is not the first decision on this subject.

In a 2009 case, the *Commission des lésions professionnelles* (CLP) ruled that the worker's home could be considered the place of work when they were working remotely.<sup>4</sup>

In 2021, two other decisions reached the same conclusion: an accident that occurred while a worker was working remotely from home constituted a workplace accident resulting in an employment injury.<sup>5</sup>

The Laverdière case involved a worker who suffered a workplace accident when she fell down the stairs in her home while leaving to take a break, resulting in a fractured right ankle.

As in the Air Canada case, the Tribunal noted in its decision that the presumption of an employment injury provided for in the AIAOD<sup>6</sup> cannot apply in such a case since, in order to benefit from this presumption, the worker must demonstrate that they suffered an injury in the workplace **while at work**. Although the workers were at their respective home-based workplaces, they each suffered a fall while not directly engaged in their work duties. A worker must therefore prove that the conditions of an industrial accident are met in order to demonstrate that they suffered an employment injury.<sup>7</sup>

Finally, it should be noted that the Tribunal recognized that an accident that occurs when a worker arrives at or leaves their workplace using access routes made available to employees, of which the worker makes reasonable use, may constitute an accident occurring 'in the course of work.' The same conclusion could therefore be drawn with respect to the access routes in a worker's home.

It remains to be seen how, in the coming months, the new obligations of employers in terms of prevention will materialize, particularly with regard to remote workplaces and the control employers can and must have over these locations, which are mostly private homes. Arguments will undoubtedly be developed in light of a 2019 decision of the Supreme Court of Canada on federal health and safety matters. That decision found that an employer's duty to inspect the workplace does not extend to one that is beyond their control, including an employee's residence.<sup>8</sup> It will be interesting to follow the evolution of the position of the Quebec courts on this issue and the impact this will have on workplaces. Developments in remote work will also be interesting to follow, especially in light of the recent amendments to the OHSA that specify that the home constitutes a workplace if it is used for remote work.

## Footnotes

1 *Air Canada and Gentile-Patti*, 2021 QCTAT 5829.

2 *Act respecting industrial accidents and occupational diseases*, CQLR c A-3.001, s. 2.

3 *Act respecting occupational health and safety*, CQLR c. S-2.1, s. 5.1.

4 *Club des petits djeuners du Qubec and Frappier*, CLP 368135-62C-0901, November 10, 2009, R. Hudon.

5 *Corbeil and Ville de Longueuil ' Service de Police*, 2021 QCTAT 3185; *Laverdiere and Ministre des Forêts, de la Faune et des Parcs (Opérations régionales)*, 2021 QCTAT 5644.

6 *Act respecting industrial accidents and occupational diseases*, *supra*, note 1, s. 28.

7 *Ibid*, s. 2.

8 *Canada Post Corporation v. Canadian Union of Postal Workers*, 2019 SCC 67.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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