Workplace Injury And Teleworking: Can A Fall Outside The Home Be Considered A Workplace Accident?



In a recent decision[1], the *Tribunal administratif du travail* [Administrative Labour Tribunal] (the "Tribunal") determined that a teleworking employee suffered a workplace injury when she fell down the outdoor stairs of her home while on her way to take a break from work.[2]

What happened?

First, it is important to mention that the facts at issue in this decision occurred in March 2020, at the very beginning of the COVID-19 pandemic, when teleworking was highly recommended in various sectors.

The employee worked as a computer technician and was working from home. While taking a break from work, the employee fell down the stairs leading outside of her home. A doctor later diagnosed a fracture to her right ankle. A few days later, the employee met with an orthopedist who told her that surgery would be required and that time off work would be necessary. The same day, the employee informed her employer of the situation.

She then filed a claim for this diagnosis with the Commission des normes, de l'équité, de la santé et de la sécurité du travail [Occupational Standards, Equity, Health and Safety Commission] (the "CNESST"), which was denied. The employee challenged this decision, which was then brought before the Tribunal.

What did the Tribunal decide?

The Tribunal first refused to apply the presumption of employment injury provided for in section 28 of the *Act respecting industrial accidents and occupational diseases*. In that preliminary determination, the Tribunal found that the injury did not occur at the workplace while the employee was performing her duties as a computer technician, but rather as she was about to take her break.

In not applying this presumption, the employee then had to establish that the incident constituted an industrial accident, that is, "a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or **in the course of their work** and resulting in an employment injury to them."[3]

In order to determine whether the fall occurred “in the course of an employee’s work”, the Tribunal conducted an analysis to determine whether the injury came within the scope of employment, which is defined as being any activity where a work-related purpose can be established and which is related to the conditions of employment.

In this regard, the Tribunal stated that the case law indicates that a worker’s home has been considered as a place of work when teleworking. Further, the employee demonstrated that when she worked at the employer’s facility, she would often take breaks outside of the workplace. In so doing, she was using the access route to the workplace in a reasonable manner, thus establishing a connection with the work. The Tribunal transposed this finding to the employee’s new place of work; her home.

In addition, the Tribunal took into consideration several other elements, including the fact that the employer had not instituted any policy or directive limiting when and where breaks could be taken.

Ultimately, the Tribunal found that the fall occurred in the course of the employee’s work. Furthermore, it was shown that the diagnosed injury was caused by the fall down the stairs. It was found that the employee therefore suffered an industrial accident and should be compensated accordingly.

Takeaway

Despite the gradual relaxation of health measures and the gradual lifting of mandatory teleworking, many employers are choosing to maintain a hybrid work arrangement. Teleworking will therefore inevitably be part of the new work reality. This decision reminds employers that it is critical to (i) adopt clear policies to ensure that they accurately communicate how telework is to be performed, (ii) review and be familiar with the applicable health and safety regulations where their employees work, and (iii) take the necessary steps to ensure that home-based workspaces are safe for teleworking employees.

Footnotes

1. *Laverdière* and *Ministère des Forêts, de la Faune et des Parcs (Regional Operations)*, 2021 QCTAT 5644

3. *Act respecting industrial accidents and occupational* diseases, R.R.S.Q., c. A-3.001, s. 2

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.

by Florence Longval
Fasken