Blurred Lines: A Breakdown of Conventional Workplace Boundaries During the Pandemic

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COVID-19 has altered the dynamic of every facet of our lives. Perhaps, above all else, it has affected how we work. Remote work is not just a novelty of the quarantine. It is a reality that will be with us for the long-term future.

Granted, remote work was occurring before the 2020 lockdown. But when the pandemic struck, the trajectory of remote work for nonessential workers was stratospheric. The traditional work model of commuting to a job and returning home, day in and day out, is evolving into other models. The "hybrid" work model has seen a rise in popularity with employees working part of the week in the office and part of the week at home. Companies are also closing locations and providing "office hubs" for employees that allow for continued remote work and more convenient access to an office, if and when necessary.

As the extension of the traditional office workspace to the home continues, Pennsylvania's high courts are seemingly moving right along with it, as they embark on what appears to be an expansion of an employer's premises in workers' compensation cases. Very recently, the Pennsylvania Commonwealth Court issued two significant decisions wherein they enhanced the legal definition of an employer's premises and found, in both instances, that a claimant's injuries were sustained in the course and scope of employment.

In doing so, the court relied on the Pennsylvania Supreme Court's seminal case of *US Airways v. Workers' Compensation Appeal Board (Bockelman)*, 221 A.3d 171 (Pa. 2019). In that case, Pennsylvania's high court held that a flight attendant who slipped and fell on a shuttle bus taking her from the airport terminal to an employee parking lot that was owned, operated and maintained by the Philadelphia Division of Aviation after her shift ended was in the course of employment at the time. According to the court, the shuttle bus provided a reasonable means of access to the workplace and was thus an integral part of the employer's premises. The court emphasized that the critical factor was that the employer had caused the area to be used by employees in performance of their assigned tasks. They further reasoned that the employer was aware that the Division of Aviation would

make employee parking available to the airline's employees and that if they had not, the employer would have been obligated under its collective bargaining agreement to reimburse flight attendants for the cost of parking.

In the case of *Stewart v. Workers' Compensation Appeal Board (Bravo Group Services)*, No. 812 C.D. 2020, filed July 2 by Judge Mary Hannah Leavitt, the Commonwealth Court followed the Supreme Court's lead in *Bockelman*. The court found that an injury sustained by a claimant while leaving a shuttle that took him from a public train station to the building where he worked prior to his shift was on the employer's premises and thus, work-related. In finding compensability, the court reversed the underlying decisions from the workers' compensation judge (WCJ) and the Worker's Compensation Appeal Board, denying claimant benefits. According to the WCJ, the shuttle was not part of the employer's premises for purposes of Section 301(c)(1) of the act, because the employer had no connection to the employees' means with which they travel to work and did not own or operate the shuttle. The appeal board, on the other hand, determined that the claimant's injury occurred while commuting to work on a shuttle bus not owned or controlled by the employer and stressed that the shuttle pick-up was at a public transportation station, which was just one of a number of other transportation options for the claimant to commute to the building.

According to the "coming and going rule," in general, injuries sustained while the employee is commuting to or from work are not compensable because the employee is neither on the employer's premises, nor engaged in the furtherance of the employer's business. Under Section 301(c)(1) of the act, injuries are compensable if they occur while a claimant is furthering the business or affairs of his employer, regardless of where the injury occurs and, even if a claimant is not furthering the employer's business at the time of the injury, a claimant is entitled to compensation if it is established that the injury occurred on the employers' premises; the claimant's presence was required by the nature of employment; and the injury was caused by the conditions of the premises.

The above analysis is known as the "*Slaugenhaupt* test" and stems from a 1977 case where an employee, while driving his car in the employer's parking lot before his shift began, suffered an epileptic seizure, resulting in his losing control of the vehicle and striking a concrete abutment, causing fatal injuries. See *Workers' Compensation Appeal Board (Slaugenhaupt) v. United States Steel*, 376 A.2d 271 (Pa. Cmwlth. 1977). The Commonwealth Court held the employee's death was compensable under Section 301(c) of the act because the concrete abutment was a "condition" of the premises that contributed to the employee's death.

The *Stewart* court, in applying *Slaugenhaupt*, held that all three prongs of the test were satisfied. According to the court, the claimant's injury was sustained upon his arrival at the front entrance of the building to begin his shift. The court further found that the claimant was required by the nature of his employment to be present in the area where he was injured because he was entering the workplace at a reasonable time before his shift. Finally, the court concluded that the ground where the claimant fell constituted a condition of the premises that contributed to the claimant's injuries.

The Commonwealth Court also addressed the premises issue in an unreported decision from April that became precedential in July 2021. In *James Weaver d/b/a Captain Clothing v. Sally Breinig (Workers' Compensation Appeal Board)*; No. 490 C.D. 2020, filed April 26, by Judge J. Andrew Crompton, the court held that injuries sustained by a claimant when she slipped and fell on her walk into work from an employer-paid parking space while trying to avoid ice were compensable. The claimant's parking spot was in a public parking lot owned by the borough located behind the employer's building. The spot was leased by the employer and the claimant was not required to use it. The injury occurred while the claimant walked through a "parklet" owned by the borough, which was the most direct route to the main entrance of the employer's building. The spot was assigned to the claimant by the employer and, although the borough owned the area where the claimant fell, the employer rented the parking space. Thus, in the court's view, it was considered part of the employer's premises.

The court acknowledged that collectively, the precedent of parking lot workers' compensation cases suggests that an injury sustained between a private parking area and the worksite is not compensable under the act, when the employer does not require or endorse use of the parking area. However, the court noted that in *Bockelman*, the Supreme Court held that the parking lot used by airline employees was "integral to the airline's business" as the means of access to the worksite and thus, within the employer's premises. The court further pointed out that the Supreme Court in *Bockelman* emphasized that the phrase "employer's premises" in Section 301 (c)(1) of the act should be construed liberally to include any area integral to the employer's business operations, including any reasonable means of ingress to or egress from the workspace. Honoring the Supreme Court's directive, the Commonwealth Court liberally interpreted the term "premises" to include the route the claimant used to access the worksite from her parking space as a reasonable means of ingress to the worksite.

It is perhaps the *Bockelman* court's instructtion to liberally interpret the term "premises" that, more than anything else, explains the outcomes in *Stewart* and *Weaver*. In *Weaver*, the court appears to recognize that pre-*Bockelman*, the injuries suffered by the claimant from a fall that occurred enroute from a private parking area into work may have not been compensable. In *Stewart*, the court found that the ground itself, as opposed to a concrete abutment, ice or water, was a condition of the premises that contributed to the claimant's injuries. That said, as the court consistently reminds us, cases like this are highly fact specific and demand a thorough examination of the facts unique to each.

Like remote work, the judicial expansion of the term "premises" has developed over time. And working remotely from home has, in and of itself, extended the premises of an employer. In fact, in the 2006 case of *Verizon v. Workers' Compensation Appeal Board (Alston)*, 900 A.2d 440 (Pa. Cmwlth. 2006) the Commonwealth Court concluded that injuries suffered by a claimant while working from home were compensable, as the claimant's "home office" was a "secondary work premise." Despite the blurred lines of what constitutes an employer's premises in Pennsylvania workers' compensation law, workplace boundaries still exist. While the facts often dictate compensability, each

claim brought is fact-specific, and it is incumbent upon the defense attorney to conduct a thorough investigation, secure video and conduct a site inspection as ways to combat such claims, regardless of whether or not the injuries occurred in a remote work setting.

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