

Employers' liability for accidents during remote work

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The growing adoption of remote work has resulted in a growing number of questions about this type of arrangement, including questions about employers' liability in the event of a work-related accident or occupational illness.

The issue is an important one in Brazil, because the law gives employees who suffer accidents or illnesses related to their work a guarantee of employment: for one year after employees return to work, employers may not terminate their employment without a disciplinary reason.^[1]

Although the Consolidation of Labor Laws (CLT – *Consolidação das Leis do Trabalho*) makes no distinction between work performed at the employer's establishment and work performed off the premises (article 6 CLT), there is an enormous difference between the two situations when it comes to the measures that employers can adopt to prevent harm to employees' health. Logically, when work is performed at the employer's establishment, the employer has much more effective means to prevent accidents and illnesses. In remote work, inspecting items such as "lighting level", "noise level" and "workplace ergonomics" is an almost impossible task. After all, employees themselves decide where they will work, and they can change it according to their convenience. Moreover, when the workplace is the employee's own home, the viability of carrying out an on-site inspection will depend on the employee's consent, given the inviolability of the home guaranteed by the Brazilian Constitution.

It's true that the provisions governing telework included in the CLT in 2017 stipulate that before adopting a remote work arrangement, the employer must expressly and clearly provide instructions to employees on the precautions to be taken to avoid work-related accidents and illnesses (article 75-E CLT). After they have received the instructions, employees are required to sign an undertaking to follow the instructions.

These provisions suggest, at least implicitly, an intention to give the employees themselves responsibility for caring for their own health and safety – according to guidance given by the employer – when work is performed remotely, perhaps precisely because of the difficulties employers have in accessing the place of work.

Nonetheless, at the National Symposium of Labor Magistrates (Encontro Nacional de Magistrados Trabalhistas) held in May 2018, some judges from first instance and appeal courts took the position that employers should have liability for work-related accidents and illnesses, and that position was recorded in one of the Restatements of Law (Enunciados) issued at the symposium. Although these Restatements of Law issued in Symposiums like that are not binding, they do reveal the interpretation that some judges will give to the law, and serve to indicate how they are likely to decide a certain

issue.

Some businesses, aware of the risk that the position in favor of employers' liability might prevail, are already investing in mechanisms to inspect health- and safety-related conditions for employees working remotely.

In our view, there is an effective risk that some illnesses (particularly ergonomic) developed by employees working remotely may be considered to be occupational in nature. In contrast, it cannot automatically be assumed that accidents in remote work arrangements are occupational, given the probability that they may be domestic rather than work-related.

In the current scenario, with growing numbers of employees working from home, and the lack of precedents decided by the courts, it is important for businesses to understand that adopting remote work arrangements does not reduce their liability for their employees' occupational health and safety. Employers should be attentive to the debate over employers' liability in remote work situations, and redouble their efforts to anticipate and mitigate risks while complying with the formalities imposed by the law to prevent occupational illnesses and accidents in remote work.

NOTES:

[1] In Brazil, the general rule is that employers may terminate workers' employment without cause. Requiring employers to have good reason for dismissal is exceptional.

***This article can be found in the e-book "**Current Employment Issues: the end of the pandemic and new ways of working**". [Click here to read the whole content.](#)*