



LaborNet No. 1407

Telework - Training in Occupational Hazard Prevention - Information Posted on Corporate Intranets. Policies & Training Modules on Occupational Safety and Hygiene

Dear All,

As Work-From-Home arrangements are increasingly commonplace these days, companies design policies and handbooks on occupational hazard prevention, post training modules on their corporate intranets containing information to prevent work-related injuries and safety checklists, and sometimes send representatives to survey home office setup with the aim of reducing the risk of work-related injuries.

Those who enter into a Telework Agreement get training to prevent work-related injuries while working from home, with duties and recommendations about hazard prevention.

There are particular requirements for occupational hazard prevention while working remotely or teleworking. These requirements are contained in an Annex to the Telework Agreement, in addition to the information posted on the company's Intranet.

Employees are responsible for ensuring adequate working conditions for telework, following the instructions by the Occupational Hazard Prevention company

division. However, they should expressly state that their work location meets the necessary safety measures to reduce the risk of injuries through the Safety Self-Assessment Checklist.

The Safety Self-Assessment Checklist attached to the Telework Agreement should be reviewed and approved by the area of Hazard Prevention at the company, whereby employees' answers are adequate to meet the necessary conditions recommended by the safety and hygiene expert.

Companies must notify employees of any inspection visit they need to conduct at their work location. After employees give their consent, a representative can inspect home offices to check working conditions and compliance with safety and hygiene standards.

SPECIFIC REQUIREMENTS ON OCCUPATIONAL HAZARDS PREVENTION FOR REMOTE WORK OR TELEWORK

On November 11, 2022, the Highest Court of Justice in Madrid [Tribunal Superior de Justicia de Madrid] ruled that the injury an employee suffered at her home during work hours was considered a work-related accident.

- The employee was working for *Canal de Isabel II* on a flexible work arrangement and entered into an individual contract for remote work (telework) within the framework of a pilot program.
- She said she had completed the online training course on Occupational Hazard Prevention and Workload Management.
- She received adequate information to prevent work-related injuries while teleworking, and was aware of the obligations and recommendations about occupational hazard prevention contained in the document "SPECIFIC REQUIREMENTS ON OCCUPATIONAL HAZARD PREVENTION FOR REMOTE WORK OR TELEWORK", attached to the Telework Agreement, in addition to the information posted on the company's Intranet "Canal&tú: Métodos de Trabajo".
- As to General Safety Requirements, the employee had access to the Handbook on Work at the Office also dealing with telework hazards, and the Road Safety Handbook.
- It was up to employees to ensure adequate safety and hygiene conditions in their home office based on the guidelines issued by the Occupational Hazard Prevention sector, and in particular the "SPECIFIC REQUIREMENTS ON OCCUPATIONAL HAZARD PREVENTION FOR REMOTE WORK OR TELEWORK", attached to the Telework Agreement.
- The employee in question expressly stated that her home office setup met the necessary safety and hygiene conditions based on the self-assessment checklist for telework. The Safety Self-Assessment Checklist attached to the

Telework Agreement had been reviewed and approved by the Hazard Prevention division at the company. The answers given by the employee were adequate and met the necessary conditions recommended by the representative.

- Companies should notify employees of any inspection visit they need to conduct on their home. After employees give their consent, inspectors can conduct a home inspection to check working conditions and compliance with safety and hygiene standards.
- The Safety Self-Assessment checklist should be accepted.
- In the case under analysis, the employee worked from home. At about 9:15 a.m. she walked to the kitchen and took a bottle of water, slipped and fell hurting her left hand. At 9:39 a.m. she was seen at a doctor's office in Alameda de Osuna and then referred to Ramón y Cajal Hospital arriving at 10:54 a.m. She was diagnosed with flexor digitorum profundus (FDP) and plastic surgery. On July 31, 2020 she was put on sick leave for temporary disability due to a non-work-related injury.
- The discussion revolved around whether it was a work-related injury or not *considering the company denied her claim as a work-related accident. When she got hurt, she was not working or in her designated work space, but in the kitchen. And the presumption that she was working was not admitted, either.*
- The Plaintiff claimed that the Lower Court decision violated Section 156 TRGSS (Social Security Act) in relation to the **European Framework Agreement on Telework of July 2002; Section. 13.3, ET (Workers' Statute)**, Royal Decree-Law 28/2020 and Act 10/2021.

Highlights:

1. She said that she suffered a bodily injury when she was working for *Canal de Isabel II S.A.* and there was a cause-and-effect relationship between her work and her injury.
2. The employee had entered into a telework agreement with *Canal*, establishing her work location at home. She had a flexible work schedule. But within her schedule there was a mandatory time slot to work, specifically from 8:30 a.m. to 2:30 p.m.
3. On March 1, 2020 she completed the self-assessment checklist about the necessary safety and hygiene conditions to work from home.
4. On July 30 she teleworked. At 9.15 a.m. she walked into the kitchen. She took a bottle of water, slipped and fell hurting her left hand. She was placed on sick leave for temporary disability due to the non-work-related accident, which led to these proceedings.
5. Both rulings seek to decide if a case is work-related when the employee gets hurt during rest breaks or when he/she leaves work. The answer is yes. **As a matter of fact, "...evidence shows a direct and necessary link between an employee's fall and the time and place of work. Although the**

presumption under Section 156.3 LGSS may be applicable because she was working, and otherwise she would not have fallen, the causality link remains intact. This is because rest breaks are necessary and regular in any workday.

6. On July 16, 2020, the Court reached the same conclusion. Judgment 1072/2018. It is worth mentioning that "rest breaks" are usually taken during work hours to avoid the buildup of fatigue and distress over a workday, and not before or after work hours because in this case it would not be a break but just a short workday. Please note the occupational safety and hygiene conditions associated with them. In other words, rest breaks are implicitly connected with the effort (physically and mentally) employees put in while working and their short duration, especially when they resume tasks shortly afterwards. This means they are related to employment...".
7. That said, it is concluded that this is a work-related injury. The supporting arguments include:
 - Section 156.1 TRGSS deals with two cases of work-related injuries. Injury may arise out of employment, and more generally in the course of employment. In this case, it is not necessary to prove employees' work is the direct cause of their injury but just an indirect reason for it..." - High Court, judgment of April 20, 2021.
 - The presumption under consideration here is this second alternative.
 - The Lower Court decision interprets the definition of workplace mechanistically and strictly. It refers to the specific physical location. In this case, it refers to a table, a chair and a computer at home. Therefore, everything outside this specific space is not work-related.
 - But even if the employee just happens to work under such circumstances or works from home permanently, there are several logical assumptions for interpretation that should also apply even if she worked at the office. For example, employees might just get up from their desk and fall. They might get hurt while going to the bathroom or fall in the bathroom, or get injured during an on-site lunch break. In other words, these are perfectly normal activities during work hours, and according to precedents, it is "a matter of luck". Section 13.1 ET was still in force when this incident occurred and it refers to the "employees' domicile", i.e. a more comprehensive and all-encompassing concept for labor matters.
 - That said, in the case under analysis, the employee got injured during work hours at the work location which happens to be her home.
 - The event that caused the accident is deemed necessary and part of an employee's work activity. Grabbing a glass of water during work hours is perfectly normal. This is not strange. It does not even happen outside the work location, as explained in the Court's arguments whereby it was considered a work-related injury.

- Consequently, the employee's individual agreement for remote work established that "Telework will be conducted as if employee were in the company's workplace" (Section 4 of the Telework Agreement). "Working conditions remain unchanged" (Section 5 of the Telework Agreement).
- **The employee's work location is not a separate space, insulated from the rest of the house.**
- Therefore, it is a work-related injury, thus rejecting the claim made by the National Social Security Institute [Instituto Nacional de la Seguridad Social], the General Social Security Revenue Office [Tesorería General de la Seguridad Social] and the Company.

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