

Home Offices – Does a Fall on the Way to the Kitchen Qualify as a Workplace Accident?

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Germany's occupational accident insurance system covers primarily injuries resulting from workplace accidents. However, employees are covered not only while actually working, but also, for example, while on the way to and from the office coffee machine. But what about employees who work at home? If a home worker falls and hurts himself on the way to the kitchen to get something to drink, does that also qualify as a workplace accident?

Decision

The Federal Social Court recently addressed these questions (judgment of 5 July 2016, Ref.: B 2 U 5/15 R). In that case, the plaintiff, who had set up a home office in her attic, slipped on the steps leading to the kitchen on the ground floor below and broke her foot on her way to get a glass of water.

The insurer refused to consider the incident a workplace accident, and the Mainz Social Court rejected an action brought by the employee, but the Mainz Higher Social Court then granted the appeal. The insurer then appealed to the next higher instance, and the Federal Social Court concurred with the position of the accident insurer. According to the court, the trip to the kitchen belonged to the personal sphere of the plaintiff since she did not go to the kitchen in the exercise of her insured activity; the use of part of a home for business purposes does not change the inherent nature of a home as part of the private sphere, which is as such not covered by occupational accident insurance. Unlike those who work on their employers' premises, the court argued, the plaintiff was not bound by any company rules or constraints. As a result, home workers must themselves assume responsibility for any risks associated with their private premises, especially since statutory occupational health insurers have hardly any way to

implement preventive measures and reduce the potential for accidents while employees are not on the premises of their employers.

Comments

Accident insurers – and as a result indirectly the employers who bear the cost of the insurance – are likely to welcome this judgment since 12% of all German employees now work at home, and this figure can be expected to increase in the years to come. If the Federal Social Court had granted the plaintiff's petition, that would have been tantamount to a not insignificant expansion of employee's insurance coverage. This would especially be the case in view of the flexible working hours of employees who work at home.

The reasoning of the Federal Social Court may at first glance seem tenuous, for the Federal Social Court has consistently confirmed that employees are covered by occupational accident insurance when they leave the premises of their employers for the purposes of taking meals, which the court considers essential for them to be able to perform their work. Here too, statutory occupational health insurers have no way to implement preventive measures to reduce the potential for accidents and there is also nothing to indicate that employees are subject to any rules or constraints when they leave their place of work to have lunch.

What does, however, make the decision of the Federal Social Court convincing is the fact that home workers can indeed take measures to eliminate dangers in their own homes and provide optimum protection, which is hardly possible in the case of a lunch break in an urban environment.

Legal Update

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr. Hagen Strippelmann on +49 221 33660-503 or by email to hstrippelmann@goerg.de. For further information about the author visit our website www.goerg.com.

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