

Extension of statutory accident insurance to employees working from home

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Working from home continues to be very popular. In the cold half of the year the number of employees who work from home or remotely at least some of the time is likely to increase even more. The German Federal Government is taking account of these changes. The draft of the 2022 Annual Tax Act (Jahressteuergesetz) sees the rebate for working from home increase from EUR 600 to EUR 1000. This means employees can plan on an additional financial rebate if they work from home.

At the same time there continues to be numerous legal uncertainties for companies and employees regarding working from home. One of these aspects is the question of to what extent working from home is covered by statutory accident insurance protection. The Federal Social Court (Bundessozialgericht, BSG) has in the meantime had the opportunity to take a position on this ([judgment dated 8 December 2021 – B 2 U 4/21 R](#)).

The good news for companies and employees is that the BSG **extended** the range of statutory accident insurance protection.

Facts of the matter

The claimant, an area sales manager, regularly worked from home and usually started working directly after getting up. In September 2018, on the morning in question, the claimant rushed out of their bedroom on their morning commute from their bedroom and down the stairs to the home office which is one floor down and injured their spinal column. The claimant reported the injury to the responsible employer's liability insurance association. However, consistent with previous case law the insurance association took the view that the fall did not qualify as a workplace accident meaning the employee had no right to claim benefits under the insurance.

The Aachen Social Court (Sozialgericht, SG) upheld the action brought against it. It held that the first morning commute from bedroom to home office was also a work journey ("Betriebsweg") covered by the statutory insurance. The North Rhine-Westphalia

Regional Social Court (Landessozialgericht, LSG) however rejected the argument that the requirements for a workplace accident were met and held it was an uninsured preparatory act which only preceded the actual work ([judgment dated 9 November 2020 – L 17 U 487/19](#)). The LSG found that both when going to and from the place of work as well as on work journeys undertaken directly from home the insured activity in accordance with [Section 8 \(2\) \(1\) German Social Code Book VII \(SGB VII\)](#) only commences upon passing through the front door of the building in which the insured person's home is situated ("external door theory").

Decision of the BSG

The claimant's appeal on a point of law was successful. The BSG agreed with the SG and **upheld** the statutory accident insurance protection in relation to the accident suffered by the claimant. The route taken through the claimant's own house to first commence work was held to be an insured **work journey**. This included routes which "*are travelled when carrying out the insured work, are part of the insured work and are therefore equivalent to the work*". As a result the fall is to be considered a workplace accident in terms of [Section 8 \(1\) sentence 1 SGB VII](#).

According to the BSG, the relevant criterion for determining whether statutory accident insurance protection applies when working from home is the "**objective action tendency**" in relation to occupational work/activity. It is therefore necessary to specifically determine whether the employee "*intended to carry out an activity serving the company during the action that led to the accident and whether this action tendency is confirmed by the objective circumstances of the individual case*".

Comments

As demonstrated with this textbook decision of the BSG, statutory accident insurance protection for employees should generally be considered based on the following three aspects:

- a. The accident occurred in connection with **performing the actual activity**.
- b. The accident occurred on a **journey** to or from the place of work.
- c. The accident occurred on a **work journey**.

In the past the case law regarding accident insurance protection for (work) journeys was based on the "external door theory" (listed under b and c above). Therefore insurance protection would require the accident to occur after the employee had walked through the front door of their residential building. This point of view was **relinquished** by the BSG in relation to work journeys. Even if the employee does not leave their home, accident insurance protection would still apply if the activity is seen to be operationally useful when considering the objective action tendency.

Employees must still negotiate on an individual basis the hurdle of demonstrating and proving that the specific action during which the accident took place was an operationally useful action tendency. According to the BSG the specific location and time of the accident must be considered in particular here.

Statutory equality of working from home

In the above decision the BSG explicitly left open whether and to what extent the actual activity carried out at home falls under statutory accident insurance protection. It is to be welcomed that the legislator has considered this question. According to the new version of [section 8 \(1\) sentence](#)

[3 SGB VII](#) activities undertaken "*in the household*" or "*in another location*" are regarded as equal to activities undertaken "*on company premises*" in terms of statutory insurance protection.

This formulation suggests that, in addition to working from home, other forms of "mobile" working are also covered.

Conclusion and forecast

With this decision the BSG has clarified that accident insurance protection when working from home depends on whether the accident took place during an activity that was in the interests of the employer. The differentiation whether the insured activity was carried out on company premises or a workplace in the home is, by contrast, of little importance for the decision, including when taking into consideration the regulatory equalisation resulting from [Section 8 \(1\) sentence 3 SGB VII](#).

On the basis of [Section 8 \(1\) sentence 3 SGB VII](#) in conjunction with the amended case law of the BSG, accident insurance protection during activities carried out when working from home will not only apply to the journey from bed to desk first thing in the morning, but also to going to the kitchen to get food or drink, or even going to the toilet. What is crucial here is whether it can be proven on a case-by-case basis that the action was related to the work activity. It remains to be seen which requirements the case law will establish in the future regarding the demonstration and provability of an objective action tendency for an operationally useful activity.

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. Alberto Povedano Peramato on +49 221 33660-508 or by email to apovedano@goerg.de. For further information about the author visit our website www.goerg.com.

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