

# PUBLICATION

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## Tennessee Supreme Court Expands Workers' Compensation Coverage To Include Telecommuting

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In a case of first impression, the Tennessee Supreme Court expanded the coverage of workers' compensation statutes to include those employees who work from home or maintain home offices. The court addressed the issue in an opinion released on November 16, 2007, *Wait v. Travelers Indemnity Company of Illinois*, Tennessee Supreme Court No. 2005CC-321.

The plaintiff worked for the American Cancer Society in Nashville. When office space was lacking, she was allowed to convert a spare bedroom in her home into office space. The employer furnished the necessary office equipment and the plaintiff's home office functioned as her work place. No designated work hours were set and plaintiff did not open her house while working; her normal routine was to lock the doors and set the alarm. On the date of injury, the plaintiff opened the door to a neighbor who ultimately assaulted and severely injured her while she was preparing lunch. The trial court granted summary judgment to the employer and the Supreme Court accepted review.

The court noted a line of previous decisions holding that the workers' compensation act was to be liberally construed in favor of coverage for the employee. It also observed that the law was "a social welfare statute." The court took notice of the trend toward telecommuting as a way for employers to reduce overhead and to improve employee retention, loyalty and morale.

The Supreme Court explained that a compensable injury must arise out of and occur in the course of employment. The "course of employment" requirement was met where the employee was in a "period of the employment" and at a "place where the employee reasonably may be." Since the employer approved of the work site, it was reasonable for the employee to take breaks and prepare lunch. Thus, the "plaintiff was assaulted at a place where her employer could reasonably expect her to be."

The second requirement was to show the injury arose out of employment, or was a risk incidental to employment. Here, the court found that the assault by a third party (a neighbor) was not a risk related to the employment. The plaintiff's employment did not expose her to the risk of assault. It was noted that the plaintiff knew the attacker from events in the neighborhood which were not related to her employment. Based on this issue, the claim was denied. "Under these narrow facts, this injury occurred in the course of the plaintiff's employment...[but] did not arise out of the plaintiff's employment."

While the employer prevailed in this particular case, the Supreme Court has now expanded coverage to home offices and telecommuting. It seems that a more routine injury such as a fall or other accident could be compensable.