The Administrative Labour Tribunal rejects a worker's claim for a workplace injury in a remote work setting

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On March 2, 2023, the Tribunal in *Allard and Promutuel Horizon Ouest*, 2023 QCTAT 1027 rendered a decision that sets a new favourable precedent for employers in terms of workplace injury (that is, employment injury).

Context

With the increase of remote work in all workplaces in recent years, the Administrative Labour Tribunal (the Tribunal) has had to rule on a number of claims relating to accidents occurring at home during a work break.

A worker who is injured at home during a break while working remotely may benefit from the compensation regime provided for in the *Act respecting industrial accidents and occupational diseases* (the AIAOD) for an injury arising "*in the course of work,*" just as if they were performing their work in the office, if they meet the usual criteria established by law.

A review of recent case law developments[1] illustrates that it is difficult, in the context of telework, to distinguish between activities that fall within the private domain and those that fall within the professional domain. Until recently, the Tribunal has tended to view the "professional" domain as prevailing in a remote work context.

However, in *Allard and Promutuel Horizon Ouest*, the Tribunal rejected a claim for an accident which took place on the courtyard steps of a worker's residence in a remote work context, because the fall occurred within the worker's "personal" domain of activities.

The decision

In this case, the worker was teleworking from the basement of her home. During her lunch break, she fell down the stairs outside of her residence leading to the yard,

resulting in a sprained and fractured right ankle. The Tribunal had to rule on the eligibility of her claim for an employment injury.

In its ruling, the Tribunal discusses the *Air Canada and Gentile-Patti* case, cited by the worker. It specifies that the precedent should not be applied because, unlike this other case where the fall had occurred moments after the worker had disconnected from her shift to start her lunch break, here the worker fell in the middle of her lunch break after she had finished eating and set out to enjoy the remainder of her break in the comfort of her own yard. The evidence also established that her lunch break was unpaid and that the employer did not require the worker to remain available. In fact, the worker was disconnected from the employer's network during her break, so there was no subordinate relationship.

In addition, the Tribunal paid particular attention to the activity performed at the time of the fall, namely that the worker was injured while trying to pick up her personal cell phone that had fallen down the stairs, a phone that was not used in the performance of her job duties.

Finally, the Tribunal noted that the fall occurred on the courtyard steps of a worker's residence and not the interior staircase leading to the basement office where she worked.

The Tribunal concluded on these grounds that the fall occurred in the course of the worker's personal activities and thus did not occur *in the course of work*. The worker's claim for an employment injury was therefore denied as she did not meet the legal requirements for an industrial accident.

Contact us

If you have any questions about this article or wish to discuss any other legal concerns related to occupational health and safety, we invite you to contact any lawyer from our Labour & Employment Group.

[1]*Air Canada et Gentile-Patti*, 2021 QCTAT 5829;*Laverdière et Ministère des Forêts, de la Faune et des Parcs (Opérations régionales)*, 2021 QCTAT 5644

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