

# Employers' Liability From The Accidents Occured During Home Working

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Dear Clients, Colleagues and Friends,

Coronavirus (COVID-19) pandemic, which was first identified in the city of Wuhan, China and spread rapidly across the world affecting many countries including Turkey, continues to remain as a major global threat. While the pandemic poses a serious public health risk, it also affects countries' economies and working life. In order to minimize the effects of pandemic in the effected countries and prevent its negative impacts over the working life, remote working is increasingly becoming a common practice for the works that provide for remote working, especially amongst white-collar employees.

Remote working has been introduced to Turkish legal system with amendments made in the Labour Law No. 4857 ("**Labour Law**") in 2016. Pursuant to Article 14 of the Labour Law, remote working has been defined as "*the work relationship established in writing and whereby the employee fulfils his/her work from home or outside the workplace by using technological communication tools at the work set-up created by the employer*". When the concept of "work set-up" provided in the definition of remote working is read together with the definition of workplace under third paragraph of Article 2 of the Labour Law, which describes the workplace as "*any place where the employer is organized with the aim of a work set-up*", the debate arises as to whether the household of an employee, who works from home, will be considered as a workplace and whether an accident occurred at the employee's home will be considered as a "workplace accident".

Occupational Health and Safety Law No. 6331 defines workplace accident as "*an event that occurs at the workplace or due to the conduct of work*". In this context, every accident occurred at the workplace or an accident occurred due to the conduct of work despite being outside of the workplace are considered as workplace accidents. At home-working system, it is controversial whether the household of the employee

is to be considered as a workplace, but it is inevitable that an accident occurred at home caused due to conduct of work is considered as a workplace accident. However, if the reasons are not related to work and the causal link is interrupted, the accident will not be deemed as a workplace accident. For example, if a damaged equipment provided by the employer to the employee working from home causes a fire and results in employee's injury, this could be deemed as a workplace accident, whereas if the employee injures himself/herself while cleaning home, or cutting fruit with a knife, or pouring hot water, it is likely that those acts will not to be considered as a workplace accident.

However, it is not always straightforward to distinguish between a workplace accident and a home accident. Therefore, detailed rules as to the way of conducting work at home should be regulated under separate protocols, which are inseparable parts of the existing employment agreements – for example, designating a specific area in the house as the place of work, or specifying breaks and working hours explicitly – will set a guidance while distinguishing the nature of accidents. In such case, an accident occurred during the designated working hours or at the designated space will likely to be considered “to have occurred due to conduct of work” until otherwise is proven. In the absence of such clear instructions and designations, the qualification of the accident will be made mainly by relying on the statements of the employee, the characteristics of the case at hand and evaluation of the evidences by the judge.

In cases where the causal link exists, while determining the level of liability of the employer with respect to the workplace accident, certain criteria such as whether the employer gave necessary training to the employees, clearly explained to the employee the risks and precautions regarding the occupational health and safety that the employee may possibly encounter while working from home or provided materials and equipment to the employee that meet with the occupational health and safety standards will be taken into consideration.

Please do not hesitate to contact us for any further information on this briefing.



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