



*BEFORE THE HOUSE INSURANCE COMMITTEE
PROPONENT TESTIMONY ON HOUSE BILL 447*

*BY NATHAN P. FRANZEN, ESQ. ON BEHALF OF
THE OHIO CHAMBER OF COMMERCE*

Chairman Brinkman, Vice Chair Lampton, Ranking Member Miranda, and members of the House Insurance Committee, thank you for the opportunity to provide proponent testimony on House Bill 447 (HB 447). My name is Nathan Franzen and I am an attorney with the law firm Garvin & Hickey. We specialize in Ohio Workers' Compensation law.

I am here today testifying on behalf of the Ohio Chamber of Commerce in support of legislation that will modernize Ohio's workers' compensation statutes to reflect the reality that more Ohioans are working from home than ever before.

HB 447 amends the current definition of what is an injury under Ohio workers' compensation law to recognize there are risks in a work from home environment that are not present in a traditional work environment. This change in the law is necessary because employers are unable to remove certain hazards from an employee's home and cannot foresee all potential injuries arising from the employee's home. For these reasons, HB 447 limits compensable workers' compensation injuries to situations where a special hazard of a person's employment activity causes an injury or disability.

Under the legislation, a work from home employee is an employee who performs their duties in the employee's home or dwelling, away from their employer's premises. This definition matches the National Counsel on Compensation Insurance's (NCCI) manual classification code currently used by the Ohio Bureau of Workers' Compensation for clerical telecommuting employees. By borrowing the NCCI's characterization of who is a work from home employee, HB 447 effectively limits who is a work from home employee.

In addition to delineating who is a work from home employee subject to the provisions of HB 447, the legislation also creates a three-prong test to determine when a work from home employee has a compensable workers' compensation claim. The first prong confirms that injuries or disabilities must arise out of the employee's employment. Ohio courts generally consider three factors to determine if an injury arises out of employment: (1) the proximity of the scene of the accident to the place of employment, (2) the degree of control the employer had over the scene of the accident, and (3) the benefit the

employer received from the injured employee's presence at the scene of the accident. These factors are not exhaustive, but a guide post for the courts.

The second prong will codify that a work from home employees' injury must be a special hazard to their employment. The special hazard doctrine in Ohio workers' compensation law potentially allows claims for work injuries and disabilities when an employer's lack of control over the scene of the accident would have otherwise resulted in a denial of the claim. The special hazard exception is a two part test which Ohio courts have defined as: (1) "but for" the employment, the employee would not have been at the location where the injury occurred, and (2) the risk is distinctive in nature or quantitatively greater than the risk common to the public. In this instance, employers lack control over the employees' homes, and many of the risks associated with being home are common to every person, so requiring a special hazard for at home employees insures employee's injuries are work related.

The last prong, requires the injury or disability to occur in the course of an activity undertaken by the employee for the exclusive benefit of the employer. This means the work from home employee's injury would not be compensable in Ohio workers' compensation where the employee was injured by a personal activity or errand.

Importantly, HB 447 still allows for employees who are working from home to bring workers' compensation claims. One common example of an injury that would be compensable is that of a simple cut, sprain or other injury to an employee while performing clerical type duties. If an employee is working from home handling paper files, answering the phone, scanning or faxing documents, or other work activity and they are injured directly by that activity the injury would arise out of their employment, the injury would have been caused by a risk distinctive in nature to the employee's employment greater than that of the general public and would have occurred during the course of an activity solely for the employer's benefit. Therefore, the injury would be compensable.

Another example of a compensable injury would be a slip, trip and fall where the employee is working from home, again engaged in work activity such as walking to, in or around their desk or office to answer a phone, retrieve documents from a printer, file documents away, etc. and they trip over their office chair, their phone cord, files, or other work-related items. The injury would have arisen out of their work, a special hazard of tripping over work related items would be greater than that to the general public, and the injury would have occurred in the course of an activity whose benefit was exclusive to the employer.

We cannot discuss every potential scenario because each workers' compensation claim is unique and considered on a fact by fact basis. Indeed, HB 447 requires this type of factual analysis to determine if a claim is compensable. Under HB 447, work from home employees would have their work related injuries heard, adjudicated, and compensated in a relatively quick and efficient manner just like all other Ohio employees.

Moreover, HB 447 does not disqualify a class of persons or a class of injuries from workers' compensation benefits. Instead, it only changes the evidentiary requirements.

This is similar to the higher evidentiary standard for substantial aggravation of a pre-existing condition which is already contained in Ohio's workers' compensation statute. The rational basis for a higher evidentiary standard for work from home employees, is that the employer loses control of the work or employment environments when they allow the employee to work from home. HB 447's higher standard reasonably and fairly ensures that compensable injuries are indeed work related, which is the purpose of the Ohio Workers' Compensation system. Under HB 447, the Ohio Workers' Compensation system will continue to provide employer funded medical and non-medical benefits for injuries and disabilities sustained during work from home employment activities, and employers will continue to receive the benefit of the Ohio Workers' Compensation system which includes immunity from common law actions for an injury suffered on the job.

The passage of HB 447 also brings certainty to Ohio employers and employees alike about what types of injuries are compensable in a work from home environment. This certainty increases efficiencies in our workers' compensation system and can lower operating costs for employers. Likewise, creating a statutory scheme that defines what is a work from home injury will reduce litigation by creating uniformity in the law.

In closing, the Ohio Chamber urges your support for HB 447 because it represents a reasonable approach to reforming our state's workers' compensation law to account for the increase in the number of Ohioans who are working from home.

Thank you for the opportunity to testify and I welcome any questions from the committee.