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Pennsylvania Legal Update

Fall 2007

Telecommuter Awarded Workers' Compensation

People who work at home are sometimes called "telecommuters" or "teleworkers." Many businesses have recognized that permitting, encouraging, or even requiring their employees to work from their homes eliminates commuting time

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and expenses and provides a comfortable and productive work environment. Working at home does not suit every individual, and some job duties demand a presence in the workplace, but telecommuting is certainly on the rise.

Recently, a Pennsylvania telecommuter, injured while working at home, won full workers' compensation benefits. The worker was a computer systems engineer who had worked for the same company for more than 32 years. At the time of her injury, she was working three days per week at an office site

and two days per week from a basement office in her home.

On a day when she was working from her home office, the worker answered a telephone call from her employer. She was in her kitchen drinking a glass of juice when she took the call. Because she decided that the call required immediate attention, the worker began descend-

ing the stairs to her basement office while on the telephone. She fell down the stairs and injured her head and neck. Neck surgery left her scarred and prevented her from working for a year.

The employer claimed that the injury was not work-related be-

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Breast Cancer Misdiagnosis

October is National Breast Cancer Awareness Month—a time for all women to remember the importance of early diagnosis. But even women who are careful about breast health can suffer from breast cancer if they are the victims of misdiagnosis.

A 36-year-old Pennsylvania woman with a family history of breast cancer learned too late that she should have received more thorough diagnostic services following her routine annual mammograms.

Over a period of three years, the woman's mammograms showed

an area of calcifications that the radiologists characterized as benign. Calcifications can be indicative of increased activity in certain cells and may be a sign of cancer, but they also are a normal part of aging and can even result from injuries or inflammation. Most calcifications are not related to cancer.

After the woman noticed a lump in one of her breasts in the third year of her regular mammograms, a biopsy revealed numerous cancer sites in her breast. Over the next year, she took aggressive chemo-

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Child Support Obligations

Child support is a shared responsibility of both parents. No matter what custody arrangement exists between parents for the sharing of physical custody of a child, some sharing of financial obligations usually is ordered by the courts if one parent seeks child support from the other parent. In deciding whether a parent must pay child support, the courts focus on the earning capacity of both parents, and not simply on their actual earnings.

The parent with longer periods of physical custody is generally entitled to some child support even if he or she earns more than the other parent. A parent who is obliged to pay support may be entitled to a reduction of up to 20% of the recommended support order if he or she has overnight custody that amounts to 40% or more of the calendar year overnights.

Nurturing Parent Doctrine

Recently, a Pennsylvania father appealed a trial judge's decision that relieved the father's former wife from making any contributions to the support of their child. The former wife and mother was remarried and had recently given birth to another child. She was not working and was able to prove that the costs of infant child care and her loss of government benefits would put her at an economic disadvantage if she returned to work. The court relieved her of any child support obligations under the "nurturing parent" doctrine. Pennsylvania law has long recognized that, where a parent elects to stay at home with a young child, he or she may be excused from contributing to support.

In deciding whether to excuse such a parent, the courts consider the age and circumstances of the child who is the subject of the support proceedings. The courts focus on whether other sources of support are available to the child. Most often, the nurturing parent doctrine is asserted by mothers who wish to stay at home with young children. Application of the doctrine often places all

responsibility for the child's support on the child's father.

In the case at hand, the father objected to the application of the nurturing parent doctrine where the child being "nurtured" was not the child whose support was at issue and was not a child of the father's. The Pennsylvania Superior Court

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Structurally Deficient Bridges

Following the collapse of an interstate highway bridge in Minneapolis this past August, the Pennsylvania Department of Transportation (PennDOT) responded to growing concerns by promising to publish more detailed information about Pennsylvania's bridges at www.dot.state.pa.us. Pennsylvania has the largest number of structurally deficient bridges in the nation—nearly 6,000 total.

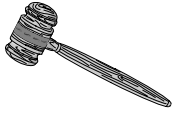
Currently, PennDOT's website identifies the Commonwealth's bridges that have been designated structurally deficient, but the website's list of bridges does not include the actual rating for each bridge.

Bridges are rated for sufficiency and for condition. The sufficiency rating is a composite number rating on a scale from 0 to 100, with 0 being the worst and 100 being the best, and focuses on a bridge's overall capability. The bridge's structural condition, the bridge's ability to meet current traffic conditions, and the bridge's importance to the public use all are considered in the sufficiency rating.

The condition rating operates on a scale of 0 to 9, with 0 being the worst and 9 being the best. A separate condition rating is assigned to each of three bridge components: (1) bridge deck, (2) bridge superstructure (the structure that holds up the deck), and (3) bridge substructure (the foundation and piers that hold up the superstructure). A bridge is classified as structurally deficient and in need of repair when one or more of the three components receives a condition rating of 4 or lower.

Right now, you can find a list of structurally deficient bridges on the PennDOT website. Within the next several months, you should be able also to see the specific sufficiency and condition ratings for those bridges.

Jury Duty in Pennsylvania



Pennsylvania law provides that every citizen of the Commonwealth becomes qualified to serve as a juror at the age of 18. Certain exceptions exist. Anyone who is unable to read, write, speak, and understand the English language cannot serve on a jury. Anyone convicted of a crime punishable by imprisonment for more than one year can never serve on a jury unless he or she has been granted a pardon. Pennsylvania citizens are also excluded from jury service if they suffer from any mental or physical infirmity that prevents “efficient jury service.”

You can be summoned for jury duty at any time. In most counties, the process starts when your local county Jury Commission sends you a Juror Qualification Form. The form is designed simply to gather updated information about your basic qualifications to serve on a local jury—the questions focus on your current address, your age, and your ability to understand and participate in a trial. Do not ignore a Juror Qualification Form if one arrives in your mailbox: You can be ordered to come to court to fill out the form and to explain why you failed to do so voluntarily.

After you return the Juror Qualification Form to your county Jury Commission, you will be added to the list of qualified jurors if the Commission finds you qualified. The Commission then draws names

randomly from the list of qualified jurors whenever the county judges need jurors for trials. In counties where the Juror Qualification Form is not used, the Jury Commission simply sends a notice of jury duty to randomly chosen citizens that it assumes are qualified.

Excuse Me, Please

How can you secure an excuse from jury service if you receive a summons ordering you to appear for jury duty? The Commission can excuse you if you meet any of the following criteria:

- (1) you are in active service of the armed forces of the United States or of the Commonwealth of Pennsylvania;
- (2) you have served within the past three years on any jury for more than three days;
- (3) you can demonstrate undue hardship or extreme inconvenience; or
- (4) you are a spouse, child, sibling, parent, grandparent, or grandchild of a murder victim.

In most counties in Pennsylvania, people who ask to be excused from jury duty due to hardship are required to appear for duty and to present their request to the trial judge.

The Jury Commissions use a variety of sources of information to locate and identify potential jurors. In most counties, a combination of the voter registration lists and lists of licensed drivers are used to find potential jurors.

Actively participating in our judicial system is a basic democratic right and duty. While most people groan when they receive a summons for jury duty, many later agree that their service on a jury was a surprisingly positive and rewarding experience.

Child Support

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found that whether or not the nurtured child was the same child whose support was at issue was not a controlling factor in deciding if the mother was entitled to nurturing parent status. Instead, the mother’s earning capacity and the support otherwise available to the child at issue were the primary issues for the court’s focus.

Many Pennsylvania county courts consider every parent responsible for paying some child support, no matter what his or her circumstances. Parents who seek relief from child support based on the nurturing parent doctrine are frequently denied relief. But a parent who chooses to stay at home with a young child is entitled to seek relief from the payment of support on the ground that the young child is in need of parental nurturing and that the fulfillment of that need prevents the care-taking parent from earning income.

Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Health Insurance for Drug and Alcohol Treatment

Beginning in 1989, Pennsylvania law required that all health insurance companies had to include drug and alcohol dependency treatment in their health insurance policies issued in Pennsylvania.

The treatment must include detoxification services in a licensed hospital or facility. If recommended by a physician or a psychologist, the covered treatment also must include residential care of up to 30 days in a calendar year and may be subject to a lifetime limit of 90 days of total residential care. Coverage is also required for a minimum of 30 full-session outpatient visits or equivalent partial visits per year and may be subject to a lifetime limit of 120 full-session outpatient visits or equivalent partial visits.

After the change in the law, the Pennsylvania Insurance Commission issued regulations forbidding insurance companies from imposing “managed care” or other limitations on drug and alcohol dependency treatment recommended by an insured’s physician or psychologist. In response, a group of insurance companies sued the Pennsylvania Insurance Commission, claiming that the new drug and alcohol treatment laws did not limit the provisions in health insurance policies that require “pre-certification,” “gatekeepers,” or “utilization review” and other procedures that are often found in managed care policies.

Recently, the Pennsylvania Commonwealth Court dismissed the lawsuit, agreeing with the Insurance Commission that insurance companies cannot impose any additional limits on patients whose physicians or psychologists have

recommended drug or alcohol treatment. Noting that the 30-day annual limit and the 90-day lifetime limit included in the statute adequately protect the interests of the health insurers, the court found

that the legislature wisely limited the available care and equally wisely addressed the social importance of drug and alcohol treatment by requiring its inclusion in Pennsylvania health insurance policies.

Workers’ Compensation

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cause the worker was not in her basement office when she was injured. The worker claimed that she was entitled to benefits because she was engaged in furthering the business needs of the employer when she fell. The court agreed with the worker.

The court concluded that the worker was engaged in her employer’s business because she was speaking on the telephone to her employer when she fell. The fact that the worker went upstairs to her kitchen for juice was an innocent break and was not an abandonment of her work that could justify the denial of benefits.

If you work at home and expect to be covered by your employer’s workers’ compensation benefits, you should be sure to document your work hours and minimize your breaks and departures from work duties during the day.

If you have employees who work at home, consider setting up a series of guidelines about what constitutes work hours and what does not. Employees who work at home are still subject to workplace rules, including scheduled work hours and set breaks.

Breast Cancer

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therapy and underwent a radical mastectomy and a series of reconstructive procedures. Radiation therapy left her with serious radiation burns.

The woman sued the radiologists, claiming that they should have recommended biopsies based on the nature of the calcifications in her breasts. An expert testifying on her behalf stated that the woman’s calcifications were not obviously benign and that all three radiologists who had reviewed her series of annual mammograms should have ordered follow-up biopsies. The woman was awarded \$4 million in damages, and her award was upheld on appeal.

If suspicious calcifications show up on a mammogram, the reasonable standard of care requires that the treating physicians expand the diagnostic procedures to include biopsies. Be sure that you and your loved ones get appropriate diagnostic care. Every year, more than 40,000 American women die from breast cancer. This year, in National Breast Cancer Awareness Month, take a moment to share this article with someone important to you.

Pennsylvania Legal Update

Background Citations, Fall 2007 Issue

Telecommuter Awarded Workers' Compensation

Verizon v. WCAB (Alston), 900 A.2d 440 (Pa. Commw. Ct. 2006).

Breast Cancer Misdiagnosis

Carrozza v. Greenbaum, 2004 PA Super. 464, 866 A.2d 369 (2004), *aff'd*, 591 Pa. 196, 916 A.2d 553 (2007).

Child Support Obligations

Reinert v. Reinert, 2007 PA Super. 170, 926 A.2d 539 (2007).

Structurally Deficient Bridges

See www.dot.state.pa.us.

Jury Duty in Pennsylvania

See 42 Pa.C.S. §§ 4501 et seq.; see also 42 Pa.C.S. § 2122; *Moore v. Diaz*, 428 Pa. Super. 532, 631 A.2d 658 (1993).

Health Insurance for Drug and Alcohol Treatment

Insurance Federation v. Commonwealth, Dep't Insurance, 2007 WL 2127222 (Pa. Commw. Ct. 2007).

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