HAVE YOU HAD AN ACCIDENT ON YOUR WAY TO WORK?

It has become more popular than ever to live in an apartment or semi-detached house on the outskirts of town or in a villa near the beach.
With more and more people living further away from their place of work, this increases the chances of accidents whilst commuting. Any kind of accident on your way to work – known as an "in itinere accident"- could be considered a labour accident depending on the place where the incident occurred. The High Court has expanded on the definition of such an "in itinere" accident adding that the stairs of the doorway of a block of flats would be included as part of the way that the employee must travel to get to work. This means that a fall down the stairs would still be covered and considered as a labour accident.
The explanation given by the High Court is that the doorway of a block of flats is a free space access for all the neighbours and does not belong to the private and personal space that is the employee's home. According to the latest rulings, the key point is that when an employee initiates the descent of the mentioned stairs he has started his way to work through a common and free space.
These pronouncements may cause a lot of controversies as individuals may argue what would happen if the accident occurred on the stairs of the house? Sadly, the incident would not be considered as a labour accident in this situation because this kind of home is considered a private property and the entrance would be restricted to other people. But is this fair coverage for all employees?
Though the High Court recognises that the concept of an address can be constituted by a house or a flat, only in this last case would there exist common areas that can be used by all the owners. And it is in these areas - not private ones - where it could be considered a work accident.
But what are the advantages of considering an accident as labour related?
The main advantage is that the next day before the employee's sick leave, the Social Security will pay 75 percent of the employee's salary. Moreover, the applicable Collective Bargain Agreement may foresee that the employer has to pay the difference of up to 100 percent of the employee's salary.

On the other hand, if the accident is considered as non-labour the amount the employee would receive would be inferior to the ones established for a labour accident. For example, the general rule is that from the first to the third day, the employee would not receive any salary and that from the fourth to the 15th day, the employer would pay only 60 percent of the employee's salary – unless the applicable Collective Bargain Agreement specifically determines to pay 100 percent of the employee's salary.

In the event that you have any future accident on your way to work, be aware of the enormous differences regarding the pay out you will receive depending on the classification of the accident as labour or non-labour. It is always advised to contact a legal representative to ensure that your rights are met, and as head of the labour department I can recommend **Lexland Abogados** as qualified multi-lingual professionals.

About the author:

As a Labour Law and Social Security Specialist at Lexland Abogados, Fátima Vera regularly advises clients on all labour law related matters. Amongst others, this includes the drafting and termination of ordinary and senior executive's employment contracts, bonus schemes, stock options, collective bargaining agreements and social security contributions. She also provides companies with guidance on staff restructuring.

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