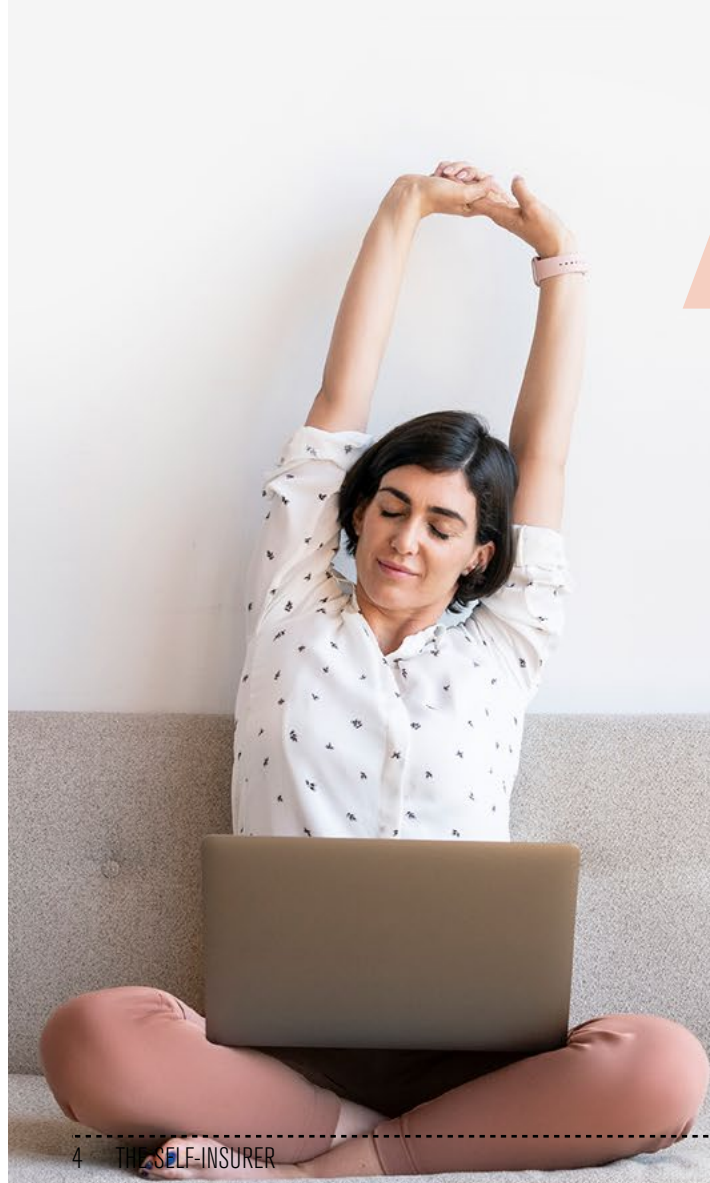


Workers' Comp for Remote Employees:

Updates and Guidance for the Self-Insured Community

Written By Laura Carabello



Among the many changes and upheavals that the COVID-19 pandemic has brought to the workplace, now more than ever Americans are working from home. To limit the spread of the virus, many offices simply closed their doors and transitioned their employees to remote work, reshaping and forever changing the world at work.

Characterizing the past two years as a rollercoaster for employers, Sally Pace, CEO, Connect Healthcare Collaboration, shares, “This has been especially impactful for the way we operate our office environments. As an employer with a mix of remote and headquartered staff, juggling employee satisfaction and safety has become a bigger focus due to the pandemic.”

She says that as a result, her organization has changed its own requirements, adding, “We have adopted a hybrid work policy that we expect to remain intact for years to come. It includes establishing standard working hours adjusted according to each employee’s time zone, implementing new communication tools and computer programs to allow for more fluid work remotely while also remaining secure.”



Sally Pace

While technology is the organization's biggest asset in a remote situation, she notes, "But it can also be our biggest risk during remote work. Evaluating and adjusting technology protocols is paramount to any employer with a hybrid or remote workforce."

While a telecommuting workforce was not an option that the Alabama Self-Insured Worker's Compensation Fund was exploring prior to the onset of the pandemic, this mindset has changed overnight. Freda Bacon, administrator, says,

"Because of the investment we made in technology, the dedication of our staff, and a determination that service would not be interrupted, we were able to pivot quickly to a remote work model."

Bacon, who has been proud to serve as a past president and chairman of SIIA and currently serves on the SIEF Board of Directors and the SIIA Worker's Compensation Committee, continues, "Two years later, the remote operation worked so well that we have continued a hybrid work option. Our workforce is even more productive and has a much better life work balance. In the future, I believe this new normal work environment will help retain workers, be attractive to new employees and keep morale at a high level!"



Freda Bacon

Even though more people are getting vaccinated, many self-insured employers will continue to offer remote work options to their employees in the post-COVID world and the work-from-home trend is unlikely to end:

- Upwork estimates that 22% of the workforce (36.2 million Americans) will work remotely by 2025.
- A new survey from the Pew Research Center reports that nearly two years

into the COVID-19 pandemic, roughly six-in-ten U.S. workers who say their jobs can mainly be done from home (59%) are working from home all or most of the time. The vast majority of these workers (83%) say they were working from home even before the omicron variant started to spread in the United States.

- A PWC survey on US remote working found that 55% of executives believe that most of their employees will continue working remotely at least one day a week post-pandemic.

But the shift to remote work as a new normal poses many challenges, not the least of which are the home environment and workers' compensation insurance. Protecting business interests associated with workers' compensation (WC) while helping staff work more safely at home both now and in the future are key concerns.

Steve Kokulak, MagnaCare, says at the height of COVID in New York, when many people were working from home or out of work completely, their worker's compensation claims were down 50% compared to pre-pandemic levels.

"Today they're down by about 25% compared to 2019 and will likely not return to pre-pandemic levels," says Kokulak.

GATEWAY TO THE FUTURE

Join self funding's most influential companies for networking and making new connections this summer at TPA Summit 2022. You won't want to miss the full slate of inspiring speakers as they explore what truly lies ahead for the business of self funding and the opportunities that are on the horizon for us all.

Learn More and Register at
hcaa.org/page/2022TPASummit



TPA SUMMIT 2022

SAVE THE DATE!
JULY 18-20, 2022

ST. LOUIS
#HCAATPASUMMIT
HCAA.ORG



“This environment has forced us to be nimble and shift our business model to more of an outcome based managed care approach, with nurse case managers supporting workers’ care, as opposed to a traditional PPO network savings model. Given that our primary concern is the health of our customers, we’re glad to make those adjustments, and we hope to see more employers, insurers and TPAs adopt this more comprehensive proactive approach in the future.”

Remember, if the company has even one employee, it's most likely required by state law that the business has workers' comp insurance. This is regardless of employees being remote or not. Note that while each state has its own set of laws and regulations around WC, volunteers are not typically covered.

To this point, Mark Walls, vice president client engagement, Safety National, recommends that employers ascertain whether or not employees have relocated to

a different state in the work-from-home environment. “If so, there could be problems with your self-insured workers’ compensation coverage. Your approval to self-insure is state specific, so if your employees have moved and they file a claim in the new jurisdiction you could find yourself in a situation where you are in violation of that new state’s workers compensation insurance requirements.”

Source: Pew Research

https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2022/02/PSDT_2.16.22_CovidandWork_o_o.png?w=544

Joseph Berardo, Jr., CEO, Carisk Partners reports, “When the pandemic struck, our IT team was very proactive in transitioning all employees to work from home. We had an infrastructure and a platform that allowed for it, so within two weeks everyone was fully functional. There was no downtime or interruption in the delivery of care for our patients or productivity for our employees.”



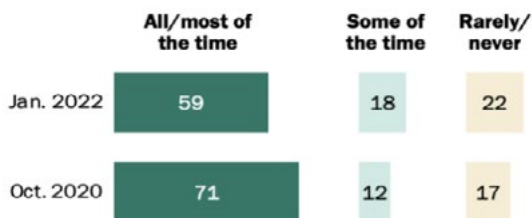
Joseph Berardo

Since then, he says they have seen a significant increase in the use of technologies that improve access to care for the injured workers and clients they are serving,” adds Berardo. “Telemedicine is a great example of an enabling technology that spiked in use as a result of the pandemic. Our platform allows for it, and we continue to partner with providers who have those HIPAA-compliant capabilities. We further leverage our own integrated technologies that not only conform with patient privacy guidelines, but also enhance the patient experience.”

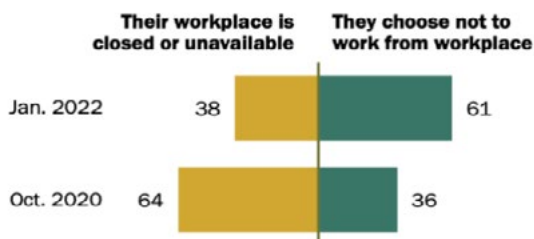
Digital technologies have become integral to improving patient outcomes, including mobile apps that track, monitor, and communicate with patients. Berardo has also piloted the use of HIPAA-

Majority of workers with jobs that can be done from home are teleworking, even as more workplaces have become available

Among employed adults who say, for the most part, the responsibilities of their job can be done from home, % saying they are currently working from home ...



Among employed adults with a workplace outside their home who are working from home all or most of the time, % saying they are doing so because ...



Note: Share of respondents who didn't offer an answer not shown. Source: Survey of U.S. adults conducted Jan. 24-30, 2022. "COVID-19 Pandemic Continues To Reshape Work in America"

PEW RESEARCH CENTER

compliant, voice-enabled home health devices designed to assist patients with limited mobility access to health, wellness and emergency resources by using their voice.

“From a culture perspective, I have always found personal interaction and relationships to be so important,” adds Berardo. “While there is no replacement for the face-to-face interactions, we have prioritized our employee engagement through an increase in overall communication as we maintain a balance with being back in office and remote in our working environments.”

He notes that employee burnout was an additional focus, and due to the nature of their business, his team has increased their internal programs that focus on employee mental health and wellness as well as providing these services to their partners and clients.

ELIGIBILITY FOR WC BENEFITS

Working from home or a remote location doesn't mean that accidental injuries don't still occur. Typically, if a remote worker is injured while conducting work-related activities, he or she is eligible for WC benefits.

To determine whether or not the injury is work related rests upon a multitude of factors, including whether the employer intended/approved the activity, whether the injured worker was required to participate in the activity when injured, and whether any benefit arose to the employer for the activity causing the injury. Many determinations are dependent upon the specific jurisdiction's rules for assessing each claim.



CANARX



CANARX was the first International Prescription Service Provider to introduce and supply a public-sector program in America and we've since saved self-funded health plans – and members – millions of dollars on prescription costs.

CONTACT US TODAY FOR YOUR FREE SAVINGS ASSESSMENT

canarx.com | 1-888-739-2718

**SIMPLE.
SAFE.
SMART.**

A medical stop loss grand slam.

A trusted business name.
A stellar balance sheet. An executive team with
30 years of experience. Creative, tailored solutions.
Berkshire Hathaway Specialty Insurance
is proud to bring our exceptional strength,
experience and market commitment
to the medical stop loss arena.

**It's a home run for
your organization.**



Berkshire Hathaway
Specialty Insurance®

www.bhspecialty.com/msl

Atlanta | Boston | Chicago | Houston | Irvine | Indianapolis | Los Angeles | New York | San Francisco | San Ramon | Seattle | Stevens Point
Adelaide | Auckland | Brisbane | Cologne | Dubai | Dublin | Frankfurt | Hong Kong | Kuala Lumpur | London | Macau | Madrid | Manchester | Melbourne
Munich | Paris | Perth | Singapore | Sydney | Toronto



Mark Walls

Mark Walls explains, "Remote and telecommuting workers are typically covered under WC policies if the injury or illness occurs while an employee is completing a work task during work hours. In most cases, the remote worker has the burden of proof and must be able to demonstrate that he or she was acting in the interest of their employer at the time they got sick or injured. There are many things that self-insured employers need to be considering when it comes to a remote workforce."

LARSON'S WORKERS' COMPENSATION LAW IS THE PREMIER SOURCE FOR ANALYSIS OF WORKERS' COMPENSATION LAW AND IS USED BY ALL STATE COMMISSIONS AND CITED, WITH GREAT FREQUENCY, BY COURTS IN ALL STATES.

LARSON'S THREE-PART TEST WHICH STATES THAT FOR THE DETERMINATION AS TO WHETHER A HOME QUALIFIES AS A WORK SITE, ONE MUST LOOK AT: "THE QUANTITY AND REGULARITY OF WORK PERFORMED AT HOME; THE PRESENCE OF WORK EQUIPMENT AT HOME; AND THE SPECIAL CIRCUMSTANCES OF THE EMPLOYMENT RENDERING IT NECESSARY, AND NOT MERELY PERSONALLY CONVENIENT, TO WORK AT HOME, WHILE ALSO CONSIDERING WHETHER THE EMPLOYER ACQUIESCED TO THE EMPLOYEE'S USE OF HIS OR HER HOME AS A WORK SITE, OR REASONABLY SHOULD HAVE KNOWN THE EMPLOYEE WAS REGULARLY USING THE HOME AS A WORK SITE."



Joe Clifford

Where states have already adopted Larson's three prong test, or a modified version, for establishing if home qualifies as a work site, the first question to ask is how courts are going to apply the test where people are working from home not because the nature of their employment requires it, but because government-mandated shut downs require it. According to some legal reviews of the pre-COVID case law, the courts are fairly uniformly

going to treat working from home because the government required it, the same as working from home because the nature of the employment required it.

According to Joe Clifford, MBA, area president Risk Placement Services, "Self-insured group funds (SIGs) in Michigan have been confronted with a variety of challenges related to the pandemic. The SIGs we manage have held up well overall and are now bouncing back to pre-pandemic levels of payroll and premium, as the economy opens up."

He cites the first primary regulatory change during COVID was the ability to utilize tele-health for treating injured employees. "The state broadened the treatment fee schedule codes to include this service, offering it as a compensable option. These added codes are still allowed and will provide this option moving forward."

He sees the primary application is for the treatment of existing injuries, relative to return-to-work and ongoing care, adding, "We're providing our client SIG members information and implementation support for its use, through both our loss control and claim teams."

MOST COMMON WORK-FROM-HOME INJURIES

The courts have found that, even though the employer does not have control over an employee's home environment, that lack is not a reason to deny claims. As a result, employers are responsible for providing the same safe work environment for both their on-site and remote workers.

According to the National Safety Council, about 14 out of 100 people were injured and about 1 out of 2,100 died from



CLAIMS MANAGEMENT SOLVED

We build our software around your business.
Innovative, turnkey claims administration software with a global footprint.



EXPERT SERVICES



SECURE CLOUD-BASED SYSTEM.



CUSTOMER SERVICE

Clients choose us!

We have 30 plus years of happy clients using our customized software solution to help eliminate their frustration and put them on the path to success.



hi-tech health

Solutions as Individual as You.

Email: info@hi-techhealth.com Phone: 908.813.3440



John Cooper

a preventable injury in the home and community venue in 2020. While slips, trips, and falls are some of the most frequently reported accidents in the US, NSC also points to the incidence of cuts, poisoning, burns, concussions and even drowning. Employers should encourage workers to always be aware of their surroundings and avoid complacency.

Most home environments do not have the same safety standards that employers have put in place in the workplace. Think about the risk of slipping on oil splatters from cooking or water spilled from

a dog bowl, tripping over a child's toys or falling down the stairs.

Some encouraging news comes from John Means Cooper, vice president, Excess Worker's Compensation, Amwins Insurance Brokerage, LLC. He says that from an excess workers' compensation insurance perspective, remote working has had little to no impact at all in pricing or terms, noting, "Employees working from home tend to be professional or clerical, which rarely have claims large enough to exceed today's

self-insured retentions. If anything they are safer at home, as it's the most familiar place a person has in their life."

Claims examiners report that work-from-home injuries are usually categorized as "cumulative injuries" resulting from poor ergonomics, slips, trips and falls and referring to damage and pain caused by repetitive movement and overuse. Many of these injuries include Carpal tunnel syndrome, tendonitis, bursitis, and back pain and can be the result of inadequate ergonomics at the workstation. This can be avoided by installing an ergonomic workstation that allows workers to sit comfortably at a computer screen.

Walls emphasizes the importance of ergonomics in the home office, adding,

Litchfield
UNDERWRITERS

Limiting Self-Funded Employer Risk, One Policy at a Time

Founded on the principles of **stability and integrity**, Litchfield Underwriters' proprietary underwriting methodologies deliver **superior self-funded reinsurance solutions** to both commercial clients and Welfare Funds alike.

SUPERIOR POLICIES FOR PRACTICAL SOLUTIONS



Specific & Aggregate Coverage



Underwriting Flexibility



Custom Solutions



is proud to partner with



LEARN MORE AT
LITCHFIELDUNDERWRITERS.COM

CONTACT US  ABOUT@LITCHFIELDMGU.COM

"Many of the workplace injuries being seen in home office environment are arising from poor ergonomics on the employee's work station. Performing ergonomic assessments of home office work stations is a strategic imperative. Employers can easily have employees send in a picture of their work station for review and then offer feedback on proper ergonomics."

He says that employers should also require employees to designate their home work station as a single place, noting, "It should not be the kitchen table today, outside tomorrow, on the couch the next day. By not having a defined work station you open yourself up to greater potential for claims in the home office environment."

CHECKLIST FOR PREVENTING CUMULATIVE WORKSTATION INJURIES

Top 6 Temporary Ergonomic Techniques

Use a separate keyboard and mouse. Arrange the workstation so that your elbows hang directly beneath your shoulders without shrugging, having them held or pushed away from your sides, or having to hold them forward. Aim to have your wrists in a neutral, comfortable position that does not require you to flex or extend them.

Elevate the monitor. Raise your computer monitor to eye level.

Adjust chair and table. If you do not have an adjustable desk chair, use folded towels or pillows to raise the seat and support your upper and lower back. Your hips and knees should be at about 90 degrees, with your feet firmly on the floor. (Place a box or large book under your feet if necessary.)

Prevent monitor glare. Adjust blinds and curtains to prevent glare or bright backlighting around your computer screen.

Take frequent breaks. Stand up when you can during calls and try to get up and move around every 30 minutes.

Use a headset. Using a headset when on calls will help keep your hands free and help reduce back pain and muscle fatigue.

Source: Woodruff Sawyer

<https://woodruffawyer.com/property-casualty/temporary-ergonomics-working-from-home/>

ADDRESSING WORK-FROM-HOME INJURIES

While it is nearly impossible to prevent all workplace injuries, this is particularly true for employees who work from home. It is important that Human Resource supervisors develop best practices for at-home, work-related injuries so that they are addressed as they occur and reported to the insurance carrier, if necessary.

Generally, work-related injuries or illness for remote workers is compensable under workers' comp if it "arises out of and in the course of employment," regardless of

where the injury occurs. In other words, it must relate to what the employee was doing at the time of the injury and when the injury happened.

In some cases, a workplace injury may occur suddenly or develop over time such as carpal tunnel syndrome. Regardless of the incidence, a compensable injury must have occurred during work hours and from an activity related to the employee's job. Since this is not always a clear-cut case, self-insured companies should consult with their insurance provider, state compensation board or legal counsel regarding individual workers' compensation claims.

Also be aware of the "Going and Coming Rule" which denies WC benefits to an employee who is injured while commuting to or from work since the employee is not "rendering any service to the employer" during a typical commute. However, this rule is less applicable when the home functions or is designated as a secondary job site and the employee is required to work at both the employer's premise and at home.

This has become an issue with the onset of the pandemic and the "Coming and Going Rule" does not apply. Since many employees are now required to work from home due to the pandemic, the employee's home becomes a secondary job site. So, for example, if a teleworker drives from their home to pick up materials or go to a workplace meeting and gets into a car accident, the injuries would likely be compensable since it is

arguably within the course and scope of employment.

The personal comfort doctrine is an additional concern, regarding a claim that might occur when an employee is injured while getting coffee or going to the bathroom at home. In these instances, an injury is compensable if the employee was engaging in activities necessary for their personal comfort or welfare and part of "normal working conditions." This personal comfort doctrine applies to employees who work from home, meaning that applicable activities can range from eating lunch, drinking water or coffee, going to the bathroom, and even taking a break for a smoke.

It is often difficult for an employer to correctly assess if the employee's activity was in the scope or course of employment or whether it was strictly personal. When there are no witnesses to corroborate the employee's statement, the issue becomes even more complicated.

EMPLOYER RESPONSIBILITIES

Fortunately, employers are not responsible for making these decisions since it up to the WC carrier to conduct an assessment in collaboration with the defense counsel after the investigation is completed.

Employer responsibility is to take the first step by reporting an at-home injury claim, including a detailed written statement from the employee to understand what the employee was doing at the time of the injury and when and where it happened. Employers should also ask the employee to take photos of the injury (cuts, bruises, swelling, etc.) and the injury site when possible (broken

furniture, dangling electrical cord.) The more information gathered for the carrier, the easier it will be to assess compensability.

As the self-insurance community realizes the "new normal", Todd R. Johnson, president, FutureComp, a division of USI Insurance Services, advises that we now must recognize that while remote work was initially viewed as temporary, employers are moving to hybrid or exclusively remote employment

structures. "New exposures must be considered and there is less control over the work environment," says Johnson.

"The overlap of work activity and non-work activity blurs the lines of responsibility and may lead to more litigation. Ergonomic injuries may develop because of altered work settings and self-insurers need to develop policies and support systems to proactively manage this new paradigm."

Self-insurers now must recognize that there is a potential need for "out of state" workers' compensation coverage, as Johnson explains, "Self-insurance is licensed by individual states, so long-term exposure in other states must be addressed through commercial coverage. This poses newfound administrative, financial and operational challenges in the smooth administration of a self-insured program."

Lack of case law is also an ongoing concern, as Walls states, "There really is not much out there in terms of case law with regard to what constitutes an increased risk due to working in a home office. This will vary greatly by jurisdiction. In some states, positional risk applies so the all the hazards of the home could become hazards of the job."

As pointed out earlier, the convenience doctrine also may apply, so an injury suffered while getting a cup of coffee could be deemed compensable. "Around the country," continues Walls, "there have been claims awarded for tripping over a dog, getting injured on a treadmill while on a call, even for being assaulted by someone who enters the home. Investigate every claim thoroughly but be careful about what you choose to litigate. You don't want your company name tied to bad case law."



Todd R. Johnson

ADDITIONAL GUIDANCE

ACCORDING TO THE NATIONAL COUNCIL ON COMPENSATION INSURANCE (NCCI) WHICH FOSTERS A HEALTHY WORKERS COMPENSATION SYSTEM, SPECIFIC REPORTING REQUIREMENTS HAVE BEEN ESTABLISHED FOR CLAIMS ATTRIBUTABLE TO COVID-19 WITH ACCIDENT DATES OF DECEMBER 1, 2019 AND SUBSEQUENT. EXTRAORDINARY LOSS EVENT (ELE) CODE 12 (CATASTROPHE NUMBER). A NEW CODE 83 FOR NATURE OF INJURY AND CAUSE OF INJURY WILL BE REQUIRED FOR THE APPLICABLE DATA TYPES. TO GET MORE ANSWERS REGARDING COVID-19 AND THE IMPACT IT MAY HAVE ON THE WORKERS COMPENSATION INDUSTRY, VISIT [HTTPS://WWW.NCCI.COM/ARTICLES/PAGES/INSIGHTS-CORONAVIRUS-FAQS.ASPX#](https://www.ncci.com/articles/pages/insights-coronavirus-faqs.aspx#) ■

Laura Carabello holds a degree in Journalism from the Newhouse School of Communications at Syracuse University, is a recognized expert in medical travel, and is a widely published writer on healthcare issues. She is a Principal at CPR Strategic Marketing Communications. www.cpronline.com

References:

Pew Research. https://www.pewresearch.org/social-trends/psdt_2-16-22_covidandwork_0_0/

Wards Black. <https://www.wardblacklaw.com/blog/workers-comp-coverage-impact-remote-work/>

Upwork. <https://www.upwork.com/press/releases/upwork-study-finds-22-of-american-workforce-will-be-remote-by-2025#:~:text=Upwork%20Study%20Finds%2022%25%20of%20American%20Workforce%20Will%20Be%20Remote%20by%202025,-Resources%20Press%20Releases&text=SANTA%20CLARA%2C%20Calif.&text=The%20findings%20reveal%20that%20by,increase%20from%20pre%2Dpandemic%20levels>

PWC. <https://www.pwc.com/us/en/library/covid-19/us-remote-work-survey.html>

National Safety Council. <https://injuryfacts.nsc.org>

Woodruff and Sawyer. <https://woodruffandawyer.com/property-casualty/workers-comp-remote-employees/>

Larson's Workers' Compensation Law. <https://store.lexisnexis.com/products/larsons-workers-compensation-law-skuusSku10777>