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Workplace Flexibility Adds Risk Complexity

Working from home can be a valuable benefit that helps employers retain employees seeking the flexibility and convenience of not having to commute. In their [directive on Home-Based Worksites](#), the Occupational Safety & Health Administration (OSHA) states “Family-friendly, flexible and fair work arrangements, including telecommuting, can benefit individual employees and their families, employers, and society as a whole.” According to an analysis of 2005-2014 American Community Survey (US Census Bureau) data conducted by [GlobalWorkplaceAnalytic.com](#):

- 50% of the US workforce holds a job that is compatible with at least partial telework and approximately 20-25% of the workforce teleworks at some frequency
- 3.7 million employees (2.5% of the workforce) now work from home at least half the time
- The employee population as a whole grew by 1.8% from 2013 to 2014, while the employee telecommuter population grew 6.5%
- In 2013, the typical telecommuter was a 49-year-old, college educated, salaried, non-union employee in a management or professional role, earning \$58,000 a year at a company with more than 100 employees

The trend toward telecommuting and utilizing remotely located workers is expected to continue. While beneficial in many ways, the move toward home-based workers is not without some additional risk and exposure to the employer. The same hazards presented by working in a physical “main” office are also present in a home-based office setting. However, given the alternate physical location and reduced access to support operations, some of these hazards may be exacerbated or modified.

Potential Risks

Before extending this offer, make sure you understand your responsibilities as an employer, and that you and your employee are on the same page with respect to mutual responsibilities and terms of the agreement. Telecommuting and teleworking arrangements can vary from a formal, on-going, work-from-home agreement to an occasional project based work assignment. While beneficial to both employer and employee, permitting employees to work offsite (particularly from their homes) can create unexpected and unanticipated liability for employers. Potential liabilities to employers who allow telecommuting include:

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Potential Liability	Considerations
Workers' Compensation	<ul style="list-style-type: none"> • Regardless of location, employee injuries sustained in the course and scope of employment are generally considered compensable, however this varies based on state WC laws. • Factors to consider include: <ol style="list-style-type: none"> 1. Time and location of injury – Did the incident occur in a designated work area of the home and during normal working hours? 2. Task being performed - Was the worker engaged in work-related tasks, or taking care of personal business or taking a break? 3. Employer's home office safety requirements – Does the employer have a telecommuting policy that includes home office safety policies?
Auto	<ul style="list-style-type: none"> • Use of a personal vehicle for a business related need such as a trip to the post office, picking up office supplies, dropping off a package at a shipper, etc., could be considered business travel. • Typically, in a hired/non-owned auto incident, the employee's personal auto insurance coverage would respond first, however in the event of a serious accident, personal limits could be exhausted, potentially exposing the company's auto insurance.
Third Party	<ul style="list-style-type: none"> • Customers or clients sustaining injury at an employee's home while meeting there for business could result in general liability claims. • Vendors or package delivery service workers injured while conducting business at worker's home could potentially present liability to the worker's or employer's general liability coverage.
Cyber Risk	<ul style="list-style-type: none"> • Mitigate the risk of unauthorized access to company and customer information and data, particularly sensitive or proprietary information. • Firewalls, virus scanners and similar security measures between telecommuters and company internal network will provide added layers of safety.

Discrimination

- Discrimination laws apply equally to home-based workers.
- Clearly defining the telecommuting program and how workers qualify can minimize exposure to discrimination claims.
- Working from home can be a reasonable accommodation for an employee's disability for purposes of the Americans with Disabilities Act (ADA).

Physical Worksite

Although OSHA has ruled that the Occupational Safety and Health Act does not apply to an employee's home, worker's compensation laws (which vary by state) generally extend to cover workers in these environments, as long as they are performing work that is in the course and scope of employment.

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=2254

OSHA (for home-based worksite)

- OSH Act does not apply to an employee's house or furnishings
- Will not hold employers liable for work activities in employees' home offices
- Does not expect employers to inspect home offices
- Does not, and will not, inspect home offices
- Employers continue to be responsible for maintaining records of work-related injuries and illnesses

Worker's Compensation

- Varies by state, but generally extends to any location where an employee is working
- Covers injuries arising out of or in the course of employment
- Employer should assist workers in identifying and minimizing workplace hazards and exposures
- Claims for home-based works still impact the cost of an employer's Workers Compensation insurance.

Best Practices for Home-Based Worksites

To help employers and employees partner effectively in work-at-home arrangements, Berkley FinSecure offers some best practices to help promote safety, security of corporate information and property, and a mutual understanding of the agreement.

1. ERGONOMICS: Assist home-based workers in ensuring home offices are set up in an ergonomically appropriate fashion.
 - a. This article (requires registration) provides some additional guidance: <http://www.shrm.org/templatestools/hrqa/pages/ergonomics-do-employers-have-to-provide-ergonomically-correct-furniture-under-osharequirements.aspx>
 - b. Link to OSHA's Ergonomics guidelines: <https://www.osha.gov/SLTC/etools/computerworkstations/index.html>

2. SAFETY: Provide training and periodic reminders regarding creation and maintenance of a safe home office. Consider requiring home-based workers to submit annual safety check-lists to identify potential hazards. These resources will you in this effort:
 - a. [Home-Based Office: Safety Checklist Template](#) on the Berkley Finsecure website.
 - b. The following article also provides some step-by-step guidance to assessing workplace safety:
<http://www.safetyandhealthmagazine.com/articles/recognizing-hidden-dangers-25-steps-to-a-safer-office-2?page=1>.
 - c. Cal-OSHA's Small Business Safety Training Guide also includes some helpful checklists that can be adapted:
www.cal-osha.com/articles/COR04-20080229-005.pdf.aspx
3. WORK AREA: Establish a mutual understanding regarding the specific area of the home in which the employee will work and, to the extent practical, their work hours. This will help address potential gray areas of whether or not an injury is work-related. There is potential for fraud, and injuries at home typically have no witnesses, so it's difficult for employers to prove when and how an injury occurred and if it was work related.
4. EQUIPMENT: Document any equipment, including serial or asset numbers, provided to the employee to use at home. These may include phones, computer and office equipment, furniture, etc.
5. REPORT INJURIES: Create a strict policy for immediate reporting of at-home injuries related to work. Early reporting helps minimize claims costs and provides you and your employee with access to all the resources available through your Workers Compensation insurance. For Workers' Compensation purposes, it is beneficial to document the time and accident location within the home as well as what the employee was doing when the injury occurred. [OSHA recordkeeping requirements](#) apply.
6. INSURANCE: Review your insurance policy to be sure the states in which your employees are working from home are covered on the policies, including any company-owned property at the location. Employees may drive their own car at least incidentally for business purposes, such as purchasing supplies, going to the post office, etc. Be sure your policies provide coverage.
7. DRIVER QUALIFICATION: Formally qualify (via Motor Vehicle Record check) those workers who may drive their personal vehicle for company business and ensure that they possess a valid driver's license and current personal auto insurance with company required limits.
8. DATA & INFO: Create and enforce a data, communications and information policy for at-home workers that complies with your company's information security policy. The following article includes some helpful suggestions on setting a policy: <http://www.shredit.com/en-us/managing-off-site-employees-data-information-security>

9. PHONES: For home-based workers receiving customer calls, consider routing calls through a forwarded office phone or company cellular phone versus the employee's personal phone so you can control how calls are routed if the employee leaves the company.
10. AGREEMENT: Consider using a formal telecommuting agreement between employer and a home-based employee. Include the circumstances under which a "telecommuting" agreement may be withdrawn to avoid any misunderstandings. Sample agreements are available online; it's best to have your Human Resources manager work with a local attorney to ensure the language is appropriate for your situation and satisfies jurisdiction requirements. Note: The telecommuting agreement is not intended to be an employment agreement.
11. COSTS: Establish what costs will be covered by the employer and separately by the employee to avoid misunderstandings or expectations.

Working at home can be a great way to support the flexible needs of your employees and retain workplace talent. These best practices will help establish the framework for such arrangements as well as provide some parameters for expectations and requirements. By providing training and procedures, employers can have a meaningful impact in mitigating risk in home-based work environments.

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