

EC RISK REVIEW

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Telecommuting and Home Office Liabilities

The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.

Virtually every environmental consulting firm is now networked via the Internet to employees, clients, subconsultants, contractors, vendors and other business partners. Consultants share messages and documents, transfer files, and carry on virtual meetings and conferences from across the hall, across the street, across the state, across the country or even around the world. Wireless Internet transmission and mobile devices have untethered the workplace.

As technological capabilities continue to grow and improve, the virtual environmental firm has emerged in which principals, consultants and other employees work out of home offices, sometimes on a full-time basis. Even employees in traditional brick-and-mortar firms are regularly conducting company business at home, on the road and at the neighborhood coffee shop.

Without question, the Internet has been a boon to productivity and business growth. Environmental firms can serve their clients effectively whether they are in the corporate office or at their computer in their extra bedroom at home. What's more, environmental firms no longer must rely upon the local talent pool or relocate a new hire to put together their core staff of employees. Designers, engineers and other staff can live anywhere there is a high-speed Internet connection.

With the emergence of the virtual environmental firm, however, come new liabilities and risks. The courts are grappling with these liability issues and precedents have barely been set in many areas.

Emerging Liabilities of the Home Office

It is virtually impossible to avoid the new liabilities associated with telecommuting. Some firms find it necessary to offer perks such as the ability to work from home in order to attract the best up-and-coming consultants. Other progressive entrepreneurs afford themselves and their staff the luxury of working at home for most if not all of the workweek. Still others seek to minimize office space and expenses by letting employees work at home. More and more senior consultants and principals at large traditional firms also keep a fully-wired home office.

So what are the liability issues associated with today's so-called virtual organizations? Let's look at four broad categories of home-office issues every firm should consider: safety, security, management and insurance.

Safety Concerns

Before allowing employees to work from their homes, consider inspecting the proposed home office to make sure it is safe for both the employee and the company. Under OSHA standards, employers are responsible for providing a safe workplace for all employees, and that can include those who work from home. Further, any employee accident that occurs while working at home must be reported using the appropriate OSHA forms. Note, too, that these "workplace" accidents are likely covered by workers' compensation laws.

When inspecting a home-office setup for an employee, consider:

- Are furnishings and equipment ergonomically designed and arranged to minimize work-related injuries?
- Is the computer monitor and keyboard properly placed to avoid carpal-tunnel syndrome, eyestrain and other common computer-caused maladies?
- Does the desk chair provide comfort and support?
- Is electrical and phone wiring safe, adequate, surge-protected and positioned to avoid trips and falls?
- Is lighting sufficient for the work involved and positioned not to cause glare and eye strain?
- Are smoke detectors, fire extinguishers and other safety equipment installed?

Some risk managers contend it is best for the employer to provide all office equipment (computer, monitor, fax, printer, copier, scanner, telephone, and so on) for the telecommuter's home office. In that way, your company avoids responsibility for damage to employee-owned equipment. Plus, you have more control over whether the equipment is in safe working order and the workspace is ergonomically designed.

While you can supply ergonomically designed equipment such as desks, chairs, keyboards, wrist pads and footrests to help prevent physical ailments, you cannot guarantee that a home-based employee will use such equipment properly. Likewise, you cannot be certain that telecommuters will take appropriate breaks to rest their hands, eyes and backs. Accordingly, you should provide at least basic ergonomic instruction and/or training for all telecommuters. Be sure to document these training efforts.

Security Issues

Security is often overlooked when setting up a home office. Employees, their equipment and their work are no longer protected by the physical and electronic security barriers in place at the company's main office. You'll likely need to set up new security policies and procedures to compensate for this heightened exposure.

As a general rule, you should prohibit anyone other than the employee from using company equipment at the home office. At a minimum, make sure company-owned computers are password-protected with a sign-on procedure and insist that the employee keep that

password confidential. If an employee is using a personally-owned computer, ensure that access to the company network is password protected and all company documents are stored in password-protected files.

It is unrealistic to prohibit at-home workers from using company equipment at their home for personal reasons – that's almost impossible when the employee works in a company office. However, you can demand that employees follow reasonable guidelines. For example, when it comes to company computers, you should put limitations on the employee's personal use of company-owned hardware and company-licensed software. Likewise, employees should not install personal software programs on a company computer, not download non-business files from discs, portable drives or the Internet, and not open or forward attachments from personal e-mails.

Check with your information technology professionals regarding the most secure way to hook-up telecommuters to your company network. Firewalls, virus scanners and similar security measures between telecommuters and your internal network will provide added layers of safety. Make sure that telecommuters keep their virus-protection software up to date, whether they use company or personal equipment.

Document management is another important component of security. Identify the types of documents you expect the telecommuter to create and deliver in hard copy, and those to be transmitted electronically. Have employee work files backed up, preferably on a company or other offsite hard drive.

Telecommuters tend to rely on e-mail as their primary method of communication. A great deal of that e-mail tends to be written informally. It may contain personal comments, jokes, jargon, and – from a professional liability standpoint – any number of taboo words such as “certify” or “guarantee.” While all employees need to be reminded that e-mail must be treated as important documentation, telecommuters working from the comfort of their home may need such reminders more frequently.

Be aware of software licensing requirements when setting up a telecommuter's computer. In many cases, your firm does not own the software it uses; it pays a

licensing fee to do so. Violating licensing agreements by burning duplicate copies of software or using pirated software is illegal. If an employee installs illegal software on a company computer, or if the employee does company work on a computer loaded with illegal software, the company could face a costly risk exposure.

Consider the physical security of the home office as well. Can it be secured from the rest of the house with locks? Should a security system be installed? How will sensitive company documents be stored and protected from theft, fire or other disasters? Would it be wise to have a fireproof safe or file cabinet located at the home office? Are electronic files backed up at the company office or other location? These are all viable concerns for any environmental firm.

Management of At-Home Workers

Telecommuting requires a great deal of trust between supervisor and subordinate. Unless a company plans to make frequent or unannounced visits to the employee's home office, it is virtually impossible to provide close supervision of work hours and habits. If a manager feels an employee cannot be trusted to self-manage his or her workday, then perhaps telecommuting should not be considered.

Because telecommuters sometime feel like they work alone and set their own rules, quality control can become an important issue, especially when it comes to drawings, proposals and reports. The key is to have a policy for work review and ensure it is properly enforced. Determine which materials need to be checked by a supervisor or peer before they are released. Track the quality and quantity of work closely and address any perceived problems immediately. As long as the telecommuter is performing job functions to high standards and maintains adequate communication, you shouldn't be too concerned whether they do it from 9-5 in a three-piece suit or from 4-12 in pajamas, house robe and slippers.

Insurance Requirements

Telecommuting raises important insurance issues that affect both the employee and the company. For example, you will likely have situations where a client, fellow employee, independent contractor or a supplier's representative visits the telecommuter at home. The employee's homeowner's insurance needs to cover the

potential of someone being injured at the home office, or on the property where the office is located. If the employee's current homeowner's policy does not provide adequate protection, the company should consider paying for increased coverage. Be sure to investigate workers' compensation insurance issues as well.

Note that your firm will likely have to amend its business property insurance schedule to identify the location of equipment used by telecommuters. Make sure the policy covers equipment housed offsite or travelling between your office and the telecommuter's home office.

If the telecommuting employee uses his or her own equipment, determine whether it is properly covered by insurance. Does the employee's homeowner's policy protect the equipment even though it is used for business purposes? If an additional premium is required, the company should likely pay it.

Most employees use their private auto for commuting. What happens during a commute is not a company's responsibility. However, if an employee works mostly at home, something as simple as a trip to the office supply store could be considered business travel. It is advisable, therefore, to check into the necessity of coverage for employees' use of an auto not owned by the company. If an employee has an accident while driving on company business, or what could be construed as company business, the company will be a likely target for a claim or lawsuit.

Proceed Cautiously

While some of the precautions covered here may seem a bit like overkill for an informal telecommuting arrangement, the associated risks should not be taken lightly. You are well advised to develop standard policies regarding telecommuting, whether full-time or part-time, permanent or temporary. Set minimum requirements for home office set-up and equipment. Any telecommuting policy should clearly state that the agreement is not an employment contract and does not preclude any existing contract or employment-at-will provisions between the company and the telecommuter. Finally, we can help you examine your insurance needs and search for appropriate coverage.

Can We Be of Assistance?

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.