

# RISK CONTROL TOPICS – TELECOMMUTING/HOME-BASED WORKERS



Business continues to realize benefits of employees working from home or in locations away from a traditional office building. These benefits revolve around: attracting and retaining top employees, increased productivity, and environmental impact to name a few. According to an analysis of 2005-2014 American Community Survey (US Census Bureau) data conducted by [GlobalWorkplaceAnalytic.com](http://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

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:

Potential Liability	Considerations
<b>Workers' Compensation</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Factors to consider include:               <ol style="list-style-type: none"> <li>1. Time and location of injury – Did the incident occur in a designated work area of the home and during normal working hours?</li> <li>2. Task being performed - Was the worker engaged in work-related tasks, or taking care of personal business or taking a break?</li> <li>3. Employer's home office safety requirements – Does the employer have a telecommuting policy that includes home office safety policies?</li> </ol> </li> </ul>
<b>Auto</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
<b>Third Party</b>	<ul style="list-style-type: none"> <li>• Customers or clients sustaining injury at an employee's home while meeting there for business could result in a claim being made under the employer's general liability policy.</li> <li>• Vendors or package delivery service workers injured while conducting business at a worker's home could potentially present a liability claim to the worker's or employer's general liability policy.</li> </ul>
<b>Cyber Risk</b>	<ul style="list-style-type: none"> <li>• Access to company and customer information and data, particularly sensitive or proprietary information.</li> <li>• Firewalls, virus scanners and similar security measures between telecommuters and company internal network will provide added layers of safety.</li> </ul>
<b>Discrimination</b>	<ul style="list-style-type: none"> <li>• Discrimination laws apply equally to home-based workers.</li> <li>• Clearly defining the telecommuting program and how workers qualify can minimize exposure to discrimination claims.</li> <li>• Depending on the circumstances, working from home might be a reasonable accommodation for an employee's disability for purposes of the Americans with Disabilities Act (ADA).</li> </ul>



PHYSICAL WORK-SITE

Although the Occupational Safety and Health Administration (“OSHA”) has ruled that the Occupational Safety and Health Act (“the 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.

OSHA (for home office worksite)

- The Act does not apply to an employee’s house or furnishings
- OSHA will not hold employers liable for work activities in employees’ home offices
- OSHA does not expect employers to inspect home offices
- OSHA does not, and will not, inspect home offices
- OSHA requires that 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

The physical work-site presents potential hazards to employee injury and despite that worksite being the home of the employee the employer should establish guidelines for ensuring a safe workspace. Best practices include:

Best Practice	Resource	Website
Assist home-based workers in ensuring their home offices are set up ergonomically correct	BTU Office Ergonomics – Workstation Adjustment	<a href="https://www.berkley-tech.com/wp-content/uploads/2019/01/RCT-Office-Ergonomics-Workstation-Adjustment-Single-Sheet.pdf">https://www.berkley-tech.com/wp-content/uploads/2019/01/RCT-Office-Ergonomics-Workstation-Adjustment-Single-Sheet.pdf</a>
	OSHA Computer Workstation eTool	<a href="https://www.osha.gov/SLTC/etools/computerworkstations/index.html">https://www.osha.gov/SLTC/etools/computerworkstations/index.html</a>
Require employees to complete an initial and periodic Home-Based Office inspection	BTU Home-Based Office: Safety Checklist	<a href="https://www.berkley-tech.com/wp-content/uploads/2018/12/Home-Based-Office-Safety-Checklist.docx">https://www.berkley-tech.com/wp-content/uploads/2018/12/Home-Based-Office-Safety-Checklist.docx</a>

TELECOMMUTING POLICY

A formal telecommuting policy should be developed and clearly communicated to all telecommuting/home-based workers. The policy should cover the following topics:

- Work Area – The home-based office should have a formally designated work area or space and this space should be defined for each worker/location.
- Work Hours – To the extent practicable, specify designated work hours during typical days. Special attention should be paid to the work hours of non-exempt employees.
- Eligibility – Establish criteria for which workers are eligible for telecommuting arrangements, including specific positions and individual employee qualifications.
- Equipment and Services – Document equipment provided by the company and office costs covered by the employer vs. the employee. These may include: phone (land line and mobile), telecommunications access, office equipment, furniture, etc.
- 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.
- Client Meetings - Refrain from meeting clients/customers at home – select a public place.
- Home Office Safety - Create and maintain a safe home office. Develop a home-based safety checklist and require employees to complete the checklist annually. Ensure appropriate ergonomic arrangements for home work space.
- Injury Reporting - Immediate report of injury/illness. 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.
- Create and enforce data, communications, and information policies for at-home workers that comply with company information security policies.