

A/E RISK REVIEW

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Home Sweet Home? Liabilities of Telecommuting

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.

Wireless Internet transmission and mobile devices have untethered the workplace. In the extreme, virtual design firms have emerged in which principals, designers and other employees work full time out of their home offices, at the local coffee house, in their vehicles and elsewhere without a regular company office. The same work-at-home world holds true for many sole proprietors as well. More typically, employees in traditional brick-and-mortar firms are allowed or required to conduct company business from home on a part-time basis. That extra bedroom has become a home office where a substantial amount of design work is accomplished.

There is no disagreement that the Internet and related technologies allow architects and engineers to serve their clients more effectively and efficiently whether they are in the corporate office or on their computer at home. What's more, the wireless world allows design firms access to a greater pool of potential employees. Indeed, to attract the best up-and-coming designers, some firms find it necessary to offer perks such as the ability to work from home. No longer do design firms have to rely solely on local talent or incur the expense of relocating a new hire or paying for additional office space. Designers and other staff can live and work virtually anywhere there is a high-speed Internet connection.

With the emergence of the virtual design firm and the common use of home offices, however, come new liabilities and risks. The courts and the insurance industry are grappling with these liability issues and precedents are being set in many areas. 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 a case can be made that includes 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 accidents may be covered by workers' compensation laws.

When inspecting or setting up a home-office 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 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?
- Is there adequate ventilation?
- Are smoke and carbon monoxide 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, modems, routers, 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 (and regularly update) home office policies and guidelines including basic ergonomic training. It is advisable to have employees recognize in writing that they agree to these policies and training programs.

Security Issues

Security is often overlooked when setting up a home office. In most cases, employees, their equipment and their work are not protected by the physical and electronic security barriers typically in place at a company's main office. You'll likely need to set up home office 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 and insist that the employee keep that password confidential. If an employee is using his or her own computer, ensure that access to the company network is password protected and all company documents are stored behind a secure firewall.

It is unrealistic to prohibit at-home workers from using company equipment for personal reasons – that's nearly 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-licensed software. Likewise, employees should not install personal software programs on a company

computer, not download non-business files, and not open or forward attachments or links from personal e-mails. If your employee uses a company laptop or portable device you might prohibit them from attaching to the Internet via unsecured public wireless networks for personal use.

Check with your information technology professionals regarding the most secure way to hook-up telecommuters to your company network. Firewalls, antivirus software and similar security measures between telecommuters and your internal network will provide 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 transmit electronically. Have work files backed up, preferably on a secure company or other offsite hard drive or cloud.

Telecommuters tend to rely on e-mail and texting as their primary methods of communication, and a great deal of those communications tend to be written informally or in shorthand. These communications may contain personal comments, off-colored 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-mails, text messages, tweets and other electronic communications sent and received in the course of conducting business 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 distributing 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 door locks? Should a security system be installed? How will 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 design firm.

Managing 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.

Managers should also realize that flexibility in work hours is almost a given when an employee is working at home. Productivity needs to be measured by results, not by the hours kept. While employees may take time during the workday to handle a few household chores, they are also likely to be working into evenings and weekends since their home office is only a few steps away.

Quality control can become an important issue with telecommuters, 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 issued. 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 to 5 in a three-piece suit or from noon until 8 p.m. 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. An employee's accident at home can become a workers' compensation claim if the accident occurred while performing work duties. In a noted Oregon case, an employee who worked mostly at home as a condition of employment filed a workers' compensation claim when she tripped over her dog while getting supplies from her garage and fell, breaking her wrist. The Oregon courts have gone back and forth on the claim, with the Court of Appeals most recently reversing a denial of the claim by the Workers Compensation Board.

Note that your firm will likely have to amend its business property insurance schedule to identify the location of company 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 consider paying for it.

What happens during a commute from home to the company's office is typically not a company's responsibility. However, if an employee works from home, something as simple as a trip to the office supply store or dropping off a document to a client could be considered business travel and the company becomes a target for a claim if an accident occurs. To provide adequate insurance coverage for you and your employees when they conduct company business in autos they own or personally hire, you likely need to secure specific endorsements to your basic business auto policy.

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 with an eye on safety. 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.