

11 Telecommuting FAQs



Although the decision to allow—or not allow—telecommuting is driven mostly by business considerations like marketability and retention, don't overlook the legal issues these arrangements create. Here are 11 FAQs to help you resolve the legal and operational problems associated with telecommuting.

QUESTION 1: Can you require employees to work from home if they don't want to?

ANSWER: No. The arrangement must be voluntary and not forced on employees against their will. For example, a BC court ruled that forcing a veteran analyst with two young kids to give up her office and do part of her job from home constituted constructive dismissal [*Renard v. Facet Decision Systems Inc.*, [2010] B.C.J. No. 2694, Nov. 19, 2010].

QUESTION 2: How do you keep employees from telecommuting without permission?

ANSWER: Implement a written policy that specifically defines “telecommuting” as a formal arrangement in which the employee must get permission to work from home a certain number of days or hours each week. The reason you need such a policy is to prevent employees who want to work from home from taking matters into their own hands. “If you’re not careful, employees will begin making unilateral decisions about whether to come to work each day,” warns a veteran HR director from Ontario. “The moment you start getting those ‘my dog is sick so I’m just going to work from home today’ calls, you’re in trouble,” she adds.

QUESTION 3: How do you keep employees from cutting their own side deals with supervisors?

ANSWER: Establish a central process requiring employees to fill out a written application form requesting permission to telecommute and a procedure for approving or rejecting requests.

QUESTION 4: How should you decide whether to approve telecommute requests?

ANSWER: Establish criteria based on both position, e.g., jobs involving extensive phone contact or computer work but not face-to-face contact with customers or use of company resources that can’t be moved from the workplace, and skills and personal qualities indicating they can be trusted to do their jobs from home.

Without such criteria, denying permission to telecommute could lead to grievances and subject your rulings to second-guessing by arbitrators. For example, an arbitrator

ruled that it was unfair and arbitrary to deny a call centre employee's application for a telecommuting position based on a single incident where he was disciplined for leaving work early without permission [*Telus Communications Inc. v. Telecommunications Workers Union*, [2008] C.L.A.D. No. 169, Aug. 26, 2008].

QUESTION 5: How do you get your telecommuters to work productively?

ANSWER: Set out clear standards for telecommuters. Consider having employees sign a written telecommute contract establishing productivity standards and other specific terms of their employment while working from home.

QUESTION 6: How do you control the hours telecommuters work?

ANSWER: Set ground rules on hours worked, e.g., maximum daily or weekly hours or an exact work schedule. Have telecommuters keep and submit a weekly log of their work time so you can ensure that they're following the agreed-to schedule.

QUESTION 7: Are telecommuters covered by Occupational Health and Safety (OHS) laws?

ANSWER: Potentially yes. OHS laws require employers to protect against hazards *in the workplace*. This can potentially include hazards found at a telecommuter's home, such as fire, electricity, chemicals and even ergonomic hazards. Nova Scotia has issued guidelines making it clear that the OHS duty to protect employees extends to wherever they work, including the home; Alberta has taken the other position. The other 12 jurisdictions don't directly address the question. However, BC and NL define the term "workplace" broadly as any place where a worker is or may be engaged in work. BC, MB and PE have also issued guidelines suggesting that an employee's home *would likely be* deemed a workplace under the OHS law. In addition, 10 jurisdictions—AB, BC, MB, NB, NL, NT, NU, PE, QC and SK—require employers to take measures to protect employees who work alone.

QUESTION 8: Are telecommuters covered by workers' compensation?

ANSWER: Yes. Illnesses and injuries that telecommuters suffer in the course of their work might be deemed work-related and thus covered by workers' compensation. Work-relatedness is determined by *what* the employee was doing when the injury occurred rather than *where* she was doing it.

QUESTION 9: How do you protect the health and safety of telecommuters?

ANSWER: Include language in your telecommuter agreement addressing health and safety hazards, including:

- A statement that the company's OHS policies and procedures, including WHMIS and ergonomics, apply to work done from home;
- A description of the physical area that makes up the workspace;
- The requirement of an assessment of the hazards found in that space;
- The employer's right to access the workspace to inspect or respond to hazards; and
- The employee's duty to report illnesses, injuries and safety incidents that occur at home (Policy, Sec. 6).

QUESTION 10: Are there any other legal issues to be aware of when dealing with telecommuters?

ANSWER: Yes. For one thing, the risk of privacy and security breaches is much greater in telecommuting arrangements. Once people plug their own equipment and thumb drives into the company's information systems, problems are bound to crop up. These problems

can include computer viruses, violations of privacy laws and breaches of confidentiality.

QUESTION 11: How do you deal with telecommuter privacy and information security challenges?

ANSWER: Make sure that your policies and procedures dealing with computer usage and internet access, e.g., requirements that employees follow certain password protection and encryption procedures, apply to telecommuters. Require telecommuters to keep all files and other paperwork in a secure place. Instruct the telecommuter that these files are the company's property and must be returned immediately when their employment ends.