

Do OHS Laws Cover Employees Who Work from Home?



In most parts of Canada, protecting the health and safety of the telecommuters who work for your organization isn't just a moral obligation but also a legal one. The source of that obligation is the OHS law. But the obligation is implied, rather than spelled out.

Starting point: The OHS laws say employers must protect the health and safety of "workers/employees" in the "workplace." Employees who telecommute are clearly "employees/workers." The question is whether the home space in which they do their job counts as a "workplace."

The 10 Jurisdictions Where a Home Workspace Is Likely to Be Considered a Workplace

The answer to that question depends on what part of Canada you're in. In AB, BC, FED, NL, NS, NT, NU, PEI, QC and SK, the answer is probably yes. Explanation: The OHS laws of these jurisdictions define workplace as a location in which a worker/employee "engages" or "is engaged in" work for the employer. That language is clearly broad enough to include an employee's home. Federal law also specifies that certain employer OHS duties apply to not only workplaces the employer controls but those it doesn't control to the extent that it controls the *activity* [*Canada Labour Code*, Sec. 125(1)].

The 4 Jurisdictions Where a Home Is Less Likely to Be a Workplace

While ON, MB, NB and YK, also use the term "engage in" to define a workplace, they include specific exemptions that may be interpreted as covering work done from home:

- In Ontario and Yukon, the *OHS Act* doesn't apply to "work performed by the owner or occupant. . . in or about a private residence";
- In New Brunswick, the *OHS Act* doesn't cover a place of employment that's a private home unless the work is done by a contractor; and
- In Manitoba, a person isn't considered a "worker" unless "he works or performs services in a workplace which is owned or operated by the person who engages him to perform services."

Why Telecommuters Are Likely Covered in Alberta

In Alberta, the rules are a bit confusing and intricate. The *OHS Act* definition of "work site" excludes work in a "private dwelling." That sounds like bad news for

telecommuters. However, the exception doesn't apply "if the work is performed for an employer who is not an occupant or owner who lives in" that private dwelling.

Translation: The "private dwelling" exception doesn't cover most telecommuting arrangements and telecommuters are thus protected by the OHS law.