The 10 Things You Must Do to Protect Telecommuters' Safety



One of the only positive aspects of the COVID-19 pandemic is that it forced organizations, HR, and OHS directors to address the challenge of ensuring that telework from a remote location is carried out in a manner that's safe and compliant with OHS and other laws. We've identified 10 best practices and organized them into a Model Policy.

Why Should You Care about a Telecommuter's Health and Safety?

In most parts of Canada, protecting telecommuters isn't just a moral obligation but also a legal one. The source of that obligation is the OHS law. But because telecommuting wasn't a thing when those laws were first written, they don't say one way or another whether an employer's duty to ensure employees' health and safety includes employees who do their jobs from home. Still, that duty is implied in what the OHS laws *do* say—at least in 10 of the 14 jurisdictions (the arguable exceptions being Ontario, Manitoba, New Brunswick and Yukon). (See the legal briefing in the shaded box below to find out why telecommuting is covered in the OHS laws of some jurisdictions but not others.)

How to Comply

Simply requiring telecommuters to work safely the way some organizations do isn't enough to comply with your OHS duties. You must actually incorporate health and safety into your telecommuter approval management and approval protocols, either as an addition to your current policies and procedures or as a freestanding supplement. You can adapt the Model Policy on the HRI website, which includes the X basic elements a telecommuting safety policy should incorporate.

1. Policy Statement

Say upfront that telecommuters are responsible for working safely and that failure to do is grounds for rejecting or revoking an existing telecommuting arrangement (Policy, Sec. 1).

2. Home Office Hazard Assessment

Require employees seeking approval to telecommute to designate a room or area as their home workspace and allow you to perform a hazard assessment inspection to verify that the workspace is:

- Appropriate for the work;
- Well lit;
- Properly ventilated;
- Free of obstructions and trip and fall hazards;
- Equipped with appropriate first aid supplies and equipment;
- Free of biohazards and other hazardous materials;
- Free of electrical hazards;
- Secure;
- Ergonomically safe; and
- Compliant with fire and building codes.

There are 2 ways to perform the hazard assessment:

First Choice: Have a supervisor or manager visit the site and do a physical walk-through inspection (Policy, Sec. 3).

Second Choice: Do the inspection virtually by having the employee tape the space and/or submit detailed photos and a floor plan.

Best Practice: Use the Home Workspace Safety Checklist to perform the hazard assessment.

3. Work from Home Safety Training

Once employees are approved to telecommute, require them to successfully complete training on how to work safely from home covering, at a minimum:

- Safe use of furnishings and equipment;
- Fire and electrical hazards;
- Hazardous products;
- Ergonomic safety;
- Emergency evacuation and communications;
- Hygiene and housekeeping; and
- Inspection and incident reporting procedures (Policy, Sec. 4).

4. Regular Site Inspections

You must ensure that the employee safely maintains the workspace once the telecommuting arrangement begins. So, require the telecommuter to provide access the home workspace for regular inspections at designated intervals and on an unscheduled basis in response to incidents, complaints, significant changes and other occurrences suggesting that there may be a problem. Indicate who will do the site inspections, e.g., a supervisor or joint health and safety committee member, and how much advance notice the employee will get (Policy, Secs. 5.1 and 5.2). **Alternative:** As with the initial hazard assessment, you can also provide to have site inspections carried out virtually.

Best Practice: Regardless of how you do the inspection, require the employee to take corrective actions and do follow-up inspections to verify that problems identified during the inspection have been fixed.

5. Consequences of Failed Inspections

To establish accountability, reserve your right to terminate the telecommuting agreement immediately if the employee fails, obstructs or refuses to allow site inspections or doesn’t take appropriate corrective actions (Policy, Sec. 5.3).

6. Emergency Evacuation Plan

Require employees to work with their supervisors to create an acceptable emergency evacuation plan and emergency contact information. If feasible, require that the plan be tested successfully before the telecommuting arrangement can begin (Policy, Sec. 6).

7. Emergency Communication Equipment

Employers are responsible for ensuring that employees working offsite have the equipment necessary to call for help. Some provinces specify the kinds of equipment required. For example, AB and SK require the use of radio, telephone or other forms of electronic communication. BC goes even further by stating that visual and 2-way voice contact systems are the "preferred method, " while allowing for one-way systems where the former systems aren't "practicable" (Policy, Sec. 7).

8. Monitoring or Check-In System

OHS laws require employers to protect employees who work alone or in isolation in where not being near co-workers puts them at peril, e.g., in a hazardous atmosphere or high-crime location. If your hazard assessment determines that this is the case with the telecommuter, implement additional safety measures, starting with a check-in or other system for monitoring him/her. The greater the danger, the more frequently check-ins need to take place. While most jurisdictions leave it to employers to work out the details, BC specifically requires designation of a person to maintain contact with the employee during the shift and immediately after it, and to keep a log of the contacts (Policy, Sec. 8).

9. Injury/Incident Reporting

Require employees who work from home to immediately notify their supervisors of any injuries or safety incidents that occur in their workspace, just the way they'd have to do for work incidents at the organization's own facilities. Note: Employers are responsible for ensuring that telecommuters and other employees who work offsite receive the necessary first aid and rescue help if they get injured on the job (Policy, Sec. 9).

10. Injury/Incident Investigation

Recognize that your OHS duty to investigate and report work injuries and incidents applies to home workspaces and require the employee to provide you immediate access to the space so you can perform those functions. Note: Telecommuter safety training should address incident response and the need of employees to preserve the incident scene unless cleaning up, moving equipment or other measures are essential for immediate safety (Policy, Sec. 9).

Legal Briefing: Do OHS Laws Require Employers to Protect Employees who Work from Home?

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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 May Not 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.”

Alberta Compliance Pointer In Alberta, the definition of “work site” excludes work in a “private dwelling” but 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.