

Workers' Compensation Claims by At-Home Employees

By Rich Lenkov

More companies than ever are allowing employees to work from home. With that trend comes increased risk of employees injuring themselves at their home office. This raises a host of new risks and issues.

Business Insurance

At-home workers create new risks for employers

Proactive approach needed to avoid potential liabilities

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As more companies allow their workforces to move from cubicles to home offices, outdated risk management plans may not be keeping up with the exposures related to at-home workers.

“A lot of companies are waiting and seeing,” said Richard Lenkov, president of the Chicago-based National Workers' Compensation Coalition and a partner with Chicago-based Bryce Downey & Lenkov L.L.C. “You have all these new risks, but not a lot of specific (risk management) programs for working from home.”

The trend of working from home is not new; the term “telework” was first used in the 1970s. Yet today, nearly 20% of the workforce works from home or remotely, with home being the main venue for remote work, according to World at Work's “2011 Survey on Workplace Flexibility.” The survey found that in 2010, 26.2 million U.S. workers conducted some business outside of the office, a dip from 2008 data—33.7 million—that was pinned on a bad economy and unemployment.

At-home workforces “will grow with the growth of companies, and companies will need to start paying more attention to liabilities,” said Sharon MacDougall, principal and founder of Corona Del Mar, Calif.-based Remote Workforce Consultants.

A 2011 white paper, “Virtual Workforce: The Changing Face of Absence and Productivity in the Technological Age,” written by the San Diego-based think tank Disability Management Employer Coalition, found that the move from offices to home for work goes beyond the obvious real-estate-and-utilities savings of not having to pay rent for office space. Companies are looking to telecommuting because it improves recruitment and retention, increases productivity, decreases absenteeism and presenteeism, reduces stress and ensures business continuity in the event of unforeseen natural or man-made disasters, according to the white paper.

Risks not managed

Yet risk management hasn't kept pace with the changes, say legal and loss control experts.

Attention to risk often “comes up after something has already happened,” said Matthew Schiff, a management and employment attorney with Chicago-based Schiff & Hulbert.

“I'm sure (risk management) is on the radar, but it hasn't made an impact yet,” said Charlie Martin, Norwalk, Conn.-based national claim consulting practice leader with Marsh Risk Consulting. “One of the main issues is we haven't seen a lot of claim activity. That's when we'll see more of this.”

Experts referred to two recent cases that may drive the greater interest in telecommuting risk management plans.

In June, a New Jersey court granted workers compensation survivor benefits to the family of Cathleen Renner, an AT&T manager who died of a blood clot after sitting at her work computer at home for long periods of time. Earlier that month, Oregon's Court of Appeals ruled that Mary S. Sandberg, a J.C. Penney & Co. saleswoman of window treatments and bedding, was entitled to workers compensation after she tripped on her dog while carrying fabric samples from her home to her car and suffered a broken wrist. Previously, an Oregon Workers' Compensation Board determined that her injury did not arise from her employment and denied her benefits.

A key suggestion for companies that want to allow employees to work remotely is to consider carefully which candidates are suited to such work.

Hourly workers—those subject to receiving overtime pay—are not good candidates because they can claim longer workweeks with little proof, subjecting employers to lawsuits stemming from overtime issues, said Mr. Schiff.

Experts also warn that new workers—those who have not established trust within the company—are not good candidates to work at home. Mr. Martin said companies could expose themselves to fraud—injuries that did not happen on the job, for example—if a new employee is dishonest. Trusted employees are less likely to commit fraud, he said.

Clearly identified and examined home office space and clearly defined duties are also important, experts say.

Remote Workforce Consultants' Ms. MacDougall said companies can set up an employee's home office by sending in a specialist to examine workspaces, desks, chairs and filing or storage systems to ensure that a worker has a comfortable, ergonomic office space that isn't cluttered. She estimated that it could cost between \$2,000 and \$5,000 to help create workspaces at home offices, a one-time cost that can help mitigate future losses. "Companies are saving up to \$10,000 a year by allowing workers to work from home; this is just a one-time cost," she said.

From a legal standpoint, setting up—and even photographing—a worker's home-office space can ensure that if a workers comp claim arises, an employer can have proof that it helped create a safe work area, said Mr. Lenkov. "Don't rely on an employee to set up their own workspace," he added.

Companies with tighter budgets can help workers create their own office space with training materials and seminars, said Judy Sehnal, Hartford, Conn.-based technical manager in ergonomics for The Hartford Financial Services Group Inc.

"We advise companies on the right equipment and setup to help employees," she said. "We tell employers to create a written program, to look at equipment, set requirements and highlight safety issues."

Home visits often are necessary only after an employee complains about a health issue such as back pain, she added. "That's not very different than what happens in the traditional work environment."

As for work hours and duties, experts say employers can have employees log into a computer program to track time at work and time off to ensure that incidents occur during the defined workday.

"We tell employers to ensure that workers keep their work area separate from their living area," she said, highlighting yet another exposure: clutter around the home that can lead to trips and falls. Extension cords are another hazard. "We see that all the time when we look at workspaces," Ms. Sehnal said.

Another exposure could stem from work materials and lifting heavy boxes, said Richard Sabetta, managing principal and cofounder of Fort Hills, N.J.-based Risk Navigation Group.

For his small firm, which employs 11 workers who conduct business from home, Mr. Sabetta tries to have documents delivered electronically. "I don't want my colleagues lifting heavy boxes," he said.

Smaller firms, he added, have much more control when it comes to regulating a telework force. "The larger the company, the larger the exposure," he said.

Another hurdle for companies that are just starting to address exposures is the blurry line that exists between home and business. "We are telling people what to do in their own homes," said Ms. Sehnal. "This can become a legal question at some point."

But, she warned, “the very worst thing a company can do is send employees out to work from home without addressing these issues.”
