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Comp risks follow workers home

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Technology advancements are leading to changes in the workplace as more employees work outside of the traditional office space, but employers need to consider how to protect workers in this new environment because telecommuting does not eliminate workplace safety risks.

Employees are taking advantage of remote working opportunities, with 3.9 million U.S. employees working from home at least half of the time, according to a 2017 report by FlexJobs, a Boulder, Colorado-based telecommuting job listings company.



“We are in a digital age right now — technology enables us to work from home, so I think we will see a rise in this dynamic of a redefined workplace that stretches beyond a brick-and-mortar store or four walls of an office,” said Christopher Earley, a Boston-based personal injury and workers compensation attorney.

Mr. Earley cited *Mary S. Sandberg v. J. C. Penney Co. Inc.*, a 2011 case in Oregon that involved a woman who worked as a custom decorator. The employer had a studio where work was performed, but the employee would also work from home from time to time. While working at home, the employee tripped over her dog on the driveway while moving employer fabrics from her personal van to her garage. The court ruled workers compensation coverage was available to the employee.

When workers telecommute, employers do not always consider the need for workers compensation insurance to cover employees working from home, co-working spaces or other venues not controlled by the business, according to experts.

“The employer can’t control the work environment of the remote worker like he can in a conventional dynamic where the employee comes to work every day ... any type of liability situation that can cause injury could create problems,” said Mr. Earley.

Employers who choose not to address telecommuting workers take a risk, experts say.

“Employers who provide work from home or telecommuting accommodations may increase their risk of work-related injuries given the employer has in essence added a number of work locations by doing so,” said Richard Ives, Hartford, Connecticut-based vice president of claims at The Travelers Indemnity Co. “An employer has much less, if any, knowledge of the conditions and risks of each employee’s remote work location.”

Employers are responsible when workers who telecommute are injured at home or other venues, experts say.

“It doesn’t really matter where an employee works,” said Sandra Rappaport, a San Francisco-based partner at Hanson Bridgett L.L.P. “It’s about whether their injury or illness ... occurred during the course of employment. The question about whether the injury is compensable under workers comp is if it arises out of the employment and occurred during the course of employment. It doesn’t matter where the injury happened.

If I’m an employee who goes out to a client and does a presentation and I get hurt there, I’m there doing a presentation for my employer ... my injury is covered even though I’m not in my office.” If an employee is

working from home and engaged in work at the time they are injured, they are covered under workers comp, said Ms. Rappaport. But there are exceptions. “If someone is out in the backyard playing with their kids and gets hurt, it would be hard to count that as a compensable injury even if it’s during their work hours,” she said.

It is difficult to control what goes on in an employee’s home workspace, but experts say employers should implement best practices that could help avoid injuries. These include providing a clear-cut job description and expectation of duties that describes the entire scope of the employee’s activities, clearly defining the boundaries of the home office or work space, setting specific work hours, and if possible, setting a break schedule.

“We find that when employers don’t have best practices in place, you put the ball in the employees’ court,” said Gale Hamilton, New York-based, assistant vice president at brokerage NFP Corp. “It is much harder to defend a workers compensation claim when you don’t have specific parameters in place.”

“Ensure that the employees’ home is safe for business,” said Jana Wilson, a Portland, Oregon-based member of the American Society of Safety Engineers and the National Ergonomics Council and managing director, risk services at Industria Risk & Insurance Services L.L.C. “Even if you are not going to go visit, you ask the questions: Do you have a designated space in your home? Do you have a home office? Do you have all of the equipment you need? Do you have an ergonomic keyboard? Are you set up in a way where you feel comfortable at your desk?”

“Whether working at home, in an office or while traveling, ergonomic risk from working at a computer can be reduced with proper posture, good work habits and appropriately adjusted equipment,” said Mr. Ives.

Employers should consider hiring ergonomics experts to visit workers’ homes to ensure workspaces are safe and ask employees to take photos of their workspaces, said Ms. Wilson.

If privacy questions arise, telecommuters must remember that “telecommuting is a privilege, not a right,” meaning employers can set guidelines, policies and procedures for the home work environment, she said. Because these are their homes, employees can refuse to allow the employer inside to conduct an ergonomic evaluation. “But ... the employer has every right, in turn, to withdraw the privilege.”