

Compliance Briefing: What You're Required to Do to Protect Workers Who Work from Home



- You fail to ensure that a worker's work station is ergonomically sound and she suffers a musculoskeletal injury as a result;
- Another worker using an electrical tool suffers shock because she wasn't trained or instructed how to safely use the equipment; and
- A worker at a remote and isolated site is left to bleed to death because of your failure to check in on and make proper first aid provisions for her.

Under normal circumstances, any and all of these scenarios would be grounds for liability under the OHS laws. But what happens if these injuries occur to the worker while working from home? This question, which was relevant when workers were allowed to telecommute, has become imperative now that COVID-19 has forced so many workers to work remotely.

Do OHS Laws Apply to Workers who Work from Home?

Telecommuting wasn't a thing when the OHS laws were first written several decades ago. As a result, they don't talk about telecommuting or say one way or another the various measures employers must take to ensure their workers' health and safety also apply when workers work from home. Result: The OHS laws *may* apply to workers who work from home.

Note: You can skip the next 2 subsections and go right to the compliance part if you're not interested in the legal details.

It boils down to interpreting what the laws actually do say. Starting point: Employers must protect the health and safety of "workers/employees" in the "workplace." Employees who telecommute, including the people that used to work at the site but now must work from home to prevent the spread of COVID-19, are clearly "employees/workers." The question: Are their homes "workplaces"? The answer varies by jurisdiction.

The 10 Jurisdictions Most Likely to Cover Work from Home

In 10 jurisdictions (all but MB, NB, ON and YK), the answer is probably yes.

That's because the OHS laws of these places 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 a worker's home. The case for OHS protection applying to telecommuters is the strongest under federal law, at least with regard to specifically listed employer health and safety duties (including for fire and emergency, first aid, sanitation, HVAC, among other things) apply to not only workplaces the employer controls but also workplace the employer doesn't control to the extent that the employer controls the activity [*Canada Labour Code*, Sec. 125(1)]. Such activity would likely include work done by a telecommuter.

The 4 Jurisdictions Least Likely to Cover Work from Home

While most of the remaining jurisdictions also use the terms "engage" or "engage in" to define what a workplace means, they include specific exemptions that arguably cover 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 apply to 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.

5 THINGS YOU MUST DO TO COMPLY

Although it's not clear, a strong case can be made that OHS laws do apply to telecommuters, especially in the jurisdictions outside ON, MB, NB and YK. In addition to being the safe compliance choice, there are compelling financial and moral reasons to ensure the health and safety of workers who work from home, especially in these difficult and uncertain times. Here's a strategy for accomplishing that objective.

1. Conduct a Home Office Hazard Assessment

Start with a hazard assessment by doing a walk-through of the telecommuter's work area and identifying health and safety hazards as comprehensively as you do at your own facilities. If at all possible, do it in-person; but in the current situation, you may have to do a virtual assessment. In either case, limit the assessment to the areas in which the telecommuter actually works. In other words, inspect the home office and adjacent areas and bathrooms but not the bedrooms and other parts of the house not used for work. Using the OHS Insider Home Office Safety Checklist, check for:

- Ergonomics hazards, such as improperly positioned computer keyboards or desk chairs;
- Fire hazards, such as lack of smoke detectors or fire extinguishers;
- Trip-and-fall hazards, such as extension cords, area rugs and items strewn

across the floor;

- Electrical hazards, such as overloaded outlets or lack of surge protectors;
- Condition of equipment and furniture, such as broken desks or poorly hung shelves;
- Emergency preparedness, such as presence of a first aid kit and procedures for evacuating; and
- Any unsafe practices, such as piling of supplies.

2. Set Up a Monitoring or Check-In System

Consider telecommuters who work from home as other workers who work alone or in isolation that OHS laws require you to protect. The first required measure is a check-in or other system for regularly monitoring the telecommuter. The greater the danger, the more frequent check-ins should take place. While most jurisdictions leave it to employers to work out the details, BC specifically requires the employer to designate a person to maintain contact with the worker during the shift and immediately after it, and to keep a log of the contacts.

3. Ensure Telecommuter Can Call for Help

There must be a way for telecommuters to call for help. Some provinces require the use of specific kinds of equipment. For example, AB and SK require the use of radio, telephone or other forms of electronic communication. BC does the same but goes even further. According to the regulation: "The preferred method for checking is visual or two-way voice contact, but where such a system is not practicable, a one-way system which allows the worker to call or signal for help and which will send a call for help if the worker does not reset the device after a predetermined interval is acceptable."

4. Provide for First Aid & Rescue

It's your responsibility to ensure that telecommuters who get injured on the job receive the necessary first aid help. provide first aid and rescue workers who suffer injuries while they're working alone or in isolation. That would include ensuring that vehicles are equipped with first aid kits and rescue equipment.

5. Provide for Injury Reporting

Recognize that your duty to investigate and report work injuries applies to telecommuters and plan accordingly. You need a clear procedure requiring telecommuters to immediately notify you of injuries, just the way they'd have to do so if they got injured at your facilities.

6. Provide Safety Information & Training

You must provide workers information about the hazards of working at home and train them how to maintain communication and summon help if they need it.