

PROFESSIONAL LIABILITY UPDATE

A Loss Prevention Newsletter for the Design Profession

MSP PL 05/2003: "Safe at Home with Telecommuting"

May, 2003

Safe at Home with Telecommuting

Internet, Intranets and Extranets. Virtual home offices, virtual branch offices, even virtual firms. As you're no doubt aware, the advent of "e" is changing the face of corporate America in general, and design firms in particular.



Virtually every design firm is networked together and/or networked to the rest of the world – clients, sub consultants, contractors and lawyers included. And, of course, we have the new breed of virtual firm principals who work out of their homes, or – more accurately – out of their laptops, connected to the world via the Internet. And now we're going wireless, breaking down even another barrier.

While the maturation of electronic communications permits radical ways of performing traditional activities, some of these new ways present new risks. The courts are just now tackling many of these liability issues and precedents have barely been set in many areas.

Here we'll focus on one area where the computer and Internet age have had a significant impact on how design firms operate and the liabilities they face – telecommuting from a remote office.

Home Office Increase

With advancements in technology and the coming of the Internet, design firms are no longer restricted by physical boundaries when it comes to working with clients, sub consultants and others in the A/E/E community. You can instantaneously share documents, transfer files, even carry on virtual meetings from across the street, across the state, across the country or around the world.

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Cavnac & Associates

INSURANCE BROKERS
License No. OA99520

1230 Columbia Street, Suite 850
San Diego, CA 92101-3547

Phone: 619-234-6848 ♦ Facsimile: 619-234-8601

Web Site: <http://www.cavnac.com>

These same physical boundaries have also been broken when it comes to employer-employee relationships. With design talent at a premium as we enter the 21st century, firms often find it necessary to offer perks such as the ability to telecommute from a home office in order to attract today's up-and-comers.

Some start-up entrepreneurs afford themselves and all of their staff the luxury of working at home at least part of the workweek. More and more senior designers and principals at large traditional firms also keep a fully wired home office.

So what are the liability issues associated with today's fluid, so-called virtual organizations? While we can't cover every issue associated with telecommuting, we can address four broad categories every firm should consider: safety, security, management and insurance.

Safety

Before allowing employees to work from their homes, seriously consider inspecting the proposed home office site to make sure it is safe for the employee and for the company. Under OSHA standards, you are responsible for providing a safe workplace for all employees, and that includes those who work from home.

Any type of accident that occurs to the employee must be reported using the appropriate OSHA forms. Note, too, that these accidents are covered by workers compensation insurance.

When approving a home office setup for an employee, consider:

- Are furnishings and equipment ergonomically designed and situated to minimize the chance of work-related injuries?
- Is the computer monitor and keyboard properly placed to avoid carpal-tunnel syndrome, eyestrain and other common computer-caused maladies?
- Does the chair provide comfort and good back support?
- Is electrical and phone wiring safe, adequate, surge protected and positioned to avoid trips and falls?
- Is lighting sufficient for the work involved and positioned not to cause glare on the computer screen?

Four San Diego County Architects Join AIA College of Fellows

Four local architects, Charles Angyal, 55, Eric C. Nelson, 42, Jonathan Segal, 41, and Joseph Wong, 51, were among 62 fellows who were recently named to the American Institute of Architects College of Fellows, the architectural profession's hall of fame.

Held in conjunction with the recent AIA national convention in San Diego, the College of Fellows induction ceremony was held at the Salk Institute in La Jolla, which was designed by Louis Kahn in the 1960's. The Salk Institute is venerated by architects as one of the country's finest examples of modern architecture.

Of the approximately 71,000 AIA members in the nation, only about 2,400 are Fellows; 37 are from San Diego County. ✨

- Are smoke detectors, fire extinguishers and other safety equipment installed?

Some risk managers contend it is best to provide all of the equipment (computer, fax, printer, copier, telephone, pager, and so on) for the telecommuter's home office. In that way, your company avoids responsibility for damage to employee-owned equipment and you have more control that the workspace is ergonomically designed.

While you can supply ergonomically designed equipment such as keyboards, chairs and footrests to help prevent physical ailments, you cannot be certain that a home-based employee will use such equipment properly. Likewise, you cannot be certain that telecommuters will take appropriate breaks to rest their hands, eyes and backs. Accordingly, you should provide at least basic ergonomic training for all telecommuters. Also be sure to document such training.

Security

Security is an overriding issue when setting up a telecommuting arrangement. Work-at-home employees, their equipment and their work are no longer protected by the physical and electronic security barriers in place at the company's main office. You'll likely

need to set up new security policies and procedures to compensate for this added exposure.

As a general rule, you should forbid anyone other than the employee from using company equipment at the home office. Likewise, you should put limitations on the employee's personal use of company hardware, software and supplies.

It is perhaps unrealistic to attempt to forbid telecommuters from using company equipment for personal reasons – that's practically impossible even when the employee works in a company office. However, you can demand that employees follow reasonable guidelines, such as not downloading files from the Internet or not opening or forwarding attachments from personal emails. Imagine how the company could be affected were the employee or a family member to download a virus-carrying file that infected the company's network or clients' computers. Imagine the potential consequences if an employee's child unknowingly altered a drawing or specification.

Check with your information technology professionals regarding the most secure way to connect telecommuters to your company network. Firewalls, virus scanners and similar security measures between telecommuters and your internal network will provide added layers of safety.

Document management is an important component of security. Identify the types of documents you expect the telecommuter to create and deliver in hard copy, and those that can be transmitted electronically.

Telecommuters tend to rely on e-mail as their primary method of communication. And a great deal of e-mail tends to be written informally, containing personal comments, jokes, jargon, and – from a professional liability standpoint – any number of taboo words (“certify,” “inspect,” “safety”) and absolutes (“all,” “every”). While all employees need to be reminded that e-mail must be treated as important documentation, those who rely on it more heavily than others – e.g., telecommuters – need such reminders more frequently.

Be aware, also, of software licensing requirements when setting up a telecommuter's computer. In many cases, your firm does not own commercial software; it pays a licensing fee to use it. Violating licensing requirements, “burning” duplicate copies of software or using pirated software is illegal. If an employee installs illegal software on a company computer, or if the employee does company work on a personal computer loaded with bootleg software, the

company could face a surprisingly costly risk exposure.

Consider the physical security of the home office as well. Can it be secured from the rest of the house with locks? Should a security system be installed? How will sensitive company documents be stored and protected from theft, fire or other disasters? Would it be wise to have a fireproof safe or file cabinet located at the home office? Are electronic files backed up at the company office or other location? These are all viable concerns for any design firm.

Management

Telecommuting requires a great deal of trust between supervisor and subordinate. Unless a company plans to make frequent unannounced visits to the employee's home office, it is virtually impossible to provide close supervision of work hours and habits. If a manager feels an employee cannot be trusted to self-manage his or her workday, then perhaps telecommuting should not be considered.

Because telecommuters sometime feel like lone rangers, quality control can become an important issue, especially when it comes to drawings, proposals and reports. The key is to have a policy for work review and to ensure it is properly enforced.

Determine which materials need to be checked by a supervisor or peer before they are issued. Track the quality and quantity of work closely and address any perceived problems immediately. As long as the telecommuter is performing job functions to high standards, you shouldn't be too concerned whether they do it from 9-5 in a three-piece suit or from 5-9 in pajamas and robe.

Insurance

Telecommuting raises certain insurance issues that affect both the employee and the company. For example, you will likely have situations where a client, fellow employee, independent contractor or a contractor's representative visits the telecommuter at home. The employee's homeowner's insurance needs to cover the potential of such an individual being injured at the home office, or on the property where the home is located. If the employee's homeowner's policy does not provide adequate protection, will the company provide it? Be aware, also, of certain workers compensation insurance issues, especially if the employee's home office is in another state.

Note that you will likely have to amend your business property insurance schedule to identify the location of your equipment. Make sure that your policy covers equipment housed offsite or traveling between your office and the telecommuter's home office.

If the employee uses his or her own equipment, determine whether it is properly covered by insurance. Does the employee's homeowner's policy protect the equipment even though it is used for business purposes? If an additional premium is required, who will pay for it?

Most employees use their private auto for commuting. What happens during a commute is not a company's responsibility. However, if an employee works mostly at home, something as simple as a trip to the supply store could be considered business travel.

It is advisable, therefore, to check into the necessity of getting coverage for employees' use of an auto not owned by the company. If an employee has an accident while driving on company business, or what

could be construed as company business, the company (which has deeper pockets than an employee) will be a likely target for a claim or lawsuit. If the employee has a bad driving record or suspended license, the firm may face a charge of negligent assignment.

Proceed Cautiously

While some of the precautions covered here may seem a bit like overkill for an informal telecommuting arrangement, the associated risks should not be taken lightly. You are well advised to develop standard policies regarding telecommuting, whether full-time or part-time, permanent or temporary.

Set minimum requirements for home office set-up and equipment. Include required safety and security measures, document and electronic file management, quality controls and insurance needs. Note, however, that any telecommuting agreement should clearly state that the agreement is not an employment contract and does not preclude any existing contract or employment-at-will provisions between the company and the employee.✘

***Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

The TENTH Commandment: It's easier to AVOID a lawsuit than it is to WIN one. Remember the 8 Ways to Avoid Litigation!

*Excerpted from "Ten Commandments of Loss Prevention" by Gunther O. Carrle, Esq.
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- 1.** Stockpile your ammunition.
- 2.** Respect the fact that "what you say is what you get."
- 3.** Develop a healthy pessimism.
- 4.** Get to know the danger signals.
- 5.** Develop preventative forms and procedures.
- 6.** Get your attorney involved BEFORE things get out of hand.
- 7.** Don't get boxed in by your emotions.
- 8.** Educate your subordinates.✘