

Commercial Insurance Update

Topics Affecting Buyers of Commercial Insurance

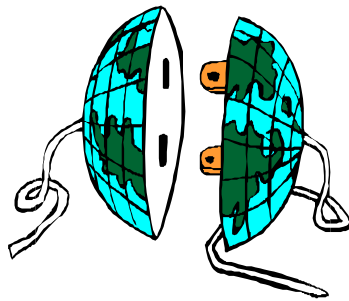
MSP C 04/2006 – “Telecommuting: Home Sweet Home Office?”

April, 2006

Telecommuting: Home Sweet Home Office?

Article Courtesy of Professional Liability Agents Network (PLAN)

The seemingly endless evolution of the Internet continues to change the face of today's business world. Nearly every company in every industry is now networked via Internet to employees, clients, subconsultants, contractors, vendors and other business partners. Businesses share documents, transfer files, and even carry on virtual meetings and conferences from across the hall, across the street, across the state, across the country or even across the world. Wireless Internet transmission has untethered the workplace even further.



As technological capabilities grow and improve, we have seen the emergence of the virtual office in which principals and other employees work from their home offices, sometimes on a full-time basis. Even employees in traditional brick-and-mortar firms are regularly conducting company business at home, on the road and at the local neighborhood Starbucks.

Without question, the Internet has been a boon to productivity and business growth. Companies can serve their clients with equal effectiveness, whether they are down the street or across the world. What's more, businesses no longer need to rely upon the local talent pool to put together a core staff of employees. Staff members can live virtually anywhere there is a high-speed Internet connection.

With the maturation of the Internet, however, come new liabilities and risks. The courts are struggling with many of these liability issues, and in many situations precedents have yet to be set. This article focuses on one area where the Internet age has had a significant impact on how businesses operate and the new liabilities they face – telecommuting from a home office.

Are You Safe at Home?

When local talent is at a premium, firms often find it necessary to offer perks such as the ability to telecommute from a home office in order to attract

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License No. OA99520

450 B Street, Suite 1800
San Diego, CA 92101-8005

✦ Phone 619-234-6848 ✦ Fax 619-234-8601

✦ Web Site www.cavnac.com

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Thursday, May 25th, 2006 — 9:00—11:00 AM
- **Contractual Risk Transfer**
Friday, June 9th, 2006 — 9:00 — 11:00 AM
- **How to Prepare for a Formal OSHA-Type Contractors Job Site Inspection**
Thursday, June 15th, 2006 — 9:00 — 11:00AM
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Telecommuting *(continued from page 1)*

today's up-and-comers. Some progressive entrepreneurs afford themselves and their staff the luxury of working at home for most if not all of the work-week. More and more senior staffers and principals at large traditional firms also keep a fully-wired home office.

So what are the liability issues associated with today's so-called virtual organizations? Let's look at four broad categories of home-office issues every firm should consider: safety, security, management and insurance.

Safety

Before allowing employees to work from their homes, consider inspecting the proposed home office to make sure it is safe for both the employee and the company. Under OSHA standards, employers are responsible for providing a safe workplace for all employees, and



that can include those who work from home. Further, any employee accident that occurs while working at home must be reported using the appropriate OSHA forms. Note, too, that these "workplace" accidents are likely covered by your firm's workers' compensation insurance.

When inspecting a home-office setup for an employee, consider:

- Are furnishings and equipment ergonomically designed and arranged to minimize the chance of work-related injuries?
- Is the computer monitor and keyboard properly placed to avoid carpal-tunnel syndrome, eye-strain and other common computer-caused maladies?
- Does the chair provide comfort and 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?
- Are smoke detectors, fire extinguishers and other safety equipment installed?

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

While you can supply ergonomically designed equipment such as desks, chairs, keyboards, wrist pads and footrests to help prevent physical ailments, you cannot guarantee 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 instruction and/or training for all telecommuters. Be sure to document your ergonomic efforts.

Telecommuting *(continued on page 3)*

Security



Security is an often overlooked issue when setting up a home office. 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 heightened exposure.

As a general rule, you should prohibit anyone other than the employee from using company equipment at the home office. At a minimum, make sure company-owned computers are password-protected with a sign-on procedure and insist that the employee keep that password confidential. If an employee is using a personally-owned computer, ensure that access to the company network is password protected and all company documents are stored in password-protected files.

It is unrealistic to prohibit telecommuters from using company equipment at their home for personal reasons – that's almost impossible when the employee works in a company office. However, you can demand that employees follow reasonable guidelines.

For example, when it comes to company computers, you should put limitations on the employee's personal use of company-owned hardware and company-licensed software. Likewise, employees should not install personal software programs on a company computer, not download non-business files from discs or the Internet, and not open or forward attachments from personal e-mails.

Check with your information technology professionals regarding the most secure way to hook up telecommuters to your company network. Firewalls, virus scanners and similar security measures between telecommuters and your internal network will provide added layers of safety. Make sure that telecommuters keep their virus-protection software up to date.

Document management is another 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. Have employee work files backed up, preferably on a company or other offsite hard drive.

Telecommuters tend to rely on e-mail as their primary method of communication. A great deal of that e-mail tends to be written informally. It may contain personal comments, jokes, jargon, and – from a professional liability standpoint – any number of taboo words such as “certify” or “guarantee.”

While all employees need to be reminded that e-mail must be treated as important documentation, telecommuters working from the comfort of their home may need such reminders more frequently.

Be aware of software licensing requirements when setting up a telecommuter's computer. In many cases, your firm does not own the software it uses; it pays a licensing fee to use it. Violating licensing agreements by “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 computer loaded with illegal software, the company could face a 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 business.

Management

Telecommuting requires a great deal of trust between supervisor and subordinate. Unless a company plans to make frequent or 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 ensure it is properly enforced.



Telecommuting (continued from page 3)

- 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 bathrobe.

Insurance Issues

Telecommuting raises important 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 office is located.

If the employee's current homeowner's policy does not provide adequate protection, the company should consider paying for increased coverage. Be sure to investigate workers' compensation insurance issues as well.

Note that your firm will likely have to amend its business property insurance schedule to identify the location of equipment used by telecommuters. Make sure the policy covers equipment housed off-site or traveling between your office and the telecommuter's home office.

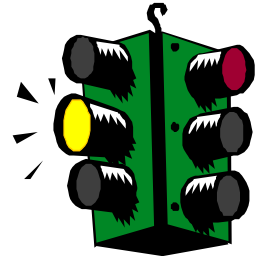
If the telecommuting employee uses his or her own equipment, determine whether it is properly covered by insurance. Does the employee's homeowner's policy protect the equipment even though it is used for business purposes? If an additional premium is required, the company should likely pay it.



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 office supply store could be consid-

ered business travel. It is advisable, therefore, to check into the necessity of coverage for employees' use of an auto not owned by the company. (This coverage is called "non-owned automobile" insurance and should be carried by every business.) If an employee has an accident while driving on company business, or what could be construed as company business, the company will be a likely target for a claim or lawsuit.

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 setup and equipment. Include policies for required safety and security measures, document and electronic file management, quality controls and insurance needs. Finally, any telecommuting policy 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.*

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Industrial Ergonomics

By Stuart Nakutin, CSM, AIC, PHR, WCCP, CPDM

You've probably heard the term "ergonomics" before. It's a relatively new field of study concerning how a person interacts with the working environment.

Ergonomics is a broad field, but the basic goal of an ergonomics program is injury prevention. Injury prevention is accomplished by fitting the job to the worker instead of fitting the worker to the job. Take a look at ergonomic concerns in your workplace, and see what you can do to prevent injuries caused by poor ergonomics. Many of the suggestions in this article can also be adapted for use outside the workplace, helping you to prevent injuries at home.

Injuries arising from poor ergonomic conditions typically involve the bones, muscles, joints, tendons, and nerves. Symptoms of these injuries are:

- Painful joints
- Pain, tingling or numbness in hands or feet
- Pain in wrists, shoulders, forearms, knees, etc.
- Back or neck pain
- Fingers or toes turning white
- Shooting or stabbing pains in arms or legs
- Swelling or inflammation
- Stiffness
- Weakness or clumsiness in hands
- Burning sensations
- Heaviness

These symptoms could also be the result of other medical conditions, so check with your doctor if you are concerned about any of these.

The good news is that ergonomic problems can usually be solved by simple, common sense solutions. Injuries that are caused by awkward posture can be prevented by improving your position while you work. Any time you must twist your body, work overhead, kneel, bend over, or squat, you increase your risk of an injury. Repetition of these movements further increases your chance of injury.



Occasional awkward posture is probably no cause for alarm, but if you find yourself repeatedly bending, stretching, and twisting, making some simple adjustments to the work environment can solve the problem of awkward posture. Your workstation may need some adjustment, or the materials you use in performing your job may need to be re-arranged to eliminate bending, twisting, and other awkward movements. Store frequently used materials in front of you at waist height. Heavier objects should not be placed overhead, nor should they be placed on the floor. Instead, place them at a level so they are easier to lift. Use of mechanical lifting equipment may also be possible.

Repetitive motion tasks can also lead to injuries. If your job requires you to make the same motions repeatedly, consider learning the correct posture for the job. Check with your company's safety department for ideas on reducing injury from repetitive motion tasks. You may find that there is equipment available to use that will reduce your chance of injury. However, don't depend only on a back or wrist brace to protect you. Your best prevention is to maintain the correct position for the task, take recommended breaks, and do any recommended exercises to help prevent injury.

Some other causes of ergonomic injuries are:

- **Sustained muscle exertion**, which reduces blood flow to the muscles and causes muscle strains and sprains
- **Contact stresses**, which are injuries that occur due to repeated contact with a hard surface
- **Temperature extremes**, which can reduce sensitivity to pain and reduce blood flow
- **Vibration**, which can reduce blood flow and sensory response

In some of these cases it may not be possible to make a simple adjustment to overcome the prob-

lem. Engineered controls may be the best solution, so check with your safety department.

Some factors are within your control, however. Sometimes you may be tempted to use your body itself as a tool. Have you ever used your hand or foot to kick or pound an object? Have you ever taken a shortcut and neglected to use the right piece of equipment to do the job? You may have substituted your hands for a vise, your knee for a ram, or your back for a hand truck.

All of these situations put you at risk of an injury. That shortcut could cost you a lot of time and unnecessary suffering. Think twice before you use your body as a tool. It will thank you for it!

Being aware of the causes of injuries is the first step in preventing them. As you work, take a look around you at the situations that could cause an injury and take steps to correct them. Fitting the job to the person is not a difficult thing to do, and it will help keep you working injury-free for a long time to come!

Stuart Nakutin is Director of Safety, Loss Control and Claims for Cavnac & Associates. ✨

The Accident Report

Explanation letter received by a Claim Adjuster regarding a reported accident:

Dear Sir,

I am writing in response to your request for additional information in Block 3 of the Accident Report Form. I put "poor planning" as the cause of my accident. You asked for a fuller explanation, and I trust the following details will be sufficient.

I am a bricklayer by trade. On the day of the accident, I was working alone on the roof of a new six story building. When I completed my work, I found that I had some bricks left over which, when weighed later, were found to be slightly in excess of 500 pounds.

Rather than carry the bricks down by hand, I decided to lower them in a barrel by using a pulley, which was attached to the side of the building on the sixth floor. Securing the rope at ground level, I went up to the roof, swung the barrel out and loaded the bricks into it.

Then I went down and untied the rope, holding it tightly to ensure a slow descent of the bricks. (You will note in Block 11 of the Accident Report Form that I weigh 135 pounds.)

Due to my surprise at being jerked off the ground so suddenly, I lost my presence of mind and forgot to let go of the rope. Needless to say, I proceeded at a rapid rate up the side of the building.

In the vicinity of the third floor, I met the barrel, which was now proceeding downward at an equally impressive speed. This explained the fractured skull, minor abrasions and the broken collar

bone, as listed in Section 3 of the Accident Report Form.

Slowed only slightly, I continued my rapid ascent, not stopping until the fingers of my right hand were two knuckles deep into the pulley.

Fortunately, by this time I had regained my presence of mind and was able to hold tightly to the rope, in spite of beginning to experience pain. At approximately the same time, however, the barrel of bricks hit the ground and the bottom fell out of the barrel. Now devoid of the weight of the bricks, that barrel weighed approximately 50 pounds. (I refer you again to my weight.)

As you can imagine, I began a rapid descent down the side of the building. In the vicinity of the third floor, I met the barrel coming up. This accounts for the two fractured ankles, broken tooth and several lacerations of my legs and lower body.

Here my luck began to change slightly. The encounter with the barrel seemed to slow me enough to lessen my injuries when I fell into the pile of bricks and fortunately only three vertebrae were cracked.

I am sorry to report, however, as I lay there on the pile of bricks, in pain, unable to move, I again lost my composure and presence of mind and let go of the rope and I lay there watching the empty barrel begin its journey back down onto me.

This explains the two broken legs. ✨

