

TELECOMMUTING

05.1998

Employment Law Reporter, Ervin Cohen & Jessup LLP

Over 9 million Americans telecommute for at least a portion of their work week. Telecommuting is apparently working; the number of telecommuters is growing at a rate of approximately 20% per year. These numbers only serve to confirm the obvious appeal of telecommuting. What is less obvious, however, are the potential pitfalls for employers.

Before establishing a telecommuting program, a variety of issues should be confronted. The employee's work area, schedule, treatment of equipment and company information, benefits and insurance are among the issues which merit consideration. The employer should establish a written policy regarding telecommuting. In addition, the employer and the telecommuting employee should enter into a written agreement which defines the terms under which telecommuting will be permitted.

A. The Telecommuting Policy

Once employees become aware that telecommuting is a possibility, the employer may receive a number of requests from individuals who want to participate in the program. Of course, telecommuting is not appropriate for every employee. Establishing a written policy which clearly defines the eligibility factors and criteria to be considered by the employer should prevent any confusion which might develop regarding the program. These criteria can include job duties, past performance, tenure, work space, ability to contribute equipment, maintenance responsibilities and other factors.

The employer's written policy should specify that permission to telecommute is at the sole discretion of the employer and that the employer retains the right to terminate the telecommuting privilege at any time for any or no reason. The policy should also state the expectations of the employer with respect to telecommuting, including continued compliance with company policies and procedures; regular attendance at meetings as required; payment of certain expenses by the employee; and the treatment of company equipment and trade secrets. As will be seen, many of these issues will also be covered in the employer's telecommuting agreement. Unlike a telecommuting agreement, however, the employer's telecommuting policy serves the purpose of advising non-telecommuting employees of the company's

PROFESSIONALS

Kelly O. Scott

PRACTICE AREAS

Employment

telecommuting requirements.

B. The Telecommuting Agreement

The employer and telecommuting employee should enter into a written agreement which sets forth the terms under which the employee will be allowed to telecommute. Some of the more important terms which should be covered are as follows:

1. *Voluntary Participation.* The agreement should state that telecommuting is an option available only to employees who are eligible pursuant to the written policy established by the employer. The agreement should state that the employee does not have a "right" to telecommute; rather, the privilege of telecommuting can be suspended, revoked or canceled at any time by the employer for any or no reason.
2. *Employment-At-Will.* The telecommuting agreement is not a contract of employment. Rather, the agreement should state that the employee remains employed on an "at-will" basis and can be terminated with or without cause and with or without notice.
3. *Work Schedule.* The agreement should establish the hours and days of telecommuting which will be permitted by the company. The employer should reserve the right to require the employee to attend meetings as it deems necessary.
4. *Company Policies.* The employee should be required to abide by company policies and procedures, except to the extent that they differ from the terms of the telecommuting agreement.
5. *Trade Secrets and Confidential Information.* The agreement should cover the treatment of the company's confidential information and trade secrets if such information will be maintained by the employee in his or her home.
6. *Company Equipment.* The agreement should specify what equipment will be provided by the employer and what will be provided by the employee. The agreement should state that company equipment is the sole property of the company and is not for personal use and that all equipment and materials belonging to the company must be returned upon termination of the telecommuting agreement.
7. *Payment of Expenses.* The agreement should cover the payment of expenses, i.e., which expenses will be reimbursed by the company and which expenses, such as phone charges and Internet fees, should be paid by the employee.
8. *Workplace Safety.* The agreement should state that the employee is obligated to maintain a safe and hazard-free workplace and that the company has a right to inspect the workplace during work hours.
9. *Insurance.* The employee should indemnify the employer from any injuries claimed by any third parties and maintain appropriate insurance in this regard. The employee should also be responsible for any damage to the company's equipment.

10. *Workers' Compensation.* The employee should be covered for work-related injuries which occur during scheduled work hours in the designated work area. The employer should review its workers' compensation policy to ensure that the telecommuting employee will be covered.

C. Conclusion

Whether or not telecommuting is appropriate will depend upon the needs of the particular employer. Once an employer decides to permit telecommuting, the specifics of its written telecommuting policy and agreement will depend upon its business needs and can differ from those of other employers. Consideration of the above terms, however, can prevent problems by anticipating them before they occur.