

Working from home – Some OHS Implications

Reaching agreement with staff to allow them to undertake a range of duties from their own home does not act to release an employer from their statutory obligations to ensure the employee's health and safety. To the contrary, having employees work away from the normal workplace creates a number of compliance challenges that require careful consideration and coverage in order to avoid unnecessary risk – to both the employer and the employee.



Key Legislative Requirements

1. Employers

For NSW employers, the Occupational Health and Safety Act 2000 and the Occupational Health and Safety Regulation 2001 set out the key requirements for employers to ensure the health of employees, including those staff working from home. While section 8 of the Act sets out the general duty which requires employers to ensure the health, safety and welfare of employees, employers need to be aware of a number of more specific provisions, including the requirements on employers to:

- ⇒ Provide and maintain a working environment that is safe and without risk to health
- ⇒ Provide and maintain equipment and systems of work that are safe and without risk to health
- ⇒ Provide information, instruction, training and supervision necessary to ensure the health and safety at work of employees
- ⇒ Make arrangements to ensure the safe use, handling, storage and transport of equipment and substances.

2. Employees

Employees, including those working from home, have responsibilities under Section 20 of the Act to co-operate with their employer on OHS issues.

The Dilemma

The key challenge for employers is the need to deal effectively with the fact that although they have a strict liability for the health and safety of home based employees, including the physical work environment; they are not in the position of being in control of the remote work place.

To deal with this, it is essential that both parties to any working from home arrangement set out the conditions of work in the form of a written agreement.

In addition, the employer needs to implement sufficient processes and monitoring to ensure that the remote workplace is and remains a safe and healthy one for the employee.

Written Agreement

A written Working from Home Agreement signed off between the employee and the employer is a very effective way to set out the exact terms under which working from home arrangement will operate. This will act to avoid unnecessary misunderstandings and ensure that key compliance issues are known and acted upon.

Some issues to deal with in a Working from Home Agreement include:

- ⇒ Timeframe for working from home – this should never be open ended
- ⇒ Exact location of home based office
- ⇒ Normal hours of work, overtime provisions, recess issues
- ⇒ Undertaking by employee to take all necessary care to create and maintain a safe and healthy work environment
- ⇒ Agreement for the employer to enter the home to conduct necessary inspections
- ⇒ Undertaking for the employee to notify any work related accident, injury or illness
- ⇒ List of equipment provided by employer and conditions for its use
- ⇒ List of equipment to be provided by the employee
- ⇒ Security issues
- ⇒ Agreement on the issue of dependent care
- ⇒ Application of workplace policies at the home ie IT policies, HR policies, OHS policies and procedures

OHS Issues

An appropriate risk assessment and monitoring process as minimal requirements for home based work arrangements.

The most effective involves an inspection of the workplace by an OHS specialist coupled with regular follow up checks of the remote workplace.

However, it is recognised that in many instances, this level of risk assessment is not possible. In these cases, it is considered that the use of a customised checklist to be completed and signed off by the employee will offer some protection. A sample checklist setting out some of the areas to be covered can be obtained from Corporate HR Solutions – see details at end of this article.

Other Issues to Consider

In addition to the many obligations to provide a safe place of work for employee's working at their own home, employer's need to ensure they comply with a number of other requirements, including:

Worker's Compensation

As a general rule, injuries sustained by home based employees would be deemed to be an injury arising out of or in the normal course of employment.

While it is clear that journey claims for NSW home based employees would normally be covered for journeys between the home and the place of work, the situation of recess claims for injuries sustained by employees working from their home is less clear.

To minimise risk, it is suggested that any working from home agreement specifies the working hours to be performed by the employee and the duration and scheduling of recess breaks.

Accident Notification

All normal reporting and investigation procedures would need to be enacted in the event of any compensable injury. Additional care would need to be taken to ensure that the home based employee was aware of the circumstances and timeframes for the notification of any workplace injury or illness.

First Aid

The Regulations provide that suitable first aid kits are available at all workplaces. In most cases involving home based employees, this would be the Type C first aid kit. Of course, arrangements would need to be put into place to ensure the kit was properly maintained.

Complimentary Checklist

To obtain a copy of a sample 'Working from Home OHS Checklist', email your details to workingfromhome@corporatehrsolutions.com

How we can assist

Corporate HR Solutions can provide additional advice on this complex issue, including processes to assist deal with the unique OHS implications of having staff work away from the office.

Corporate HR Solutions

Level 20, 99 Walker St, North Sydney NSW

Phone: 02 9510 0066

Fax: 02 9510 0067

Web: www.corporatehrsolutions.com

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