

My Employees are Teleworking – Do I Need to Worry About OSHA Work Injuries at Home?

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The COVID-19 pandemic has caused lots of changes in society (social distancing, wearing masks, singing the “Happy Birthday” song while washing your hands, etc.). One undeniable change has been the substantial increase in the number of employees teleworking (*i.e.*, working remotely from home). The [U.S. Bureau of Labor Statistics](#) reports that just under 33% of workers worked from home in June because of the coronavirus outbreak. Moreover, there appears to be a [growing belief](#) that teleworking may become the new normal for many employees even after COVID-19.

With that in mind – to what extent must employers ensure that their home-based employees are working in a safe environment under the Occupational Safety and Health Act (OSH Act)? The short answer is it depends on the type of remote work.

Under OSHA’s General Duty Clause, every employer has a general duty to “... furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” That duty applies regardless of the location where your employees are working. For home office situations where the employee performs office work activities, such as filing, computer research or work, reading, writing, etc., employers have little responsibility. In fact, OSHA (the federal agency that enforces the OSH Act) has issued [guidance](#) stating:

- It will not conduct inspections of employees’ home offices;
- It will not hold employers liable for employees’ home offices; and
- It does not expect employers to inspect an employee’s home office.

For other home-based work, such as home manufacturing operations, OSHA will only conduct an inspection if a complaint indicates that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists. The inspection, however, will be limited to the employee’s work activities, not the entire home or furnishings. Although the inspections will be limited, employers are still responsible for hazards caused by materials, equipment, or work processes that it provides or requires to be used in an employee’s home.

Additionally, employers, who are required to keep records of work-related injuries and illnesses under the OSH Act, are responsible to do so even if the injury or illness occurs in an employee's home. For employees working remotely, [OSHA requires](#) the employee to be linked to a home establishment and that any illnesses meeting the [recording criteria](#) should be recorded on that home establishment's OSHA 300 log.

Stated another way, there is not an exception for work-related injuries or illnesses that occur at home. However, for an injury sustained at home to be considered a "work-related" injury [it must have](#) 1) occurred while the employee is being paid to work, and 2) be directly related to the performance of the employee's work duties (rather than to the general home environment). It is also notable that employers likely would remain responsible for injuries arising at home worksites pursuant to state worker's compensation laws and/or under a tort theory, such as negligence. Accordingly, employers should have a legal obligation in helping ensure home worksites are safe. Below are some recommended best practices:

- Provide assistance/guidance to employees regarding the setup of the home worksite. For example:
 - If a home office: Consider developing a YouTube video or written handout giving instructions pertaining to the setting up of equipment in ergonomic fashion, electrical setup (i.e., only plug in two electrical devices in an outlet, etc.).
 - If a manufacturing-type home worksite: Ensure that employees have training on equipment, and in handling all hazardous or dangerous materials used in the manufacturing; consider having the equipment professionally set up at the employee's home (rather than having the employee do the setup).
- Establish a hotline or other communication mechanism for remote employees to call if in need of assistance.
- Develop a checklist addressing safety and productivity issues, and have employees complete checklist every six months or so.
- Train employees on a recurring basis (such as annually) as to remote employees' obligations to report alleged work injuries and/or illnesses, and how to report such injuries and/or illnesses.
- Take measures to help ensure proper insurance coverage for work injuries/illnesses and personal injury, property loss or professional or other similar service liability coverage. For instance, speak with worker's compensation coverage provider to ensure coverage of home-based employees, including employees who may reside in another state.

A [number of legal and practical issues arise](#) when workers telecommute, especially in the COVID-19 world. So be sure to involve senior management and an appropriate employment law attorney when making decisions and implementing best practices in addressing the issues.

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