

MANAGING RISK



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Tackling the Telecommuting Risk

Telecommuting allows companies to save money on office space and increase productivity, while workers enjoy increased flexibility and reduced commute times. But telecommuting represents a serious challenge for risk manag-

ers, as they find themselves responsible for workers outside the controlled office environment.

The courts have yet to define the exact scope of employers' responsibility for employees who work at home. But experts in the field agree that most traditional areas of employer responsibility apply equally whether the employee is toiling away on the company's premises or working in pajamas in the comfort of a home office.

Insurance Issues

Employers must provide telecommuters with workers' compensation coverage – unless they are independent contractors. However, companies can't simply declare someone a contractor to get out of paying workers' comp or employment taxes. The Internal Revenue Service and state tax authorities have very strict rules for what constitutes an independent contractor. (For details, see www.irs.gov/pub/irs-pdf/p1779.pdf.)

Risk managers must also ensure that their general liability policies cover the acts of employees working from home. They should check that their policies do not include a "designated premises endorsement" that would limit coverage to their main place of business. Similarly, they must make sure that having a dedicated home work space does not violate the employee's homeowners policy.

Identifying the Risk

The risks of injury in a home office may be far lower than in factories, mines and mills. But telecommuters are as likely as other office workers to suffer from back injuries, repetitive strain problems and other office hazards. And they face risk of injury from fire if they lack an adequate electrical system, or if they don't have a smoke detector or fire extinguisher nearby.

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This Just In

A survey by ComPsych Corp has found an alarming rise in "presenteeism" — employees who come to work when they are sick. Eighty-three percent of workers surveyed had at some point ignored sickness in order to work, a 6 percent increase since 2005.

A variety of factors motivated employees to come to work sick. Thirty-seven percent cited a workload that made it too difficult to take time off; 26 percent said it feels "risky" to take time off; and 21 percent wanted to save sick days for when their children were sick.

Presenteeism increases the risk of spreading viruses and the risk of accidents, because sick workers will not perform properly, often making mistakes and misjudgments.



Also in this Issue

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- Caring Can Stress Employees
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D&O Coverage: No Longer a Luxury

A recent survey found that more than 95 percent of Fortune 500 companies maintained directors and officers (D&O) liability insurance. However, D&O insurance is becoming an essential tool for companies of all sizes to attract and retain top executive talent.



Who Needs D&O?

Corporate headhunter Nicole Weber says C-level executives now routinely demand appropriate D&O coverage before even considering a job offer. "These guys are at the top of their profession," she says. "They are not going to put their personal financial assets in the firing line in case they get sued for actions they take as part of their jobs. It's simple: if you want top talent, D&O coverage is an essential part of the package."

D&O coverage is equally important for investors. They want to know that there is adequate financial backing in case gross mismanagement makes their investment in a company go sour.

D&O coverage also insulates companies and their executives from employment practices lawsuits against company directors. According to specialty insurers Gaston & Associates, employment practices suits constitute the single largest area of claim activity under D&O policies. More than 50 percent of D&O claims relate to employment practices.

Who Sues?

Unfortunately, a whole host of constituencies are just waiting to sue company directors and officers. The most frequent legal actions come from employees who allege wrongful termination, harassment and breach of contract. Almost as prevalent are shareholders upset at a declining stock price, inadequate disclosure, dishonesty, bad decisions and missed business opportunities. D&O lawsuits can also be filed by competitors, environmental activists and government and regulatory authorities such as the EPA, IRS and SEC.

What Effect Has Sarbanes-Oxley Had?

According to insurance consultant Andrew Barile, the Sarbanes-Oxley Act of 2002 gave a huge impetus to lawsuits against directors and a corollary increase in demand for D&O insurance. "Sarbanes-Oxley...specified the legal responsibilities of directors and officers. It's not enough to just be the golfing buddy of the CEO anymore," said Barile.

How Much Does It Cost?

No standard D&O policies exist. Underwriters will tailor coverage to your company's needs and determine your rates based on the exposure your company presents. A company with unsound management practices creates higher risk exposures for the insurer; likewise companies in unstable industries. The more information you can provide to demonstrate your company's good management practices, the better coverage terms you will be able to secure.

To apply for D&O coverage, you will likely have to present information on any past shareholder or employment practices claims, copies of corporate bylaws and minutes of board meetings, copies of employee handbooks, biographical information on your board members and more.

For more information on preparing an application for D&O insurance, please contact us. ■

George Downs Joins Addis

George is a vice president within the New Business Development Division at The Addis Group. Formerly, George served as a producer at a nationally top-ranked risk management and insurance broker headquartered in Center City Philadelphia.

His primary responsibilities and main area of focus are securing new business opportunities within the large and middle-market commercial accounts



George Downs

segment. Utilizing a different approach, which relies more on risk management strategies and loss mitigation practices, George has been able to design very broad, competitively priced insurance programs that have yielded positive results for his clients.

Prior to joining the insurance industry, George's professional experience was within the information systems and healthcare industries. He spent 15 years with Shared Medical Systems/Siemens Medical Systems, headquartered in Malvern,

Penn. His most recent position there was a senior account executive focusing on some of the best health systems in Pennsylvania.

George is a graduate of Monsignor Bonner High School in Drexel Hill. He holds a bachelors' degree from Millersville University, Millersville, Penn. and an MBA from Eastern College in Wayne, Penn. He currently serves as vice president on the board of the Marple Little League. He is also a board member of the St. Anastasia CYO (Newtown Square, Penn.) holding the position of athletic director.

He currently resides in Broomall, Penn. with his wife Daneen and their six children: Georgie, Kelly, Kevin, Julia, Joseph and Caroline. ■

Caregiving Can Stress Employees—and the Company Bottom Line



Most employees don't have the experience or knowledge to deal effectively with caregiving issues. Helping caregivers find assistance can prevent lost productivity.

On any given workday, an estimated 20 percent of the workforce is dealing with issues related to eldercare. The burden of caregiving has a profound effect on work, including lack of productivity, increased absenteeism, workday interruptions, leaving work early, lack of concentration and the need to take family medical leave.

Who are the caregivers in your organization? Forty percent of caregivers are men; however, the majority are women between the ages of 45 and 65. Caring for an elderly loved one can range from simply making periodic phone calls to assisting with finding appropriate housing options to having to make all de-

isions for that individual. And most caregivers have no training and very little knowledge on issues related to eldercare.

Caregiver stress can manifest itself in a variety of ways that negatively affect an employee, including sleeplessness, lack of concentration, drug/alcohol abuse and chronic fatigue. This stress can have a dramatic effect on your employees' health, leading to conditions such as headaches/migraines, ulcers, lack of energy and anxiety and nervousness.

The resulting healthcare expenditures can be astronomical and the impact on employers far-reaching. According to the MetLife Mature Market Institute, the estimated cost to U.S. employers in lost productivity for

all full-time employed caregivers is between \$11.4 and \$33.6 billion per year.

How is your company assisting employees balance work and eldercare responsibilities? Eldercare resource companies can offer the information and guidance to caregiving employees need to navigate the maze of eldercare options, develop an action plan and find solutions to their eldercare needs.

For more information on dealing with eldercare responsibilities and caregiver stress in the workplace, please contact Beth Adams, Aging with Grace, at 1.800.626.9440 (ext. 311). Aging with Grace, LLC is a comprehensive eldercare resource company headquartered in Hatboro, Penn. ■

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Many employment experts offer guidelines to assure that the telecommuter's home office is safe and ergonomically friendly. However, a survey by the American Management Association found that only 7 percent of teleworkers had been formally trained to work outside their normal office environment. Fewer than half had the necessary equipment to conduct business from home, and they complained that they lacked adequate technical support when working at home.

Providing Solutions

Jacqueline Jones, a labor and employment attorney, encourages employers to formulate a policy reflecting their expectations for telecommuters. "The policy should provide clear outlines as to when the employee is considered to be working as opposed to personal time," Jones explains. "Employers should also inspect the home-office work site and ensure work-office standards are met."

Determining the extent of such supervi-

sion can be tricky, notes employment attorney James E. Pocius. If an employer exerts control over home working conditions, the employer probably will be responsible if an accident occurs at home. But if the employer does not exert control, dangerous home conditions might result in employer liability if an accident occurs, since courts traditionally take a broad view of employees' rights to workers' compensation.

Case Study

Financial giant Merrill Lynch & Co. attempts to finesse this potential problem with a detailed training program for potential telecommuters. Telecommuters and their managers attend training programs on topics such as how to communicate with the home office and how to plan ergonomically correct workplaces. Each employee also spends two weeks in a telecommuting simulation lab at the company. The company supplies the computers and the teleworkers purchase their own office furniture. The company also requires

workers to verify that telecommuting will not violate terms of their homeowner's insurance. The company inspects home work spaces for safety and productivity and the company requires all telecommuters to go to the office at least once a week. So far the company has not had a single telecommuting-related workers' compensation claim.

The following rules can help your company minimize telecommuting-related risk exposures:

- 1 Ensure telecommuters have workers' comp coverage.
- 2 Verify that the company's general liability policy applies to the acts of telecommuters.
- 3 Check that home work space does not violate the telecommuter's homeowners insurance policy.
- 4 Offer training and guidelines for efficient teleworking.
- 5 Provide workers with the right equipment and support. ■

Target Ruling May Extend ADA to Web

An October 2007 ruling by a federal judge could extend state and federal disability statutes to the Internet and require companies and organizations throughout the country to make their Web sites accessible to blind persons.

Judge Marilyn Patel of the U.S. District Court in San Francisco certified the case *National Federation of the Blind v. Target* as a class action lawsuit. Filed in 2006 by the national and California National Federation of the Blind (NFB) organizations and a blind college student named Bruce “BJ” Sexton, the suit claims Target’s Web site violates the Americans with Disabilities Act (ADA) and two California anti-discrimination laws. The plaintiffs alleged that retail giant Target failed to make its Web site accessible to the blind, then ignored the issue when confronted with complaints.

Target said it was disappointed by the ruling, but pointed out that class certification is a procedural ruling only and in no way addresses the merit of the NFB’s claims.

“We will request an immediate review of the ruling granting class certification and we are confident that we will prevail on the merits of this case,” the company said. “Regardless of the outcome, we will continue

to implement new technologies to enhance the usability of our Web site for all of our guests.”

This may not be as hard as it seems at first glance. Many applications already make sites accessible to the blind, usually with small text tags next to images, so the software can speak the words aloud. The World Wide Web Consortium (<http://www.w3.org>) has extensive guidelines to help make access to the Web easier for people with disabilities, says Judy Brewer, director of the consortium’s Web Accessibility Initiative.

For companies doing business on the Web, this ruling could serve as a “startling wake-up call,” added attorney Sean Kane. “I don’t believe that most e-commerce sites out there have ever considered they have to comply with ADA provisions or California’s related laws,” Kane told the *E-Commerce Times*. “It’s telling to see that the judge feels this is a potential ADA violation.”

Your standard commercial general liability policy or business owner policy will pro-



vide some coverage for discrimination suits (as long as the claimant is not an employee). However, the negative publicity such a case could generate makes any investment in increased accessibility a wise one. ■



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