

Radford University



SHRM Newsletter October 2007

Announcements!

- **Buffalo Wild Wings Social and Claire's Halloween Party** have *both* been **RESCHEDULED!!** See **Upcoming Events on page 2** for Details
- **JOIN SHRM!** We need as many National SHRM members as possible, so go online and sign up today!! It's \$35.00 to join. (www.SHRM.org)
- **Don't forget to Pay Dues!** (\$10.00 to Eric; Cash or Check made out to RU SHRM)
- **T- Shirt Committee!** Anyone interested in helping Eric design the I/O T- Shirt? Get your creative juices flowing and email Eric for details. (wcarroll4@radford.edu)
- **RU SHRM Interest Meetings** were held in the Bonnie this past week (October 15th, 16th, &17th)



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Upcoming Speakers

- **October 31st**: Possible panel of HR professionals from the public sector discussing the unique issues they face
- **November**: Job search information from RU-I/O Alumni
- **December**: Possible Topic → Working in a Union Environment



I/O Picnic! All of the I/Oers at the Annual Picnic @ Claytor Lake on September 15th

Upcoming Events

- The **Buffalo Wild Wings Social** has been **RESCHEUDLED!** It will now be on **Monday, November 12th**, from 5-7 pm.
- **HaLIOWEeN PaRtY** at Claire's! The party has been rescheduled for **Friday November 2nd**, at **8 pm** due to scheduling conflicts.
- End of October: Company Tour at **Volvo**
- November: Company Tour at **Elizabeth Arden**



The first years @ Hibachi for Brandon's Birthday! (Minus Jenny ☺)

From Left to Right, *Back Row*: Brandie, Yu-En, Karl, Jason, Amanda K. *Front Row*: Andy, Leigh, Amanda S., Brandon, Sarah, Kristina, Jon.

Legal Issues in Telecommuting

By Edward M. Cherof
(Taken from SHRM.org)

In today's global marketplace, physical location has become less important than efficiency of operations. The tight labor market and advances in technology have motivated employers to offer flexible work arrangements to attract and retain talented employees while lowering overhead, increasing productivity, and gaining employee satisfaction. Telecommuting has become an attractive option for many employers and employees. However, as workplaces are changed by the economic, social, and technological forces of the early 21st century, employers must anticipate the risks that "absentee" employees present and develop strategies to minimize the potential liabilities.

What is Telecommuting?

Telecommuting is a flexible work arrangement that allows an employee to work at home or at another satellite location (which is linked, usually electronically, to a central office) during all or some portion of the workweek. Telecommuting is best suited for jobs that require independent work, little face-to-face interaction, concentration, a measurable work product, and output-based (instead of time-based) monitoring.

Pros and Cons

Employees benefit from telecommuting because it affords:

- Improved quality of life
- Increased job satisfaction
- Financial savings on commuting and other costs

Employers benefit in the following areas:

- Recruitment
- Retention
- Office space/overhead savings
- Increased Productivity
- Reduced Absenteeism
- Environmental

Drawbacks found by employees include:

- Perceived hindrance of career advancement (less visibility at the central office)
- Lack of support services (e.g., secretarial)
- Isolation and lack of interaction with fellow workers
- Household distractions
- Reduced living space

Drawbacks articulated by employers include:

- Management resistance and skepticism
- Control issues (difficulty in supervision)
- Culture change (shift from managing attendance to managing performance)
- Security of data/information stored at "home office".

Implications of Telecommuting Arrangements Under the FLSA

The Fair Labor Standards Act was enacted in 1938 to establish a minimum wage and encourage employers to create new jobs in order to avoid overtime payments. Unless specifically exempt, the FLSA requires an employer to pay its employees both a minimum hourly wage for all hours worked and overtime payments for any hours worked

beyond 40 hours a week. Telecommuting arrangements may engender FLSA compliance issues with respect to: (1) identifying compensable working time, (2) controlling unauthorized off-the-clock work, and (3) controlling unauthorized reported work. True "off duty" time is not compensable working time. An employee is off duty when: (1) he or she is completely relieved from duty, and (2) the period is long enough for the employee to effectively use the time for his or her own purpose. This generally requires that the employee receives advance notice that he or she can leave the job, and advance notice that he or she will not have to start work until a definite, specific time. Conversely, short rest periods from 5 to 20 minutes must be counted as working time.

Another troublesome issue for employers is the ability to control unauthorized, unreported "off-the-clock" work. The courts repeatedly have emphasized that *it is the employer's obligation to manage its employees to insure that they are not working uncompensated hours.*

Measures that help control "off-the-clock" work include:

1. time sheet certification by the employee
2. verification of time record accuracy by supervisors
3. communication of a policy requiring accuracy and verification of reported work hours, as well as discipline for violations
4. consistent enforcement and discipline for violators

When an employer does not want work to be performed, it has the duty to exercise its control and ensure that work is not performed. An employer cannot accept the benefits of work being performed and refuse to compensate the employee for that work if it knew or should have known it was being performed. Establishing and enforcing disciplinary policies with respect to unauthorized overtime is critical. The preventive suggestions provided with respect to "off-the-clock" work, particularly disciplinary enforcement, will also help ensure control of unauthorized overtime.

Telecommuting as a Reasonable Accommodation Under the ADA

The tension between traditional workplace concepts and the telecommuter "revolution" is illustrated by the interaction between the Americans with Disabilities Act and telecommuting. The ADA does not require employers to retain disabled employees who cannot perform all of the essential functions of their jobs with or without reasonable accommodation. Likewise, an employer is not required to accommodate an employee with a disability by eliminating one of the essential functions of the job. To determine whether at-home work would be unduly burdensome to the employer, the courts evaluate the essential functions of the job to determine if they may reasonably be undertaken in the home environment. The factors that the courts have considered include the presence of:

- teamwork
- supervision rather than solitary unsupervised work
- daily interaction with others
- frequent face-to-face contact
- whether the home environment is conducive to the work requirements

As telecommuting becomes more common, courts are viewing "work in the home" as a natural evolution and a reasonable accommodation. As technology makes it easier to

work away from the office, it is likely that more courts will begin to view telecommuting as a reasonable accommodation, particularly if a substantial part of the job is not performed in the office. For example, a federal jury in Philadelphia awarded \$1.5 million to an insurance underwriter with Crohn's disease who worked for the Guardian Life Insurance Co. of America. She claimed her employer at first accommodated her disability by allowing her to work from home when she was ill, but later insisted that she appear at the office two days a week and submit to a different performance review schedule than her colleagues. It took the jury only half a day to return a verdict against the employer.

If attendance at work is not an essential function, then (1) working at home becomes a feasible accommodation; (2) employers may be required to accommodate at-home work with such items as ergonomic chairs, desks, keyboards, computers, modems, etc.; and (3) it will be harder to prove an employee is not qualified due to poor attendance. However, when employers are seeking to accommodate life styles to recruit and retain workers, the possibility of being required to accommodate an individual with a disability who performs quality work is not a reason to avoid a telecommuting policy anyway. A prudent employer should evaluate the essential functions of an affected employee's job to determine whether working at home would be reasonable for that employee.

“Home Office” Safety Under OSHA

The Occupational Safety and Health Administration has caused employers to assess whether and to what extent they must ensure that their telecommuting employees are working in safe home offices. On February 25, 2000, OSHA issued a policy on “home offices” (defined as “office work activities in a home-based work site”), indicating the agency “will not conduct inspections of the employee's home offices”, “will not hold employers liable for employees' home offices” and “does not expect employers to inspect home offices of the employees.” However, OSHA reaffirmed the employer's obligation to keep records of work-related injuries and illnesses, regardless of whether they occurred in a central or home office. Despite the fact that employers are not directly required to enforce OSHA standards in home offices, nothing guarantees that OSHA's rules or standards will not be applied to “home office” sites in the future. It is still important, therefore, for an employer to reduce future risks by taking into consideration workplace safety when implementing a telecommuting program.

Privacy and Confidentiality Concerns

As telecommuting becomes more common, employers must address the unique issues that arise from use of e-mail and the Internet by the home-based worker. These issues include monitoring off-site e-mail and Internet use, accessing home-based company information, and protecting company secrets at remote locations. An employer's right to monitor, intercept and/or access their employee's electronic communications is not absolute, and the federal Electronic Communications Privacy Act of 1986 (ECPA), among others, regulates such monitoring. The Act permits monitoring in the “ordinary course of business” either by the provider of communications service or where one of the parties to the communication gives prior consent to the interception. Employers may not access e-mail messages if the system is provided by an outside entity, such as a provider of telephone services, without the authorization of either the employee who communicated the message or the intended receiver of the message. However, courts have provided little guidance concerning the protection of company secrets stored in employee home computers. At a minimum, companies can develop monitoring programs to track employees with access to sensitive information. Also, telecommuters (and other)

employees should be trained about how to handle such information, including security breaches, “confidentiality disclaimers” and encryption technology for transmission of work data.

Workers’ Compensation

Many workers’ compensation laws do not distinguish between home-based and central office- based workers. While an employee is not covered for an injury that occurs en route to work, there are exceptions to this rule, particularly when the employee works at a satellite work site. In that case, an injury occurring between work and the “home office” generally is considered compensable. In defining an eligible “home office,” courts consider such factors as the regularity of the work performed, whether at-home work is more than just a convenience for the employee, and whether there is business equipment at the home worksite. Therefore, employer telecommuting policies should address: (a) the specific area of the home which constitutes the “home office” and, (b) the individual’s normal work hours. This may minimize disputes about whether injuries that occur outside of the “home office” area are covered by the employer’s workers’ compensation policy. Employers also should recognize the risk of fraudulent workers’ compensation claims by telecommuters.

Telecommuting, bolstered by the tremendous increase in availability of cost-effective technology, is an appropriate workplace alternative. *A successful telecommuting program includes four important elements:*

- (1) Top management “buy in” and approval (based on need, value added, costs and benefits)
- (2) A formal program (including a coordinator, policy, standard agreement, orientation process and, pilot program)
- (3) Education and preparation of the entire work force, and
- (4) Training for telecommuters and tele-managers.

Want access to more articles like this one?? JOIN SHRM!

Have a Happy and a Safe Halloween!!

