



Remote Work: Important Policy/Contractual and Occupational Health and Safety Considerations

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Agenda

- Remote Work Policy Considerations
- Remote Work Tax Considerations
- Remote Work Agreement Considerations
 - * Remote Work/Telecommuting Contractual/Policy Term
- Opportunity for a New Employment Agreement
- Remote Work Health and Safety Considerations
- Remote Work and Workers Compensation



Remote Work Policy Considerations

- What should be included in a remote work policy?
 - Duration: how long the policy will remain in effect (i.e. pilot project?)
 - Scope: whether it applies to all employees or if some employees are required to continue to work on site/in office. If the latter, can it be adequately supported operationally?
 - Equipment: ensure that employees have the tools necessary in order to conduct their work remotely (i.e. laptops, headsets, monitors, etc.)
 - Ensure you arrange for some form of health and safety audit of the remote work environment to mitigate occupational health and safety as well as workers compensation risks (more on this later)
 - Location: consider whether you will permit employees to conduct remote work out of their usual geographic location (i.e. permit travel and work). Consider potential tax implications. (next slide)
 - The employer should reserve the right to modify or cancel the policy and state that remote work is a privilege and not a fundamental term of employment



Remote Work Tax Considerations

- With the prevalence of remote work comes the unprecedented expansion of the labour pool across Canada
- Where an employee works from home outside the province where the employer operates this raises the question of whether that employee's home office could create a "permanent establishment" ("PE") of the employer in that province for the purposes of provincial income tax
- A PE for provincial tax purposes includes a "fixed place of business"
- A home office is not normally considered a fixed place of business provided the home office is not under the control of the employer and is not objectively identified with the business of the corporation
- In the absence of the existence of a fixed place of business, the PE may nevertheless exist if the remote employee has "general authority to contract" for the employer. Briefly stated however, the court decisions in this area appear to limit the application of this rule to those situations (typically sales people) where the employee in the ordinary course of business is able to bind the corporation without prior approval. Accordingly, a senior management employee working remotely in another province may be seen to have the "general authority to contract"



Remote Work Agreement Considerations

- In some cases, a specific remote work agreement between an employee and the employer may need to be drafted
- The remote work agreement should address the following considerations:
 - Duration: the agreement should define how long it will be in place for
 - Location: define acceptable locations as to where the employee can conduct their work (i.e. specific city/country/time zone)
 - Reporting requirements: i.e. attending mandatory meetings, logging in at certain times, being available via phone, etc.
 - Equipment being maintained throughout the duration of the agreement
 - Expenses/reimbursements: reviewing expense policy under remote work like reimbursement for eligible long-distance calls, etc.
 - Time and attention: it should stipulate the hours of work the employee is expected to be “online”
 - The employer should reserve the right to modify or cancel the agreement and state that remote work is a privilege and not a fundamental term of employment



Remote Work Agreement Considerations

- Given the likelihood of ongoing changes to the employer's remote work strategy, a hybrid approach incorporating contractual and policy language may be optimal (see next slide)



[Contractual Provision]

Remote Work /Telecommuting

You must adhere to the Company's Remote Work/Telecommuting Policy as set out in the Employee Handbook at ALL times. Attached as Schedule "A" you will find a copy of that policy. Please read the policy and ask any pertinent questions BEFORE signing and returning this Offer.

Please note the Company will not reimburse any relocation expenses and home office expenses relating to setting up or maintaining your workspace at home including the cost of internet as well as office supplies other than those regular items available in the office of the Company.

Please note that while we anticipate having you work remotely on an [*if applicable* indefinite] basis, the decision to allow for remote work is in the sole discretion of the Company. The Company's decision to allow you to work remotely can be discontinued at any time, for any reason, without notice, and should the Company elect to revoke the privilege, it will not be deemed to be a fundamental change to the employment relationship, nor shall the change constitute a termination of or constructive dismissal from your employment.

[From Employee Handbook]

Schedule A

Telecommuting

For a limited number of positions within the Company, working away from the office, or telecommuting, may be possible.

Telecommuting is the concept of working from home or another location on a full or part-time basis. Telecommuting is not a formal, universal employee benefit. Rather, it is an alternative method of meeting the needs of the Company.

Employees will be selected based on the following:

- Suitability of their position for telecommuting;
- An evaluation of the likelihood of their being successful telecommuters; and
- An evaluation of their manager's ability to manage remote workers.

The decision to allow for telecommuting is in the sole discretion of the Company. If telecommuting is allowed for a position, it will last only as long as it is appropriate for the Company. Further, telecommuting can be discontinued at any time, for any reason, without notice, and should the Company elect to revoke the privilege, it will not be deemed to be a fundamental change to the employment relationship.

Professionalism in terms of job responsibilities and work output for telecommuting employees will continue to follow the standards set by the Company.

Compensation and Work Hours

A telecommuting employee's compensation, benefits, work status and work responsibilities will not change due to telecommuting.

Furthermore, the telecommuting employee is expected to maintain their regular hours of work.

Equipment/Tools

The Company may provide specific equipment for the employee to perform their current duties. This may include computer hardware, computer software and other applicable equipment as deemed necessary.

The use of equipment, software, supplies and furniture when provided by the Company for use at the remote work location is limited to authorized persons and for purposes relating to Company business only. The Company will provide for repairs to Company equipment where such repairs are deemed necessary. When the employee uses their own equipment, the employee is responsible for maintenance and repair of equipment.

Workspace

The employee shall designate a workspace within the remote work location for placement and installation of equipment to be used while telecommuting. The employee shall maintain this workspace in a safe condition, free from hazards and other dangers to the employee and equipment. It is the employee's responsibility to report any work-related injuries and obtain the appropriate insurance coverage for injuries to third parties on the employee's property. The Company reserves the right to make reasonable visits to remote work locations to conduct safety inspections in the area(s) of the remote work location used for business purposes.

Any Company materials taken home should be secured and kept in the designated work area at home and not be made accessible to others.

Office Supplies

Office supplies will be provided by the Company as needed. Out-of-pocket expenses for supplies will not be reimbursed without prior approval of the employee's manager.

Communication

Employees must be available by phone and email during their normal hours. Employees are responsible for maintaining regular contact with their manager.

All meetings shall be conducted at a customer or Company worksite. Telecommuters shall be available for employee meetings, and other meetings at the Company offices as deemed necessary by management.

The employee remains obligated to comply with all Company rules, practices and policies. Failure to do so will result in the removal of such privilege.

Opportunity for a New Employment Agreement

- Principle of legal consideration
- Permitting remote/hybrid work constitutes legal consideration
- Require employees enter into new employment agreement



Remote Work Health and Safety Considerations

- Employers have expansive general and specific obligations to maintain a safe workplace under every jurisdiction's health and safety legislation
- Many jurisdictions define "workplace" very broadly permitting the inclusion of working from home. But see Section 3(1) of the Ontario legislation which provides, in part, as follows:

Private residences

3 (1) This Act does not apply to work performed by the owner or occupant or a servant of the owner or occupant to, in or about a private residence or the lands and appurtenances used in connection therewith.

- The employer duties include obligations regarding ergonomics. In other words, the employer is required to assess ergonomic risks (as well as other risks) and minimize them



Worksafe BC – Health and Safety Responsibilities When Working From Home

“The employer should ensure it has a basic health and safety policy for working from home, and that each party understands their role, duties and responsibilities. At minimum, this policy should require employees to conduct an assessment of their workplace and report any hazards to their manager. An example of some other factors to consider in this policy include:
Protocols for evacuating from the home ...to a safe location if needed and how to contact the employer in case of emergency. Discussion of safe work practices and how to report any work-related incidents or injuries. Discussion of ergonomic considerations”



Remote Work and Workers Compensation

- Facts: Air Canada employee working from home got up to take her lunch break. As she was leaving her office to go to her kitchen, she tripped on her staircase injuring herself.
- Employee Claim: She claimed workers' compensation benefits based on the injury occurring while exiting the "workplace".
- Air Canada Response: Given the accident occurred while the employee was outside her office there was no connection to work. Accordingly, she was presumed to be on her "private time".
- Decision: Accident occurred during the course of her work and therefore was compensable





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Thank you!

