



# REVIEWED COSTS

**g.c.g. risk management, inc.**

**WORKERS' COMPENSATION, INSURANCE, CLAIMS AND LAW FOR THE EMPLOYER**

APRIL 2018

VOLUME XXXIX, NUMBER 2

## EMPLOYEES WORKING FROM HOME? MANAGING THE TELECOMMUTER RISK

There are armies of remote Home Worksite employees working regular shifts, communicating with supervisors and colleagues, attending virtual meetings, and having their work and performance reviewed regularly, without ever setting foot in the office. The specificity and regularity of such work demands a properly managed “**Telecommuter Workplace Policy**”. If you already employ a telecommuter, or are even contemplating that step, you should develop your policy as soon as possible, as your responsibilities for your workers’ safety and health will extend beyond your physical workplace, and into their homes. If a “remote” worker trips and falls over his pet dog, or breaks a leg while getting up from his work station, it may well become a workers’ compensation claim. We recommend that any “**Telecommuter Workplace Policy**” contain the following aspects:

- Ideally, the employer should insist on conducting a physical inspection of the employee’s home office to verify the safety of the environment. Ensure adequate electrical integrity, fire extinguishers, smoke detectors, carbon monoxide monitors (if applicable), slip/trip/falls prevention, lighting, ventilation, and proper ergonomics are in place. Desks, chairs and any office equipment or furniture that is used should be ergonomically designed and the work area should be similar to the general safety protections afforded employees at the office (i.e. no extension cords, adequate door mats to reduce wet floors, mending frayed carpets/rugs/wiring, managing clutter and general housekeeping). Take photos and reinspect the location every six months, if possible. If this is not feasible, then an alternative would be to have the home-based employee complete a **Work-at-Home Safety Survey**, that covers these issues, as well as requiring dated photos to be submitted.
- Clearly define the physical boundaries of the home office, i.e. “designated work area”. If these boundaries are not well-established, the employer may be liable for injuries that happen anywhere on the employee’s property. If the employee has a desk job and works at a computer, it is possible to limit risk from non-work-related mishaps that could occur, such as moving personal boxes into the garage or restocking groceries in the kitchen. A clearly delineated physical work area is also recommended to maintain, if not improve, motivation and productivity, rather than permitting the employee to wander the entire home while “at work”.
- Your policy should set specific work hours, and it should establish set breaks if possible. Without such delineation, an employee could more easily argue that an injury occurring at any time of the day or night, anywhere in the house, is work-related, by virtue of the fact that this is a home worksite. In the regular workplace, sometimes non-work-specific related injuries occur and are found to be work-related. It is hard enough to separate these in the standard workplace, but it is a must in the home-based workplace.
- Specifically describe the scope of the employee’s activities. This reduces the possibility that a clerical employee could successfully present a claim for physical activity conducted while in the home. Clarify that activities falling outside of the employee’s job description are not the employer’s responsibility (i.e. moving furniture, cleaning, doing laundry).
- Employees should make sure that their homeowners insurance coverage extends to employer-owned property in the home (i.e. cellphones, tablets, laptops). Similarly, the employer may have to extend coverage under his business policy to this home-based location, for damage or loss, and even for general liability if the home-based employee has clients coming to the home-based office.

- All employee devices (laptops, tablets, desktops) should be fully protected from intrusion. The employer's professional IT team should set up a secure connection from the employee's home to the company network. Any vulnerability in this system leaves the employer open to hacking, potentially putting the business (and its clients) at risk. There must be an absolute prohibition of anyone but the home-based employee using the company equipment. Many municipalities, healthcare entities, school systems, and others have been forced to pay ransom in Bitcoins for the key to unencrypt a hostage server or avoid the destruction of data, or its corruption or resale (as an example, medical data is today worth roughly \$350 per record and credit card data roughly \$50 per record on the black market).
- Employers should make it clear to employees that working from home is a privilege, not a right, and that the employer can rescind this privilege at any time.

For more information, or for a sample **Work-at-Home Safety Survey**, or for a customized version for your particular needs, please contact Elsie Tai at [Elsie-tai@gcgriskmanagement.com](mailto:Elsie-tai@gcgriskmanagement.com).

## **PAID FAMILY LEAVE AND HOW IT RELATES TO WORKERS' COMPENSATION**

The New York Paid Family Leave program is now open, with first covered leaves effective 1/1/18. The Workers' Compensation Board introduced a robust Paid Family Leave page on its website. We wanted to respond to general inquires we have received regarding the overlap between Paid Family Leave and Workers' Compensation.

The statutes and regulations pertaining to Paid Family Leave are part of the NYS Workers' Compensation Law. They are codified in Section 200 of the WCL, entitled, Disability Benefits Law and the Paid Family Leave Benefits Law. Unlike disability benefits, Paid Family Leave does not have a hearing process. Rather, Paid Family Leave is handled in writing between, the applicant and the carrier or self-insured employer.

There are some parallels between the Paid Family Leave process and the Workers' Compensation claim process. The carrier, or self-insured employer, has only 18 days to pay or deny a claim for Paid Family Leave. The NY Code of Rules and Regulations contains the various legitimate reasons for denying a Paid Family Leave application, which include *eligibility of the employee or family member*, timeliness, and coverage, to name a few. Given the numerous reasons available, the procedural and factual aspects of each application must be reviewed carefully. Denials can be full, partial, or without prejudice, and they must be in writing. The writing must include the reasons for the denial, and it must cite any relevant information considered when making the decision to deny. Furthermore, if a claim is denied on the basis of an incomplete claim package, the disability carrier or self-insured employer must instruct the applicant on how to correct the defect.

If the informal resolution process described above is unsuccessful, either party can request arbitration of a Paid Family Leave claim. Arbitration involves filing fees and hourly fees paid to the arbitrators. Arbitrators are appointed by the Workers' Compensation Board Chair. Arbitration proceedings are not handled at the Workers' Compensation Board, but by a dispute resolution forum. For each case, an arbitrator is chosen from a panel. Parties may object to the choice of a particular arbitrator. Once a request for arbitration is acknowledged by the dispute resolution forum, the responding party has 14 days to respond. Arbitrations are decided by desk review of written evidence unless the arbitrator finds further development of the record is necessary. Further development of the record could involve submission of additional documentary evidence, sworn affidavits, medical record review, or an oral hearing, at the discretion of the arbitrator. Once the arbitrator makes a decision, it is binding unless vacated or modified under the NY Civil Practice Law and Rules.

Please note that one of the guarantees in the New York Paid Family Leave Law is that the employer will return the employee to his or her former or comparable job after a period of leave. Failure to reinstate an employee can result in a WCL Section 120 discrimination claim, which is not in anyone's best interests. We will provide more information on this ever-evolving relationship, in the future.