



## TELECOMMUTING

The world of work continues to evolve rapidly in the 21<sup>st</sup> century. Employers and employees alike are seeking greater flexibility in their working relationships, and many are turning to telecommuting as a solution. Today, approximately 1.5 million Canadians telecommute at least one day per week. With the Olympic Games less than four months away, we can expect an increase in the number of telecommuters, at least on a temporary basis.

Employers should be aware that the compensatory and occupational health and safety provisions of the *Workers Compensation Act* apply to employees working from home.

WorkSafe BC recently published guidelines for "Working from Home". In determining whether a telecommuting worker's injuries are related to employment, WorkSafe BC has stated that it will consider the following factors: Did the injury occur:

- > in the process of doing something for the benefit of the employer?
- > in the course of action taken in response to instructions from the employer?
- > in the course of using equipment or materials supplied by the employer?
- > in the course of receiving payment or other consideration from the employer?
- > during a time period for which the employee was being paid?
- > from some activity of the employer or of a fellow employee?
- > while the worker was performing activities that were part of the regular job duties?

Employers should be aware that if an employee trips over the cat at home and is injured, that would be a compensable workplace injury for the telecommuting employee – and telecommuting employees should

know that their normal right to sue, or claim on their own insurance, for compensation for injuries would be removed for a "workplace" injury suffered at home.

While many health and safety requirements of the legislation will be easily transferrable to the situation of the telecommuter (e.g. reporting of workplace injuries, requirements for education and training, and the worker's

duty to follow safe work procedures) others that are more rooted in the traditional workplace, such as the use of a person check system if the employee is working alone, will have to be implemented as well. As examples, WorkSafe BC cites "the role of the worker's supervisor, ergonomic assessment and implementation of control measures, and how the employer will follow-up on reported incidents." Employers are responsible under the *Workers Compensation Act* for the supervision of their employees with respect to

safe work practices, and that responsibility still exists despite the fact that the employee is working at home. Employers will need to consider what additional steps are necessary to comply with workers compensation obligations, including basic requirements such as ensuring the safety of the home workplace and having someone check on the person who is working alone.

We consider it fundamental that all employers with telecommuting employees establish a proper telecommuting policy that includes provisions relating to occupational health and safety. The importance of a policy and its effective implementation is emphasized by the Working from Home guideline that recommends the promulgation of a comprehensive written policy outlining roles, duties, and responsibilities of parties covered by workers' compensation legislation. Key issues such as home office safety, eligibility for telecommuting, the right to recall employees back to the conventional workplace, and information security protections should be expressly addressed in the policy. The establishment of terms and conditions for telecommuting before it starts will help avoid problems in the future.

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The WorkSafe BC Guideline provides for a home visit by a safety officer with respect to health and safety concerns. We expect that a home inspection by a safety officer will probably be a rare occurrence, unless there is a workplace injury. It is somewhat ironic that, in times when employees are seeking fewer incursions on their privacy, telecommuting could result in employees having to open up their homes to WorkSafe BC inspectors.

## New Mandatory Retirement Decision in the Federal Jurisdiction

In a recent decision, the Canadian Human Rights Tribunal found that the provision of the *Canadian Human Rights Act* allowing mandatory retirement at the "normal age of retirement" is an unjustified breach

of the *Charter of Rights and Freedoms*.

Accordingly, the Tribunal refused to uphold Air Canada's mandatory retirement policy for 60-year old pilots.

We understand that the decision will be appealed. If it is upheld, federally-regulated employers, like their provincial counterparts, will be prohibited from implementing mandatory retirement policies.

*The content of this Newsletter is intended to provide information on Bull, Housser & Tupper LLP, our lawyers and recent developments in the law. The information contained herein is summary in nature, and does not constitute legal advice. For additional details or advice concerning specific situations please contact any member of our Labour & Employment Group.*

If you have any questions, please contact any member of our Labour & Employment Group.

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