



Directing your employees to work from home - what are your OHS obligations?

What you need to know?

The current COVID-19 pandemic has highlighted the need for employers to consider their OHS obligations when directing employees to work from home. Having employees work from home is nothing new with the Australian Bureau of Statistics reporting that over 3.5 million Australians regularly work from home.

OHS Obligations

The Occupational Health and Safety Act 2004 (Vic) (OHS Act) and similar legislation in each Australian state, effectively provide that employers have a duty of care to ensure the health and safety of their employees and that persons other than employees are not exposed to risks to their health and safety arising from the conduct of the employer's business.

In Victoria, employers are required to provide and maintain, as reasonably practicable, a "working environment" that is safe and without risks to health. This obligation will apply where an employer directs an employee to perform work at home.

An employer's obligations under the OHS Act as to providing and maintaining a safe working environment are not necessarily limited to employees. They can also apply to independent contractors and the employees of independent contractors in certain circumstances.

Failure to provide a safe workplace can expose employers to criminal prosecution under the OHS Act with penalties of up to \$1.5 million for companies.

Workers' Compensation

A failure to comply with your OHS obligations may give rise to a workers' compensation claim given that the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) (WIRC Act) provides that a "worker" who sustains an injury or illness is compensable if it "arises out of" and "in the course of" employment, regardless of the location where the injury occurred. Accordingly, this would extend to employees working from home.

The WIRC Act is not limited to employees as a number of persons are considered deemed workers. Depending on the circumstances, an independent contractor will be a deemed worker.

Injuries sustained by employees in the office environment are commonly musculoskeletal sprains and strains to the back, neck, shoulders or arms. These injuries are often caused by awkward postures, particularly when combined with repetitive or sustained movements and often arise where the home office area is unsuitable for computer or administrative tasks.

Working from home may also increase the risk of employees suffering a compensable psychological injury such as anxiety or depression through isolation, loneliness and concern about job performance and security.

Additionally, a variety of other injuries suffered by employees, where working from home, have been the subject of successful workers' compensation claims including:

- (a) injuries sustained falling downstairs; and
- (b) injuries sustained slipping on a wet floor.

Employees will not necessarily be entitled to compensation for injuries arising from private activities they engage in while working from home. Employees may be covered under the WIRC Act for activities undertaken during an "ordinary recess", such as sustaining an injury while going for a run during a lunch break when working from home.

What you need to do?

Employers have a duty of care to ensure the health and safety of their employees regardless of whether they work in the office or at home. Prior to engaging in work-from-home arrangements, you as an employer should:

- Review your work from home policy ensuring it sets out the requirements to be observed by your workers while they are working from home. The policy should include home office ergonomics, conducting risk assessments (such as the use of smoke detectors and security doors) and notification in the event of injury.

- Ensure you have a "work from home" safety checklist for your employees to use to conduct a risk assessment on their work area at home.
- Be in regular communication with employees working from home to reduce the risk of psychological injuries. Employers should check-in with employees from time to time to ask how they are going working from home. This will give employees a chance to raise any concerns or issues such as lack of support, equipment, communication issues with colleagues or management.
- Check your general property, public liability and workers' compensation insurance policies to ensure your workers are covered for business activities occurring in the home.

Peer Legal is experienced in navigating the complexities surrounding workplace law compliance. We can assist your business with complying with your obligations and dealing with any workers' compensation claims. Please contact us if you require more considered and individualised advice.



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