

Workplace Health and Safety Bulletin



Application of Alberta's OHS Legislation to Workers Working at Home

It is becoming increasingly common for workers to do at least some of their regular work from home instead of going into their office or workplace. This approach is variously known as “flexible work”, “telework”, or “telecommuting”.

The following are examples of situations commonly encountered:

- (1) A home care worker visits the homes of clients to assist them with their daily needs or medical care. The home care worker is also required to perform duties from his or her own private dwelling such as communicating with the employer e.g. e-mail and telephone calls, updating files and records, organizing and maintaining equipment and supplies, etc.
- (2) A call centre worker receives calls and makes contact with clients from his or her personal dwelling as part of the duties assigned by the employer. The employer supports this arrangement and compensates the worker for the use of the worker's personal dwelling. The employer provides the communication and computer equipment required by the worker to perform the assigned duties.



- (3) A worker performs the administrative portion of their occupation in their personal dwelling. This includes updating records and files, organizing and maintaining equipment and supplies, and communicating with clients and colleagues. The employer has not required the worker to conduct these duties at their personal dwelling. The employer requires the duties to be conducted but has not provided direction as to where they must or must not be done – it is the worker's decision.

A question that commonly arises is whether or not Alberta's Occupational Health and Safety (OHS) legislation applies to workers in these and similar situations. As of the date of this writing, there has never been a court ruling on the applicability of Alberta's *Occupational Health and Safety (OHS) Act* to these types of work arrangements.

The *OHS Act* defines a worker as a person engaged in an occupation. The word "occupation" is then defined as

"every occupation, employment, business, calling or pursuit over which the Legislature has jurisdiction, except

- (i) farming and ranching operations specified in the regulations, and
- (ii) *work in, to or around a private dwelling or any land used in connection with the dwelling that is performed by an occupant or owner who lives in the private dwelling or a household servant of the occupant or owner* [emphasis added]

When initially prepared many years ago, the phrasing "*work in, to or around a private dwelling*" probably dealt with an owner or occupant performing work on the structure or property i.e. plumbing, painting, drywalling, minor excavations, etc. In this situation, it would have been impractical, if not impossible, to apply and enforce the OHS legislation on the occupant or owner while he or she was undertaking these activities.

Such activities were therefore considered to be exempt from the requirements of Alberta's OHS legislation. This view is consistent with what appears to have been the dominant intent of this definition i.e. that the legislation stay out of the homes of Albertans.

Over time, the nature of work done in, to, or around a private dwelling has evolved to the present point where many workers work at home as described in the examples cited above. In the absence of any qualifying statements in the *OHS Act* to the contrary, the definition of “occupation” is interpreted broadly to include a worker working for an employer from the worker’s own home. The exemption under the definition of “occupation” therefore applies to a worker working from his or her home and Alberta’s OHS legislation does *not* apply in this situation.

Despite this, an employer may voluntarily choose to apply portions of the OHS legislation to a home office. This then becomes company policy, not a provincially legislated requirement.

Additional information




<http://www.ccohs.ca/oshanswers/hsprograms/telework.html>

Telework / Telecommuting – Canadian Centre for Occupational Health and Safety (CCOHS)

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Workplace Health and Safety



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