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YAHOO'S OF THE WORLD UNITE - ARE EMPLOYEES ENTITLED TO WORK FROM HOME?

Richards Buell Sutton Employment Law Newsletter

Recently, Yahoo Inc. made the controversial decision to end telecommuting and to insist that employees be physically present in the workplace. The decision has sparked shock and outrage amongst those who see telecommuting as a step forward in the advancement of employee rights. Notwithstanding Yahoo's decision, the number of people working from home continues to grow. With this growth comes a corresponding set of legal ambiguities and potential pitfalls, and it raises questions with respect to whether, and to what extent, employees can work from home.

Benefits Associated with Telecommuting:

Some of the potential benefits associated with telecommuting have been said to include: saving employers money in overhead; reducing employee work-life conflict; increasing employee engagement; increasing employee loyalty; reducing turnover; attracting and retaining talent; accommodating employees who would not otherwise be able to work; and reducing absenteeism (Global Workplace Analytics, online: www.teleworkresearchnetwork.com).

Pitfalls Associated with Telecommuting:

Some of the potential pitfalls associated with telecommuting have been said to include: exposing employees to a number of distractions at home; requiring a high level of employee discipline; loss of face to face contact with supervisors; and loss of social interaction and collegiality with co-workers.

Are Employee's Entitled to Work From Home?

Generally speaking, an employee is not entitled to work from home absent permission from the employer. British Columbia courts have held that an employer has a right, within reason, to determine how its business will be conducted. In so doing, an employer may establish any procedures it thinks advisable so long as they are not illegal, dishonest or dangerous to the health of employees. Such procedures may include insisting that employees be physically present at the workplace. Recently, the B.C. Supreme Court concluded that a Burnaby based employer was justified in dismissing an employee who insisted on working remotely, notwithstanding the fact that the employer had temporarily permitted this arrangement. The



employee's refusal to return to the Burnaby office constituted wilful disobedience, and insubordination amounting to repudiation of a fundamental term of the employment relationship (*Staley v. Squirrel Systems of Canada Ltd.*, 2012 BCSC 739).

Although an employer can establish any procedures it thinks advisable, an employee may become entitled to work from home under certain circumstances. Such an entitlement might arise through an express term in an employment agreement permitting employees to work from home. Such an entitlement may also arise by implication, for example, where there is no express term of employment prohibiting or limiting telecommuting and where:

- (a) the nature of the workplace and the position make telecommuting necessary;
- (b) a physical presence in the workplace is not a genuine occupational requirement;
- (c) an employer enables telecommuting through provision of remote access to the workplace; and/or
- (d) other employees in similar positions are permitted to work from home.

An employee may also become entitled to work from home if an employer condones such activity. This might occur in circumstances where the employer is aware that an employee is working at home without permission, and nevertheless permits the employment relationship to continue.

An employer may also be required to permit an employee to work from home in circumstances where it would constitute discrimination to insist upon physical presence in the workplace. Such a situation might arise in the case of employees suffering from disabilities that preclude them from working outside of the home. Alternatively, such a situation might arise where an employee needs to work from home in order to meet family obligations (for a recent case on the employer's obligation to accommodate family obligations, see *Canada (A.G.) v. Johnstone*, 2013 FC 113). In such cases, employers may be required to accommodate employees by permitting telecommuting to the point of undue hardship.

Given the foregoing, employers should establish written telecommuting policies that make sense for their specific workplace and their employees. Such policies should be clear and specific with respect to whether employees may telecommute, how often, and when, and with respect to the consequences of an employee's refusal to abide by these policies. Ideally, any telecommuting arrangements or policies should be referenced directly in employment agreements. An employer will likely benefit from ensuring that its telecommuting policies are balanced, reasonable and respectful of employees' needs. [Click here for more info.](#)