

MEDIA RELEASE

Work from home requests present legal balancing act for employers

6 September 2011 – With work from home requests continuing to increase, employers are being forced to walk a legal tightrope between offering increased workplace flexibility and mitigating potential risks associated with granting such requests according to Harmers Workplace Lawyers.

Kristin Ramsey, Senior Associate and Brisbane Team Leader at Harmers Workplace Lawyers pointed to a recent case where a Telstra employee who fell down the stairs and was injured whilst working from home successfully claimed compensation against Telstra on the basis that the injury occurred during the course of her employment.

“Employers often approve flexible working arrangements without giving thought to the potential risks involved. It is important for employers to evaluate potential risks and exposures when considering and granting such requests, as health and safety obligations apply the same way to work performed at home as they do to work performed in the office.

“It is often a delicate balancing act between providing flexible working options and minimising legal risks to the business. The crux of the issue is deciding whether the benefit to the employee outweighs the potential risks to the business, and whether such risks can be properly managed,” Ms Ramsey said.

Ms Ramsey noted that the issue of health and safety risks whilst working remotely is not one which is limited to working from home, as employers’ obligations in respect of health and safety apply to any place that the employer requires or permits the employee to perform work.

However, technological advances and increased rights under the Fair Work Act and Anti-Discrimination Legislation, which allow employees to request flexible working arrangements in certain situations, mean that working from home arrangements are on the increase, which makes the area one of particular concern. Furthermore, it may be problematic for employers to refuse requests to work from home without reasonable business grounds.

“An employer should only refuse a request for flexible working arrangements such as working from home if there are reasonable business grounds for doing so, they inform the employee of those reasons and keep documentary records regarding the decision,” she said.

In considering requests to work from home, Ms Ramsey said that businesses need to consider the following factors:

- The personal circumstances of the employee;
- The nature of the role and whether it can be performed from home;
- The needs of the business; and

- Potential health and safety issues.

Employers also have a positive obligation to assess the working from home arrangements and may also request that the employee make certain changes to their home office work set up, to better ensure health and safety, before approving a work from home request.

While presenting a tough situation for employers, Ms Ramsey said employees also have a role to play as they are required to take reasonable care for their own safety when working from home.

“Employees are required to comply with all reasonable and lawful directions issued by their employer, in particular directions regarding safe working methods. Employers can protect their employees from risks to their health and safety (and minimise exposure to the business) by considering all requests to work from home carefully and by issuing proper directions to employees regarding the manner in which work should be performed whilst working from home,” Ms Ramsey concluded.

Advice for employers

- Give careful consideration to all work from home requests
- Prior to granting any request, complete a detailed, documented risk assessment of the home work environment looking at areas such as environmental factors (lighting, heating, ventilation etc), workplace organisation and layout (including electrical and trip hazards), risks arising in respect of others that may enter the home work environment (such as children) and hours of work.
- Establish a comprehensive policy for working from home arrangements, which covers issues such as the requirement for employees to report health and safety concerns or incidents back to the employer and expressly allows the employer to routinely inspect the home working environment; and is signed off on by the employee prior to commencing a work from home arrangement.
- Keep documentary evidence of requests for working from home arrangements and the reasons why requests were/were not granted.
- Implement regular reviews of work from home arrangements as circumstances will inevitably change

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About Harmers Workplace Lawyers

Harmers Workplace Lawyers was established in 1996 as a boutique employment law firm. Since then it has become one of Australia's leading employment and industrial law firms, with offices in Sydney, Melbourne and Brisbane. The firm has been awarded Australasian Legal Business's 'employment specialist firm of the year' for the past five years running.

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For further information, please contact:

Mark Roberts/ Dylan Malloch
Tel. (02) 8920 0700
Email: mroberts@sefiani.com.au / dmalloch@sefiani.com.au