

EMPLOYMENT LAW CONFERENCE 2018

PAPER 11.1

Virtual Employment: Working Smarter

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VIRTUAL EMPLOYMENT: WORKING SMARTER

I.	Virtual Employment—What Law Applies	1
	A. Employment Standards Act.....	2
	B. Workers Compensation Act.....	2
II.	Communication	3
III.	Accountability	3
IV.	The Advantages	3
V.	The Disadvantages	4
VI.	Conclusion	4

Technology has made working from home a viable option for nearly every employment sector. Unless there are specialized tools or resources that require a physical, in-office presence, every sector should consider the flexibility remote employment offers. Viewed through a positive lens, the benefits of working remotely are multitudinous. To employees, working from home means flexibility, autonomy, and focus that in-office regulations or interactions may limit. To employers, having employees work from home can reduce overhead costs, increase geographical reach, and increase productivity for employees with non-traditional work needs. The inherent problem with virtual employment is that employees are on an honor system, more or less. The employee-manager relationship in a virtual work arrangement requires more trust, which is why virtual employees not only need to embody the essential characteristics of engaged employees, but require self-sufficiency tempered with communication to managers. While the various considerations listed above impact the hiring and firing decisions related to virtual employees, outstanding questions regarding the administrative aspects of a virtual workplace are also a factor for employees. In this paper, we will examine what fundamental structure that should be instituted before remote work is offered to employees.

I. Virtual Employment—What Law Applies

Virtual employment may seem a foreign concept, but in actuality all federal and provincial employment laws apply to a virtual firm as they would a central office. For virtual employers, it is important to be aware that a remote worker may be considered an employee in his or her province or country of residence, not the province or country of the company's office. For each different geographical area, an employer should be aware of the applicable requirements for payroll, wage and hour requirements, employee right notices, and work authorization.

For many companies, virtual employees will only work from home part time, or will work in the same jurisdiction as the primary office. In British Columbia, this means the *Employment Standards Act* and the *Workers Compensation Act* are the primary regulations employers should be aware of.

A. Employment Standards Act

The *Employment Standards Act* broadly defines an employee as including:

- “(a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- (c) a person being trained by an employer for the employer's business,
- (d) a person on leave from an employer, and
- (e) a person who has a right of recall;”

A virtual employee falls firmly within this definition. As the requirements of the *Employment Standards Act* apply to virtual employees, there are certain sections that employers should be wary of such as s. 22(2), which prohibits employers requiring an employee to pay for any business costs except as allowed by regulation. Therefore, employers should keep careful track of the office expenses incurred by employees required for virtual employment. Likewise, regular work hours and overtime should be carefully recorded and submitted to ensure compliance with regulations and to ensure employer and employee are aware of wages due.

B. Workers Compensation Act

Similarly to the *Employment Standards Act*, the *Workers Compensation Act* applies without revision to virtual employees. Here, virtual employers should be particularly aware of section 115 which states:

- (1) Every employer must
 - (a) ensure the health and safety of
 - (i) all workers working for that employer, and
 - (ii) any other workers present at a workplace at which that employer's work is being carried out

Although the courts have not yet applied the *Workers Compensation Act* to home offices, a clear interpretation of “a workplace at which that employer’s work is being carried out” includes the working environment of virtual employees. Employer’s further requirements under the *Workers Compensation Act* that likely apply to home offices under s. 115(2) are to:

- (a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,
- (b) ensure that the employer's workers
 - (i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,
- ...
- (c) establish occupational health and safety policies and programs in accordance with the regulations,
- (d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,

11.1.3

(e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace, [and]

(f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review.”

Employers must adapt procedures to comply with the spirit and intent of the *Workers Compensation Act* to the best of their ability. For example, proof that a copy of the *Act* is posted in each home office where a virtual employee works may not be necessary, while proof that a copy has been provided electronically and is accessible may satisfy s. 115(2)(f).

In essence, the legal framework governing virtual employees is substantially the same as that governing traditional in-office employees. Where differences arise is in the challenges of virtual employment administration.

II. Communication

Communication is an important aspect of any employment relationship, but “out of sight out of mind” can flow both ways. Virtual workers need to have excellent communication skills to express themselves well and update managers and clients quickly and consistently. Distance and time lags are inevitable downsides of working remotely. Combining vague communication with delayed communication leads to eroded confidence. As mentioned above, legislative compliance may require time and hour reporting. The same tools can be used to manage employees effectively and ensure employee efficiency. High performing virtual teams may work different hours, use different tools, and have personality differences, but encouraging communication and performance through monitoring performance metrics keeps projects running smoothly and keeps profitability high. Managers should also consider the impact of in-person meetings to address employee concerns, and employment reviews that are best conducted face to face.

III. Accountability

Generally, virtual workers are productive workers. Traditional offices are distracting. Breaks to the kitchen, water cooler talk, and long lunches are all enjoyable but inefficient aspects of working in a conventional setting. The actual time spent on the distraction also bleeds into the time required for employees to refocus their attention on the task at hand. Remote work cuts these distractions dramatically. Working remotely offers its own distractions, but those same distractions usually mean that hours worked and reported are highly efficient. When accountability is not quantified by presence in the office, but rather on productivity, employees are motivated to accomplish their work quickly. Conversely, when employees do not provide effective updates to managers, or abuse their autonomy by failing to meet expectations, accountability suffers as does the employment relationship.

IV. The Advantages

Communication and accountability are a small price to pay to reap the benefits of virtual employment. For employers, traditional offices require a physical location, the office supplies and equipment necessary to outfit the office, and the utilities, maintenance, and staff required to operate the office. Setting up and maintaining an office can be prohibitively expensive. Remote teams save

employers money on real estate costs, IT, utilities, and other overhead. Importantly, offering a remote working option may decrease payroll as well. Many employees may prefer a working from home option over a pay raise. Sick time will decrease, as employees do not spread illness around the office and those working from home are more likely to work through illness than employees that have to drive to work. Time lost to vacation also decreases as those working from home are less likely to take days off for personal errands and are habituated to working outside the office.

For employees, one of the less obvious benefits is higher morale. The pressures of office politics, balancing work and home time, and commuting are all felt acutely by in-office workers. The remoteness of working from home can also provide distance from the pressures of an in-office presence. Employee satisfaction is not only beneficial for the employee, but ultimately leads to higher retention and reduces turnover.

V. The Disadvantages

Working from home is not a panacea for every company or every employee. For inexperienced employees, working from home means isolation from necessary guidance and can prolong the training period. Having a manager physically present for reference reduces response time and fosters a familiar relationship that encourages questions. For more experienced employees, working remotely can lead to feelings of isolation as the collegial nature of an office is missed. Collaborative teams particularly may suffer as nuances conveyed through face to face interaction are lost.

VI. Conclusion

Virtual employment is a useful tool. For employees, it improves quality of life. For employers, it can increase productivity and reduce overhead. Like any tool, it does not work when used improperly. Failures of communication and accountability can sour the working relationship. Inexperienced employees or collaborative positions may require the interactions an office environment offers. For employers, an understanding of the legal requirements along with careful consideration of the pros and cons, can assist in deciding if offering remote work might be an option for your company.