

[Note: The following is from a transcription of the original OSHA letter. It is not a true copy of the original, but is true in its content, to the best of our knowledge.]

November 15, 1999

Mr. T. Trahan
CSC Credit Services
652 North Belt East
Houston, Texas 77060

Dear Mr. Trahan:

Thank you for your August 21, 1997 letter to the Occupational Safety and Health Administration's (OSHA's) Directorate of Compliance Programs (DCP), requesting information on OSHA's policies concerning employees working at home. We apologize for the delay in responding.

Specifically, you state that your company will be placing some of its sales executives in home office environments. You state that the home office is generally a single room within the home of the sales executive that would have a desk, chair, file cabinet, business telephone, desktop or laptop computer, printer and a fax machine. You ask several specific questions that would apply specifically to your sales executives, as well as general questions that could apply to many other types of home work situations.

Question #1: What is the employer's obligation within the home work environment?

Response #1: **The OSH Act applies to work performed by an employee in any workplace within the United States, including a workplace located in the employee's home** [emphasis added]. All employers, including those which have entered into "work at home" agreements with employees, are responsible for complying with the OSH Act and with safety and health standards. Even when the workplace is in a designated area in an employee's home, the employer retains some degree of control over the conditions of the "work at home" agreement. An important factor in the development of these arrangements is to ensure that employees are not exposed to reasonably foreseeable hazards created by their at-home employment.

Ensuring safe and healthful working conditions for the employee should be a precondition for any home-based work assignments. Employers should exercise reasonable diligence to identify in advance the possible hazards associated with particular home work assignments, and should provide the necessary protection through training, personal protective equipment, or other controls appropriate to reduce or eliminate the hazard. In some circumstances the exercise of reasonable diligence may necessitate an on-site examination of the working environment by the employer. Employers must take steps to reduce or eliminate any work-related safety or health problems they become aware of through on-site visits or other means.

Certainly, where the employer provides work materials for use in the employee's home, the employer should ensure that employer-provided tools or supplies pose no hazard under reasonably foreseeable conditions of storage or use by employees. An employer must also take appropriate steps when the employer knows or has reason to know that employee-provided tools or supplies could create a safety or health risk.

Question #2: Is the employer responsible for compliance with the home itself?

Response #2: An employer is responsible for ensuring that its employees have a safe and healthful workplace, not a safe and healthful home. The employer is responsible only for preventing or correcting hazards to which employees may be exposed in the course of their work. For example: if

work is performed in the basement space of a residence and the stairs leading to the space are unsafe, the employer could be liable if the employer knows or reasonably should have known of the dangerous condition.

Question #3: Is the employer required to do periodic compliance inspections in the home, which may include safety, health, fire, and environmental issues?

Response #3: There is no general requirement in OSHA's standards or regulations that employers routinely conduct safety inspections of all work locations. However, certain specific standards require periodic inspection of specific kinds of equipment and work operations, such as:

- ladders (§1910.25(d)(1)(x)) and §1910.26(c)(2)(vi);
- compressed gas cylinders (§1910.101(a));
- electrical protective equipment (§1910.137(b)(2)(ii));
- mechanical power-transmission equipment (§1910.219(p));
- resistance welding (§1910.255(e)); and
- portable electric equipment (§1910.334(a)(2)).

Although some of these operations may not be found in home-based workplaces, nevertheless, if an employer of home-based employees is aware of safety or health hazards, or has reason to be aware of such hazards, the OSH Act requires the employer to pursue all feasible steps to protect its employees; one obvious and effective means of ensuring employee safety would be periodic safety checks of employee working spaces.

This letter addresses only the employer's responsibilities under the OSH Act. Depending on what kind of business the "at home" employer is engaged in, he or she may have additional responsibilities under other federal labor or environmental laws, as well as under state laws of general applicability, such as public health, licensing, zoning, fire and building codes, and other matters.

Question #4: What would be OSHA's inspection procedures in a private home?

Response #4: OSHA's health and safety inspection program is directed primarily toward industrial and commercial establishments and construction sites. We do not ordinarily conduct inspections of home-based workplaces, although from time to time we have visited private homes or apartments to investigate reports of sweatshop-type working conditions in the garment industry and other businesses. We would also investigate work-related fatalities occurring in home-based workplaces. Any OSHA enforcement visit must, of course, be conducted in compliance with the Fourth Amendment which would require that OSHA obtain either consent to inspect or a judicially-issued warrant.

Question #5: Does the employer have to include these home locations in its file regarding record keeping on the OSHA 200 logs?

Response #5: Employers are not required to maintain an OSHA 200 Log for each home. As stated in 29 CFR 1904.14, which concerns employees not in fixed establishments, employers of employees engaged in physically dispersed operations may satisfy the provisions of 1904.2, 1904.4, and 1904.6 with respect to such employees by maintaining the required records for each operation or group of operations subject to common supervision (field superintendent, field supervisor, etc.) in an established central place. Injuries and illnesses that occur to employees working at a home location are recordable on the employer's OSHA 200 Log, if they are work-related and meet the criteria for an OSHA recordable injury or illness under 29 CFR Part 1904.2 and the Recordkeeping Guidelines for Occupational Injuries and Illnesses. Injuries and illnesses that result from an event or exposure off the employer's premises are work-related if the worker was engaged in work-related activities or was present as a condition of his or her employment (see Recordkeeping Guidelines, page 35, Section 2). These criteria must be applied to employees who work at their homes. The

Recordkeeping Guidelines are available from the Government Printing Office, OSHA's CD-ROM, and the OSHA website -- www.osha.gov.

If an employee was injured or became ill while performing duties in the interest of the employer, the case would be considered work-related. If an employee was injured or became ill while performing normal living conditions (e.g., eating), the case would not be considered work-related. For example, when an employee who works at home doing typing develops carpal tunnel syndrome, it must be determined whether the employee's work duties in any way caused, contributed to, or aggravated the condition. If so, the condition is considered work-related for OSHA recordkeeping purposes.

Below are responses to other general questions.

Workplace Analysis and Hazard Prevention: The employer is responsible for correcting hazards of which it is aware, or should be aware. If, for example, the work requires the use of office equipment (computer, printer, scanner, fax machine, copying machine, etc.) in an employee's home, it must be done in a safe manner. For example, from a fire safety aspect the installation must not overload the home electrical circuits. Training -- Can the training be in written form? In addition to any training requirements imposed by specific standards, employee training is one way for an employer to meet its general responsibility under the OSH Act for preventing violations. In the absence of specific requirements, the type of training that should be provided will be measured by what a reasonably prudent employer would do under the circumstances, taking into consideration such factors as the nature of the potential hazards and the abilities of the employees. It will not always be necessary for training to be in written form. On the other hand, written training alone may not be sufficient.

Ergonomics: From the information you have provided, your employees could be exposed to ergonomic hazards. We have, therefore, enclosed a booklet entitled, Working Safely with Video Display Terminals, 1997 OSHA Publication 3092, which may be helpful in addressing these hazards. This publication is available on OSHA's CD-ROM and at the OSHA Internet site.

Fire Protection, Lighting, Cooling, Heating, and Ventilation: See response to Question #2, above.

Asbestos, Chemicals or Toxic Materials within the Home Itself -- Would Material Safety Data Sheets (MSDS) be Required? The employer is responsible for making the workplace of its employees safe, not the entire home. If the employee will be performing work for the employer that involves exposure to any chemical substance for which an MSDS is required, then the MSDS must be present at the home worksite. However, an employer need not supply an MSDS if the hazardous chemical is a consumer product that is being used by an employee in the home office for the purpose intended by the manufacturer, and the use results in a duration and frequency of exposure which is not greater than that experienced by consumers.

Lockout/Tagout and Confined Spaces: If an employee is performing servicing and maintenance on machines or equipment which are used to perform his or her job, then the 1910.147 lockout/tagout standard applies. With regard to other equipment that may be in the home, the employer would have no responsibility. As long as the designated workplace is within the existing habitat space of the home, then the 1910.146 confined space standard would not apply. However, since you have not provided examples of such situations, we can give only general answers.

Bloodborne Pathogen Exposures: A home office for a sales executive is not covered by OSHA's bloodborne pathogen standard since the standard is intended to protect employees who are exposed or potentially exposed to blood or Other Potentially Infectious Materials (OPIM). This issue cannot be addressed further without knowing a specific factual situation in which employees in their own homes would be exposed to bloodborne pathogens while performing a work-related task.

Means of Ingress and Egress: Many building/fire codes require offices to have two entrances/exits. This, however, does not mean that OSHA would require installation of a second entrance/exit in an

employee's workroom in the employee's home unless the nature of the work and the surroundings create a heightened risk of fire. However, see response to Question #3, above.

Personal Protective Equipment (PPE): The employer is required to assess the workplace to determine if hazards which necessitate the use of personal protective equipment (PPE) are present, or are likely to be present. If these hazards are or are likely to be present then the employer must provide both the PPE and the necessary training. Employees must be trained in the proper use and maintenance of personal protective equipment, and the employer must verify, through a written certification, that each affected employee has received and understands the required training.

OSHA requires employers to make sure employees have and use safe tools and equipment and that such equipment is properly maintained. Employers are also required to establish or update operating procedures and communicate them to employees so that they will follow safety and health requirements.

Emergency Plans, Medical Assistance Services, and First Aid Kits and Training: Until OSHA develops policies for these issues as they apply to employees working in their homes, enforcement will necessarily be on a case-by-case basis. The seriousness of the potential hazards will be an important consideration.

Lead Levels in Old Paint: See response to Question #2, above.

OSHA Consulting Services: Consultation is a voluntary activity; i.e., the service is not automatic, but must be requested by the employer -- it cannot be requested by the employee. The service is provided chiefly at the worksite, but limited services may be provided away from the worksite via offsite training to employers and their employees. When an employer requests onsite Consultation services, the request is prioritized according to the nature of the workplace and any existing backlog of requests. In the case of home-based worksites, a Consultation visit would be classified as "high hazard" only if particularly dangerous work processes or work areas are within the "work zone" of the home.

Due to the limited resources available to the State Consultation Projects, requests from employers that cover only one employee at a home-based worksite would usually be given a very low scheduling priority, particularly when the requested service relates to low hazard activities. In all likelihood, therefore, a Consultation visit would occur only in unusual situations, and then only with the consent of the home-based employee. The inability of OSHA to provide such free onsite assistance in such cases does not, however, relieve the employer of the responsibility to continue to provide safe and healthful work and workplace conditions for all employees, including those based at home.

Other Consultation services are available to employers and their employees, such as dissemination of informational materials and providing telephone assistance on technical and compliance-related issues. Further, offsite technical assistance could be provided to employers and their employees at locations other than the employee's home-based worksite, such as in the State Consultation Project office. Offsite assistance is typically provided in situations where offsite training would be the best use of Consultation resources to address a training need common to a number of employers.

The involvement of employees is key:

- to ensuring the fullest protection of employees in the workplace;
- to properly identifying and assessing the nature and extent of hazards; and
- in determining the effectiveness of the employer's efforts to establish and maintain a workplace safety and management program.

However, in the case of home-based worksites, employees would be involved only where they had freely consented to the provision of assistance requested by the employer, and then only within the parameters defined above.

Americans with Disabilities Act (ADA) compliance and Workers' Compensation: An employer's responsibility under the ADA falls outside OSHA's statutory authority. Similarly, OSHA cannot address the responsibility for workers' compensation in this type of situation, since OSHA does not have statutory authority in this area. For information concerning an employer's responsibility for workers' compensation the employer should contact the workers' compensation agency in the State in which the workplace is located.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. Please be aware that OSHA's enforcement guidance is subject to periodic review and clarification, amplification, or correction. Such guidance could also be affected by subsequent rulemaking. In the future, should you wish to verify that the guidance provided herein remains current, you may consult OSHA's website at www.osha.gov.

If you have any questions, please feel free to contact Helen Rogers in the Office of General Industry Compliance Assistance at (202) 693-1867.

Sincerely,

(signed)

Richard E. Fairfax, Director Directorate of Compliance Programs