

## Do office legal protections apply to full-time employees at home?

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*Working from home has its own set of challenges for managers of teams. Image credit: Knight Frank*

By DIANNA DILWORTH

As work-from-home has become a new lifestyle for employees that does not seem to have an end in sight, brands must establish protocols to ensure that they are legally protected from any issues that could arise.

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Operating in this grey area, marketers should proactively head off any potential headaches by setting up policies that set expectations for working from home.

"With the work-from-home environment, employees are still employees and companies need to adapt their policies to deal with the work-from-home environment," said Gary Kibel, partner at [Davis & Gilbert LLP](#), New York.

"For example, you are certainly not liable if someone falls down the stairs in their house on the way to their computer they use for work, but if you have a company issued laptop, the information that is collected and used through that laptop is no different than if the employee is in the office or if they are sitting at home," he said.



*Designer Marc Jacobs works from home. Image credit: Marc Jacobs Instagram*

### Common issues

The biggest issues are often around privacy and security. Companies should be very clear to employees that they

should only be accessing the company systems through approved methods and using signed-off methods to conduct business.

For example, marketers should insist that employees email from their business email account and not their Gmail accounts to help with a company's document retention obligations.

"If people are working from home, you still as a company need to make sure that you are retaining whatever information and documents are necessary and that they are being stored in the company repository as needed," Mr. Kibel said.

"It is easy to enforce those policies when somebody is in the office, and is sometimes a little bit harder at home when somebody may just say, 'Oh I'll just send this from my Gmail instead of logging into the office email,'" he said.

Another example is ensuring that employees are using devices that have up-to-date antivirus software on them and that the devices are also capable of handling any work they might do.

"If someone works for a graphic design department, and they have an old Compact computer at home that can't handle all of the CAD software, then they company may change it in order to ensure that employee can be efficient," Mr. Kibel said.

Another problem that could come up is issues with an employee's roommate.

"It is easy in the office it is to say keep a clean desk, keep computer locked when you walk away, make sure your conversations are confidential, but what if you are a young 25-year-old person and you have a roommate and you are not best buddies with your roommate and your roommate takes something off of your desk and off of your computer," Mr. Kibel said.

"You don't have that risk as much in the office, but that could happen in the work-from-home environment and the company could become liable for that if it resulted in a breach of confidential information," he said.

"The company won't have a get-out-of-jail free card because the employee was working from home when that happened," he said.

Another issue is the size of the employee's home should account for assigned tasks.

For instance, if a luxury brand has an employee who lives on the 50<sup>th</sup> floor and they do not want to ride in the elevator but has to receive daily packages, companies should not keep these individuals in Zoom meetings for eight hours a day. These employees should be given ample time to retrieve the package so as to avoid them rushing and falling down the stairs.

"Companies need to think about these things and come up with a proper procedure," Mr. Kibel said.

It is unlikely for a workplace injury to be an issue unless there was a bizarre circumstance such as this aforementioned instance.

"I have a hard time thinking that any court would entertain the fact that a company is liable for the physical environment of any individual's home if they did not strictly dictate or design it," Mr. Kibel said.



*Gary Kibel is partner at Davis & Gilbert LLP, New York. Image credit: Davis & Gilbert*

### Best practices

Companies should update whatever technology usage policy they already have in place and decide what makes sense based on what employees are doing at home.

If the company is on Zoom meetings all the time, they should establish if they have the network bandwidth to have employees logging in through the company portals or outside systems. Additionally, they should establish if a meeting needs to be recorded.

While there were concerns around Zoom calls early on in the pandemic, updates to host controls have overcome most concerns around security.

Another key thing to establish is if every employee will remotely have access to every system, or if there is going to be a process of least privilege so that not everybody is accessing all of the company resources.

Also, companies need to consider licensing and if they are allowed to enable employees to use certain products at home, pursuant to their license agreement with the vendor.

The best way to survive these trying times is to look at how employees are working and establish policies that support these processes.

"Company policies are very important because it is the way companies convey information to employees and set expectations," Mr. Kibel said.