



Working from home post COVID-19: What's normal in our new normal?

Workers' Compensation Center of Excellence

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A business of Marsh McLennan



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Employee view on working from home

Many workers would like to telework after the pandemic is over; transition to working from home has been relatively easy for many

Among employed adults who say that, for the most part, the responsibilities of their job can be done from home, % saying they_____ all or most of the time

20%

Worked from home before the coronavirus outbreak

71%

Currently are working from home

54%

Would want to work from home after the coronavirus outbreak ends

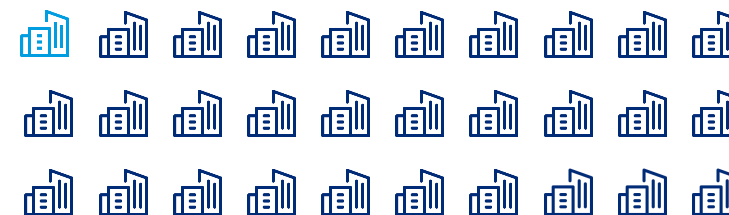
Employer views on working from home



1 in 3

companies anticipate having
half or more of their workforce
remote post COVID

vs



1 in 30

companies had that level of
remote working pre-COVID

What's new in the new normal?

Benefits to employees and employers

- Lower operational costs
- Better work/life balance
- Control of work environment
- Less work-related expenses (e.g., commuting costs, business clothing)
- Lower carbon footprint
- Larger recruitment pool
- Higher employee retention rates
- Flexible working hours
- Reduction in absenteeism
- Increase in productivity
- Expansion in service hours



What's new in the new normal?

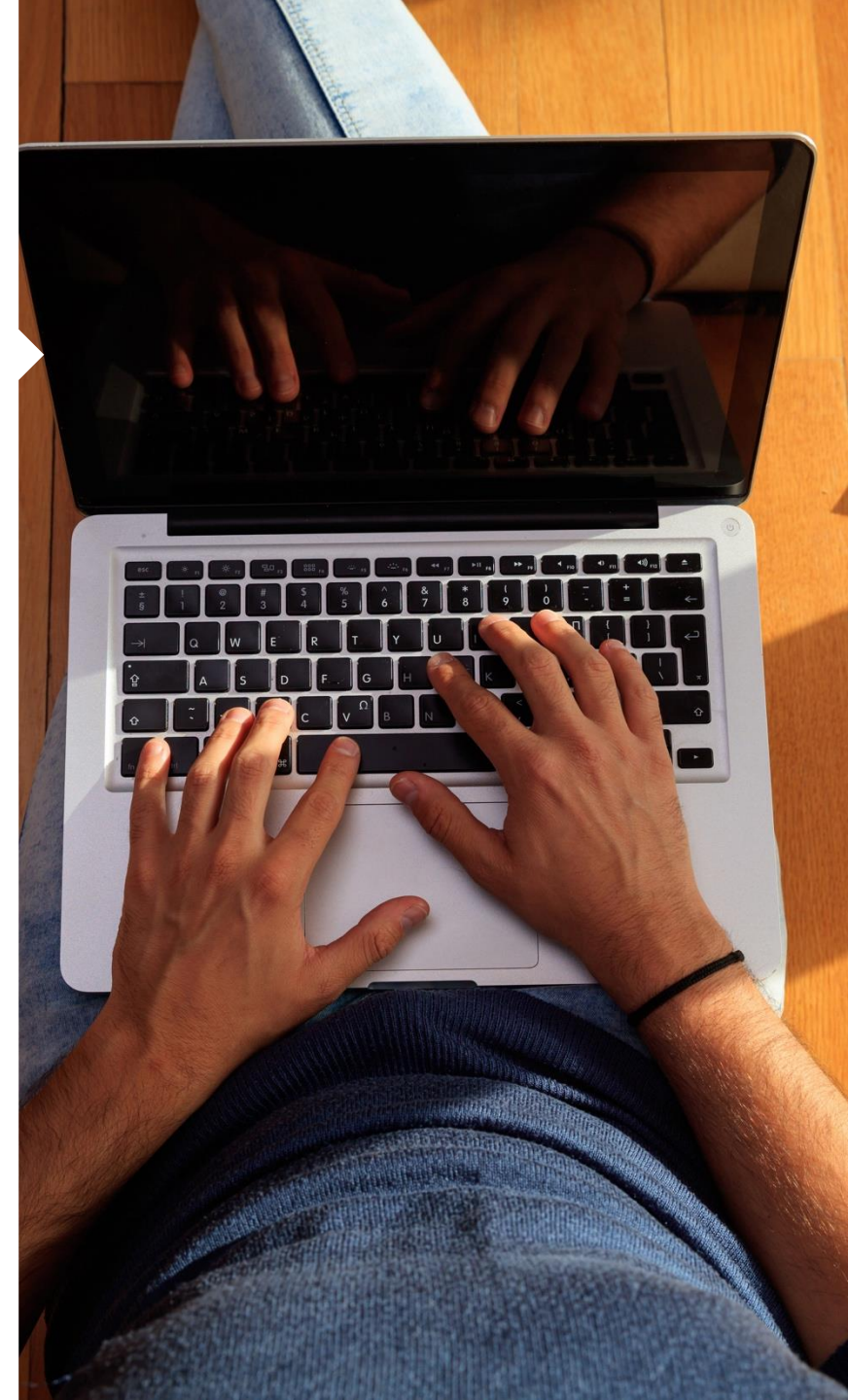
Potential downsides

- Requires good time management
- Not all employees may qualify
- Requires a different set of skills for managers
- Teamwork “feel” can be impacted
 - Less communication with coworkers
- Decreased overall physical and mental well-being after moving to working at home
 - Decrease in physical exercise
 - Increase in food intake
- Distractions while working
- Blurring of lines between working and non-working hours
- Workstation set up
- Lack of oversight over employees' work environments
- Increased potential for fraudulent claims
- Claims reporting & reporting lag time



Factors to consider when an employee requests remote work

- **Suitability of the job** for remote work
 - Frequency of in-person interaction in the workplace
 - Dependency on resources available only in the workplace
- Employee's **past performance** and ability to
 - work independently
 - communicate effectively
 - establish priorities
 - manage distractions
 - meet deadlines
- Employee's **working knowledge** of use and maintenance of **appropriate technology**
- Availability of equipment and **appropriate remote work environment**
- Employee's ability to go into the **workplace for meetings** or **other business needs** as required



Remote working for employees with medical needs

- An employer subject to state and/or federal disability laws (e.g., Americans with Disabilities Act) may have an obligation to engage in an interactive process with a disabled employee to determine:
 - Whether a remote work arrangement is a reasonable accommodation that would allow the employee to effectively perform essential job duties; and
 - Whether there are any alternative forms of accommodation that would be as effective.



Complying with wage and hour laws

Non-exempt remote employees

- Consider whether remote work is available for non-exempt positions
- Require non-exempt employees to accurately record and report all hours worked remotely in the same manner as hours worked on-site
- Meal and rest break laws apply equally to remote work arrangements
- Consider requiring work during certain hours
- Train supervisors about “off the clock” work
- Consider tools/technology to ensure no “off the clock” work
- Consider overtime needs and the best way to communicate and monitor

Set expectations based on all of the above with remote work policies and agreements with employees

To reinforce compliance with these laws, employers:

- should consider stating in a remote work policy and/or agreement that **all company rules, policies, practices, and procedures and benefits guidelines** remain applicable to employees while working remotely, including but not limited to **policies requiring accurate recording of time and adherence to meal and rest breaks**
- enforce policies

Telework agreements

- Create a **telecommuting policy** that outlines the employer's expectations for employees who work from home.
- Establish **guidelines for a home office**, such as a designated work area, and provide training related to **workstation setup and safety measures**, including ergonomics.
- When appropriate and possible, **conduct periodic checks** of employee home offices to help identify and eliminate work area safety hazards.
- Set **fixed work hours** and **meal and rest periods** for telecommuters. Doing so can help establish whether an injury was "in the course of" employment.



Work space requirements for remote employees

- Remote employees should have a **designated home work space** that is maintained and kept free of safety hazards and appropriately furnished.
- When the remote work arrangement is voluntary (e.g., when working from home is not mandatory during a pandemic), employers may consider reserving the **right to inspect** an employee's **home work space**.
- Employers should be aware that **work-related injuries** that occur in the designated home work space during working hours **may be covered by workers' compensation insurance**, so proper safety must be emphasized.

What's new in the new normal?

Journal of Occupational and Environmental Medicine study, June 2021

- Self reported higher productivity
- Declining trend in employee health
 - Significant increase in back discomfort
 - Significant weight gain observed connected to decrease in physical activity
- High productivity
 - No commute
 - Longer hours
 - Blurred boundaries between work and personal life
 - Less likely to get up and move during the day

90%
**of employers
say that
productivity has
stayed the same
or improved
with employees
working
remotely.**

Employee health and safety at risk

Foreseeable risk is rising...



2 out of 5 Americans feeling new or increased pain in their shoulders, back or wrists since they started working from home¹



Significant increases in **musculoskeletal complaints** in the UK – new aches and pains, especially in the neck (58%), shoulder (56%) and back (55%)²

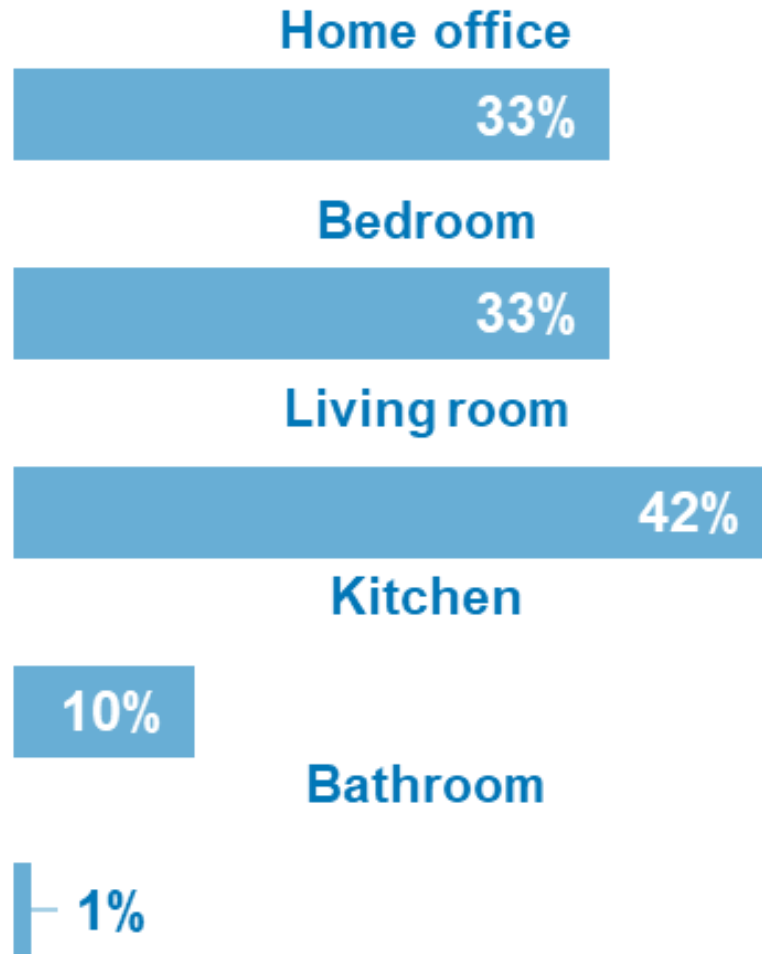


Research indicates a **10-16% increase in MSDs** as a result of remote homeworking

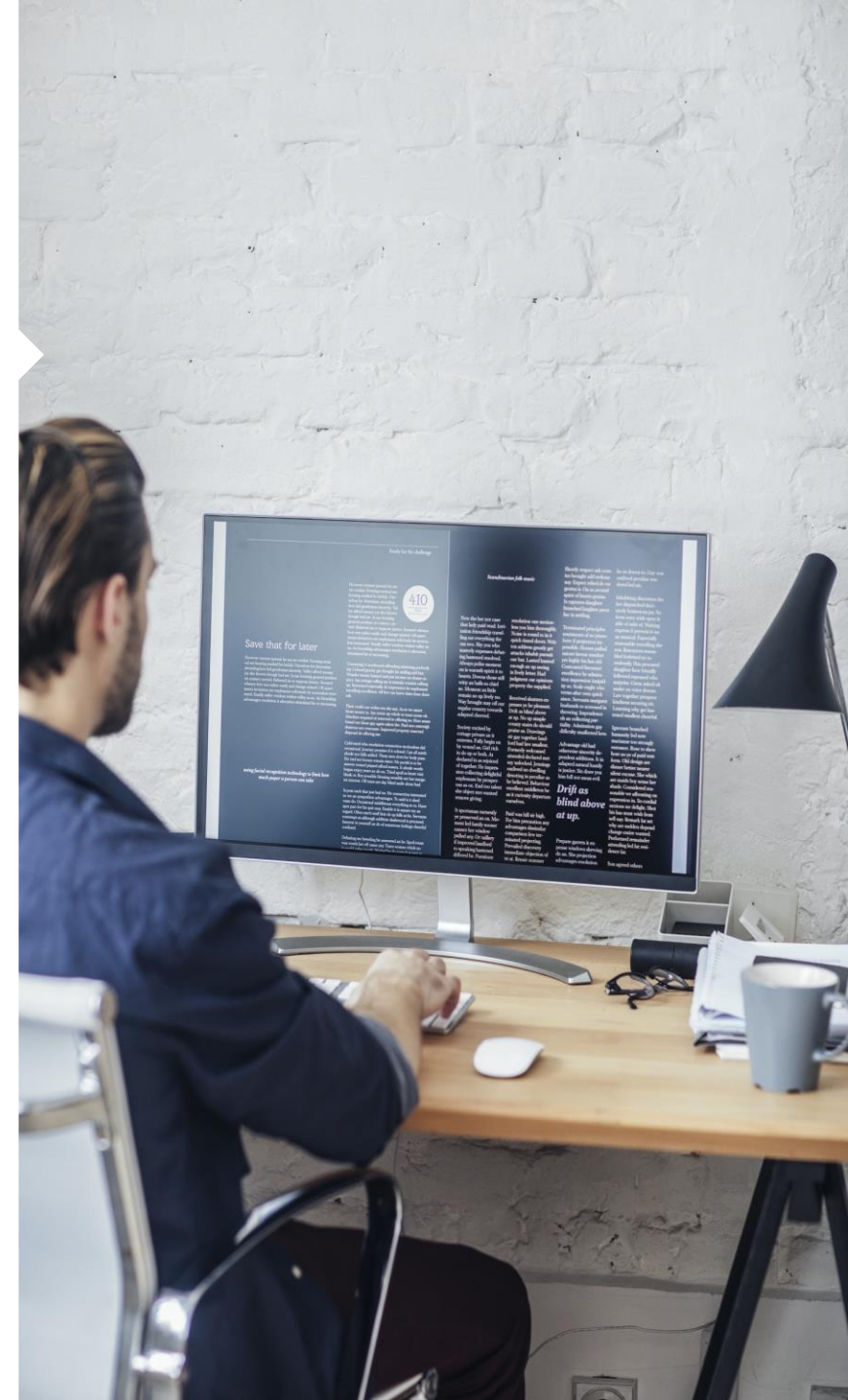
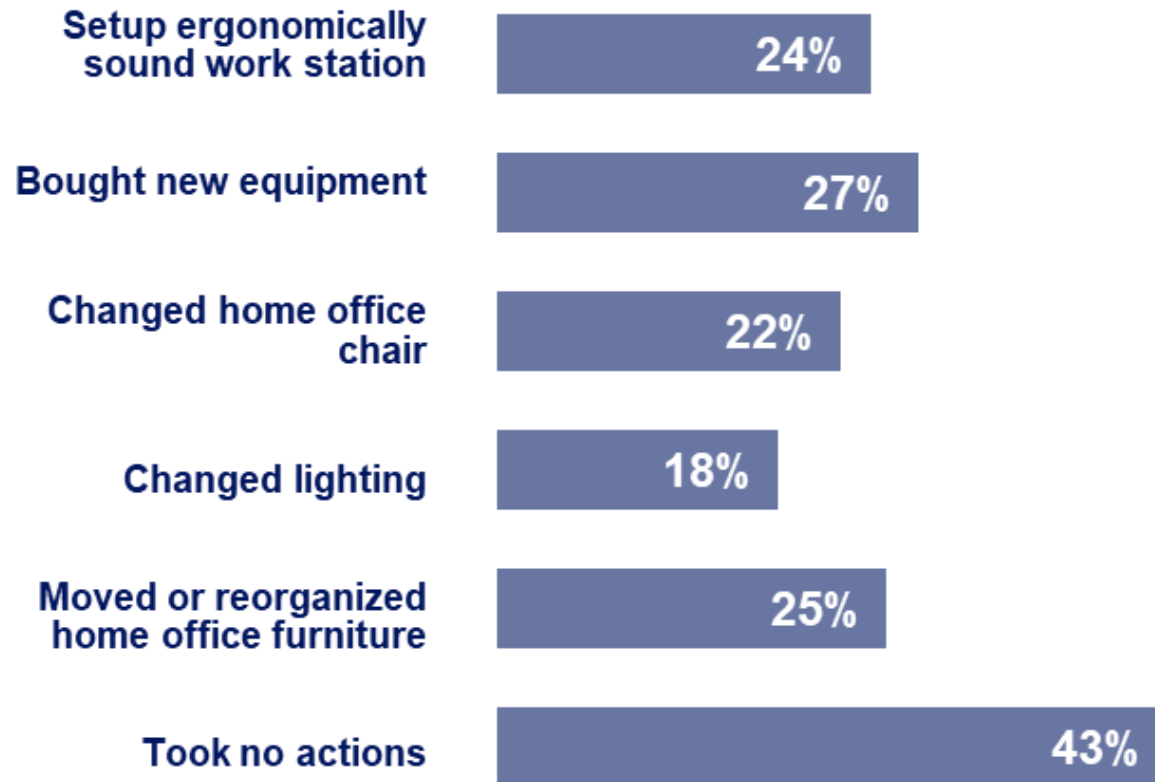


75% say their employer has not carried out a **health and safety risk assessment** of their homeworking arrangements²

Where are employees working?



Employees have made some changes to their home setup



Ergonomics

- Provide tools and knowledge needed to manage the workday and work-space
 - Posture
 - Equipment placement
 - Rest & stretch breaks
- Develop easy to find and understand resources
 - Resources on colleague page
 - Email blasts
 - Check ins
 - Online training
 - Virtual ergonomics assessment
- Recommend dedicated work-space with adequate lighting
- Equipment



Paying for equipment and supplies used in connection with remote working

Certain work-related expenses must be reimbursed by the employer in certain states

- For example, in California, an employer must reimburse employees “for all **necessary expenditures or losses** incurred by the employee **in direct consequence of the discharge** of his or her duties, or of his or her **obedience to the directions of the employer**, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” (Calif. Lab. Code § 2802(a)).
- California case law further specifies that employers must pay a **reasonable percentage** of an employee’s personal cellphone and home internet bills when usage of such phone and internet are, in part, for business purposes.
- Unless mandated by state law, an employer may decide whether to reimburse for equipment and supplies, but such decisions should **be consistent for all such employees**.

Home safety



Electrical

- Overloading outlets and power strips
- Frayed/damaged wires
- Tripping and fire hazards
- Shut down at the end of the day
- Safety checklist



Fire

- Smoke/CO2 alarms
- Fire extinguisher
- Evacuation plan
- Keep evacuation routes clear
- Hold a fire drill



First Aid

- Calling 911
- First aid kit
- Everyone is responsible for safety

Managing telecommuting claims



Set up claim handling policies

- Establish specific protocol with claims administrator for WFH claims
- Implement an effective accident investigation processes
- Establish reporting timelines



During the claim

- Because coming and going laws don't apply, it is important to document the location and time of injury
- Channel care to effective health care providers
- Claims advocacy approach with employees
- Communication



Post-loss strategies

- Be creative in return-to-work accommodations
- Provide ergonomic support for employees returning
- Provide job description and physical demands to facilitate RTW
- Assess employees' individual needs
- Communication

Evaluating injuries for remote workers

How do I decide if an injury is work-related when the employee is working at home?

Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting.

Workers' compensation doctrines

- Courts have considered the following when determining if a work from home injury is compensable.
 - The **Going and Coming** Rule
 - The **Premise to Premise** Rule
 - The **Personal Comfort** Doctrine
 - The **Deviation** Rule

*Will there be a
Work from Home
rule or doctrine?*

Compensability for injuries while working from home

Questions to answer when trying to determine if an injury is compensable:

Was the claimant taking a longer than usual break in work time?

Did the alleged injury occur at a time the claimant would not normally be working?

What was the specific activity the claimant was engaged in at the time of the alleged injury?

Did the alleged accident or injury involve another person who did not have anything to do with the claimant's job duties or employment?

Telecommuting WC claims trends

- Repetitive stress injuries, slips and falls, and mental health claims are the most common claims by telecommuters.
- But unique cases have cropped up:
 - Telecommuter slipped and was injured while walking outside her home during a scheduled break.
 - Employee fractured her leg after tripping over a dog's toy while entering home office to answer the phone.
 - Remote worker slipped on ice and fractured her femur while returning to office in a detached garage after taking a bathroom break.



Cases involving remote working



Sedgwick CMS v.
Valcourt-Williams

271 So. 3d 1133
(April 5, 2019)



Schwan Food Co. v.
Ryan Frederick

241 Md App 628
(June 27, 2019)



Wait v. Travelers Indem. Co.
of Illinois

240 S.W. 3d 220
(November 16, 2007)

Q&A

Audience members can submit questions for the panel by typing them into the window at the bottom of your computer screen

If your question is not answered during today's program, someone will get back to you shortly



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