

GAO

Report to the Honorable Dick Armey,
Majority Leader, House of
Representatives

July 2001

TELECOMMUTING

Overview of Potential Barriers Facing Employers



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United States General Accounting Office
Washington, DC 20548

July 11, 2001

The Honorable Dick Armey
Majority Leader
House of Representatives

Dear Mr. Armey:

This report addresses your request for information on potential tax, regulatory, and liability barriers that employers face when they establish telecommuting programs for their employees. Telecommuting refers to employees who routinely work (typically several days each week) from remote locations (often their residences) rather than exclusively at an employer-provided location. Even though telecommuting has grown over the past decade, some proponents are concerned that various laws and regulations discourage employers from establishing these programs.

To address your request, we first searched the literature to identify industry sectors and employers that support telecommuting programs, organizations that promote telecommuting policies, and laws and regulations cited as potential barriers to telecommuting. To further explore potential barriers identified in the literature, we interviewed representatives from two organizations that promote telecommuting programs, two industry trade organizations that represent employers who have telecommuting programs, four employers with telecommuting programs in place, several union officials, and an attorney from a law firm that provides assistance to employers who may want to establish telecommuting programs. We also interviewed Internal Revenue Service officials to discuss several aspects of the federal tax code that are often cited as barriers to telecommuting. We conducted our work from March through May 2001 in accordance with generally accepted government auditing standards. On May 24, 2001, we briefed your staff on the results of our work. This report formally conveys the document used at that briefing.

In summary, many telecommuting proponents believe that significant obstacles to increased use of telecommuting involve internal management concerns related to (1) assessing whether the employer has the types of positions and employees suitable for a telecommuting program, (2) maintaining security over sensitive company data while monitoring the actions of remote workers, and (3) ensuring that telecommuting activities do not adversely affect profits.

A number of state and federal laws and regulations were also cited as potential barriers to telecommuting by those interviewed. Specifically, concerns involved individual state tax laws that could expose employers and employees to additional state taxes, and the applicability of federal workplace health and safety laws and regulations to telecommuters' home offices. Several of the laws and regulations cited as potential barriers predate the move toward the more technological and information-based economy in which telecommuting has developed. Thus, their application to telecommuting is evolving and is somewhat unclear at this time. In combination with the management concerns noted above, these laws and regulations may affect employer decisions to establish telecommuting programs.

We are sending copies of this report to all Members of Congress who attended the briefing and will make copies available to others upon request. If you or your staff have any questions about this report, please contact me on (202) 512-7215 or Dan Bertoni on (202) 512-5988. Bill Staab and Gerry Grant also made key contributions to this report.

Sincerely yours,

A handwritten signature in black ink that reads "Robert E. Robertson". The signature is written in a cursive, flowing style.

Robert E. Robertson
Director, Education, Workforce,
and Income Security Issues



Potential Barriers Employers May Face When Establishing Telecommuting Programs

**Briefing for Representative Dick Armey
Majority Leader
House of Representatives**



Overview

- Objective
 - Scope and Methodology
 - Summary of Results
 - Background
 - Potential Barriers to Telecommuting
 - Concluding Observations
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Objective

- Identify major potential barriers to employers' increased use of telecommuting.



Scope and Methodology

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- Analyzed current literature to identify
 - specific employers with telecommuting programs,
 - industry sectors (for example, communications) where telecommuting was widely practiced, and
 - potential barriers to telecommuting.
 - Interviewed
 - organizations promoting telecommuting,
 - trade organizations for major telecommuting industry sectors,
 - four employers who have telecommuting programs,
 - IRS officials regarding relevant tax issues, and
 - union officials about views on telecommuting.
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Summary of Results: Barriers to Employers' Use of Telecommuting

- Employer concerns: management views about supervising remote work, security/privacy, and impact on profits.
- Uncertainties about how state tax laws may apply to interstate telecommuting (could increase corporate and individual taxes and sales tax collection duties).
- Concerns over application of workplace health and safety rules to home offices.
- Other issues (federal tax matters, wage and hour laws, and workers' compensation).



Background

- Definition of telecommuting varies: generally defined as work at a remote location or home office rather than working at a fixed employer-provided site or office.
- Not all jobs are suited to telecommuting. Telecommuting occupations typically involve information handling and professional/knowledge-related tasks.
- Proponents estimate that telecommuting has grown about 20 percent a year over a 10-year period.
 - 16.5 million employees telecommute at least once a month.
 - 9.3 million employees telecommute at least once a week.



Potential Barriers to Telecommuting-- Employer Concerns

- Identifying job types and employees suitable for telecommuting.

- Security/privacy concerns
 - protecting proprietary and sensitive data used at remote locations, and
 - monitoring employee use and access to company data without invading a person's privacy.

- Impact on profits: Will savings and benefits exceed additional costs related to telecommuting?



Potential Barriers to Telecommuting-- State Taxes

- Uncertainties exist about the application of state tax laws and what constitutes interstate business.
 - Telecommuting may establish a physical business presence in a state where none previously existed and
 - expose employers to additional corporate taxes,
 - expose employees to additional income taxes,
 - require employers to collect sales taxes in states where telecommuters reside, and
 - result in litigation for employers over tax issues.
 - Limited impact to date; however, this is a key emerging issue according to experts and literature.
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Potential Barriers to Telecommuting-- Health and Safety Rules

- Current OSHA directive states that employers are not liable for the safety of an employee's home office.
- Employers fear that the current OSHA policy may be reversed.
- Employers are addressing concerns by offering guidance about home office safety and design and/or providing ergonomic furniture for telecommuters.



Potential Barriers to Telecommuting-- Other Issues (Federal Tax Matters)

- Providing equipment may create taxable fringe benefits.
 - Home office equipment/services given to telecommuters are a taxable fringe benefit.
 - Equipment is not taxable if employers retain title to it and maintain substantiating records.
 - Impact on telecommuting is limited according to employers interviewed.
 - Employees face complicated home office deduction rules.
 - Restrictive rules for deducting expenses.
 - Recapture rules related to home sales are complex.
 - Tax benefits to telecommuters are limited.
 - Impact on telecommuting is limited according to employers interviewed.
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Potential Barriers to Telecommuting-- Other Issues (Federal Tax Matters)

- Several employers and experts believe additional/expanded government incentives may increase telecommuting.
 - Suggestions include accelerated depreciation for technology investments (for example, high-speed Internet technology) and employer/employee tax credits for home office equipment/services purchased.
 - Prior GAO reports have raised questions about the effectiveness of tax credits.



Potential Barriers to Telecommuting-- Other Issues (Labor Matters)

- Employer costs for overtime and record-keeping requirements for telecommuters may increase.
 - The Fair Labor Standards Act establishes overtime and record-keeping requirements for the vast majority of workers.
 - Some categories of workers are exempt from the law (for example, executive, administrative, or professional positions).
 - Most telecommuters may be exempt employees.
 - For the few nonexempt employees, employers had procedures to preauthorize and record overtime.
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Potential Barriers to Telecommuting-- Other Issues (Labor Matters)

- Telecommuting may disrupt collective bargaining process and agreements.
 - Unions have been generally wary of telecommuting because work at home is difficult to regulate and could lead to compulsory overtime and interfere with employee rights to communicate, organize, and bargain collectively.
 - Some unions, however, favor the flexibility telecommuting offers employees.
 - Telecommuting does not appear to be widely available to union members (many union jobs are not suitable for telecommuting).
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Potential Barriers to Telecommuting-- Other Issues (Labor Matters)

- The reasonable accommodation provision of the Americans With Disabilities Act may require employers to pay for modifications to home offices or equipment.
 - Disabled employees have increasingly sought to telecommute as a reasonable accommodation.
 - Employers must not discriminate against nondisabled employees in establishing telecommuting programs.



Potential Barriers to Telecommuting-- Other Issues (Liability)

- Workers' compensation costs might increase.
 - Injuries at work, regardless of location, are covered under workers' compensation.
 - Injuries at a home office are not usually witnessed, raising concerns about whether they are work-related.
 - Employers do not indicate any significant problems yet.



Concluding Observations

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- Beyond obstacles associated with employer concerns, laws and regulations, often enacted before telecommuting was widely practiced, create challenges for the new workplace.
 - Some barriers do not appear to affect significant numbers of employers or can be addressed when planning telecommuting programs.
 - Two areas in which existing rules do not fit the new workplace deserve further attention:
 - potential state tax effects and related administrative burdens arising from interstate telecommuters, and
 - uncertainty surrounding employer responsibility to provide safe workplaces when it involves home offices.
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