



Telecommuting Traps: Hidden Risks and How to Handle Them

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Overview



Why the growth?

- Technology advances
- Changing family dynamic
- Employers more open to the idea

What are the benefits of telecommuting?

For society:	For the Employee:	For the Employer:
<ul style="list-style-type: none"> - Environmental impact - Ability to hire those who cannot get into an office - Public health 	<ul style="list-style-type: none"> - Flexible schedule - Increased productivity (one aspect) (commuting time is spent working) - Savings: \$3.7k a year in fuel, food, clothes 	<ul style="list-style-type: none"> - Reduced absenteeism - Savings - \$15k per year per employee - Decreased stress in the workplace - ACH compliance - Office space

What are the cons?

- Time management for the employee – distractions
- Job advancement opportunities may be decreased – out of sight, out of mind
- Isolation – no team building
- Hard to oversee what employees are doing
- Legal issues – worker's compensation, OSHA
- Cyber security issues

Statistics



According to one survey, regular work-at-home among the non self-employed population has grown by 140% since 2005.

Full time employees are four times as likely to telecommute than part time employees.

According to a recent survey by Global Workplace Analytics, 3.2% of the American work force currently works from home – that's 4.3 million workers.

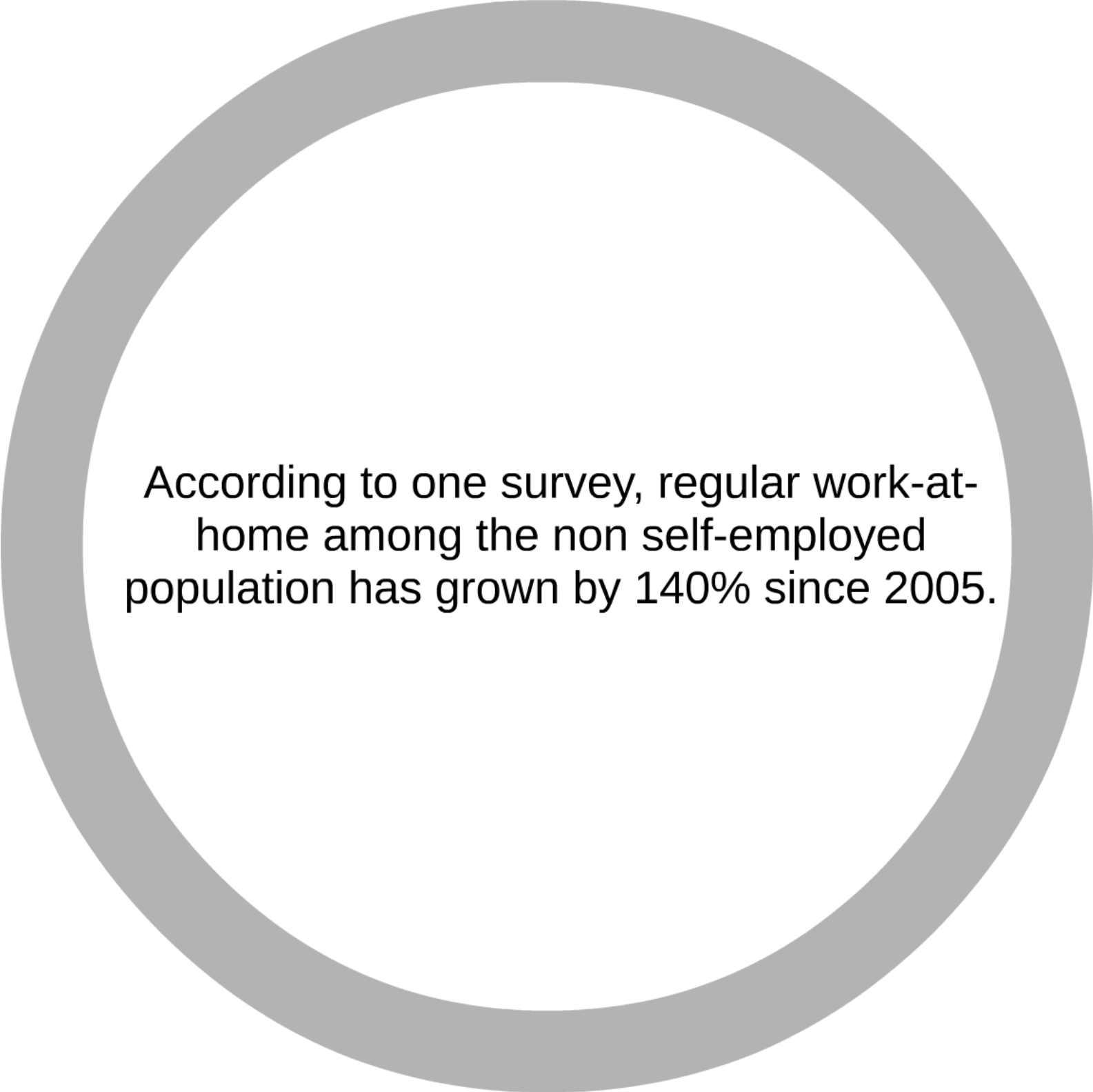
Typical telecommuter is 45 years or older, earns at least \$58,000/year, and works for company with more than 100 employees.

75% of telecommuters earn over \$65,000.


Larger companies are more likely to offer telecommuting opportunities. More prevalent in New England and Mid-Atlantic.

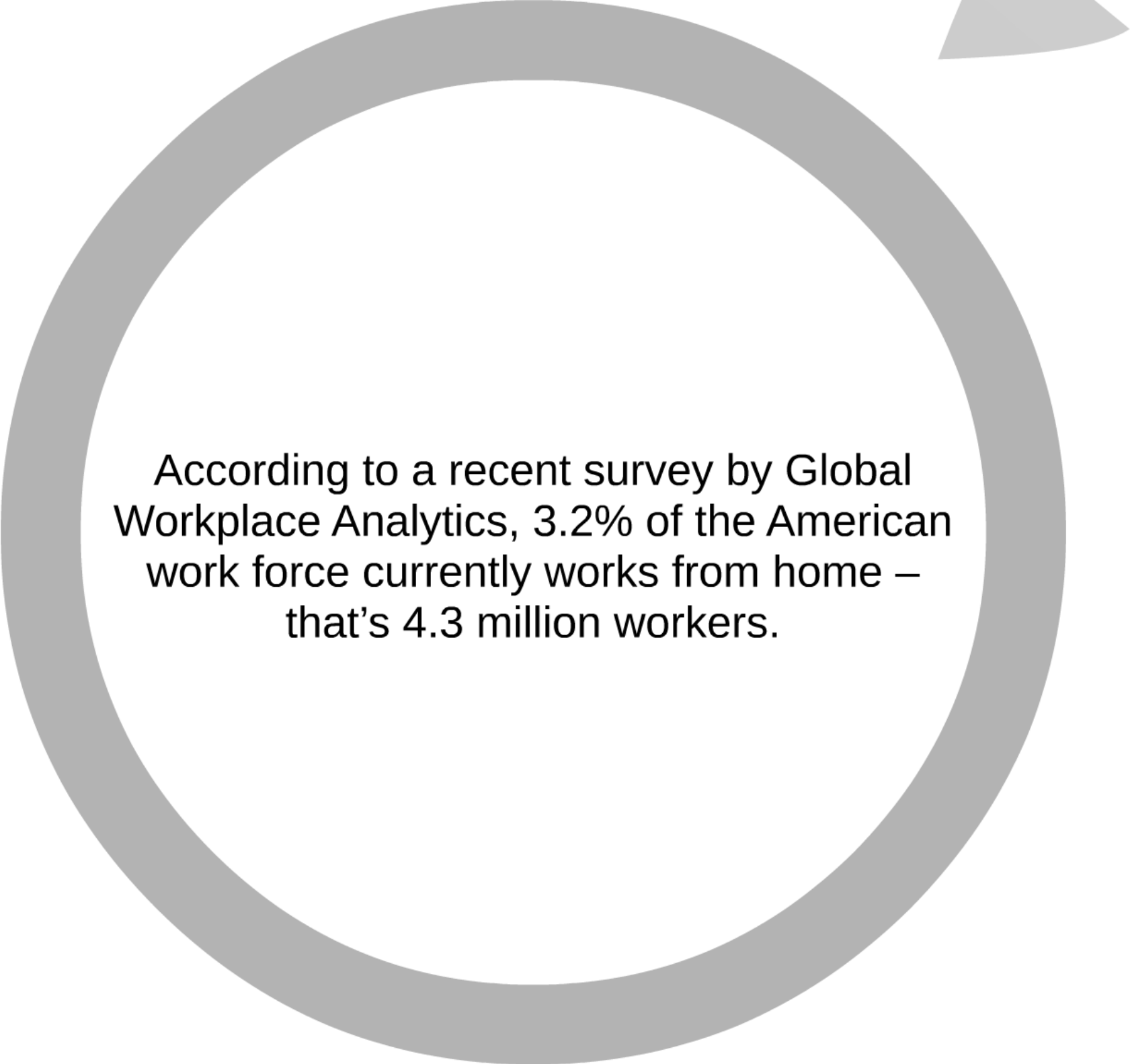
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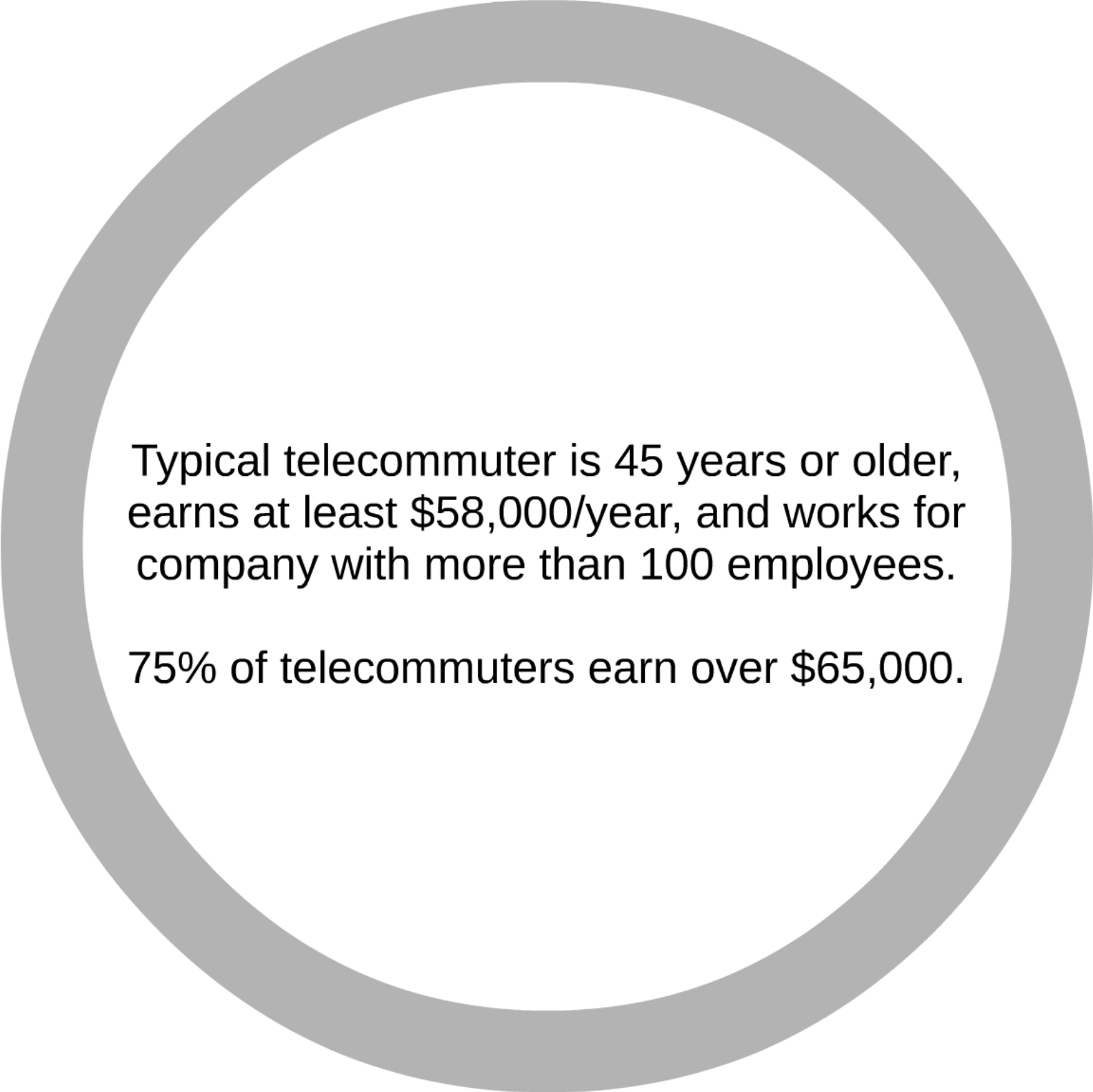


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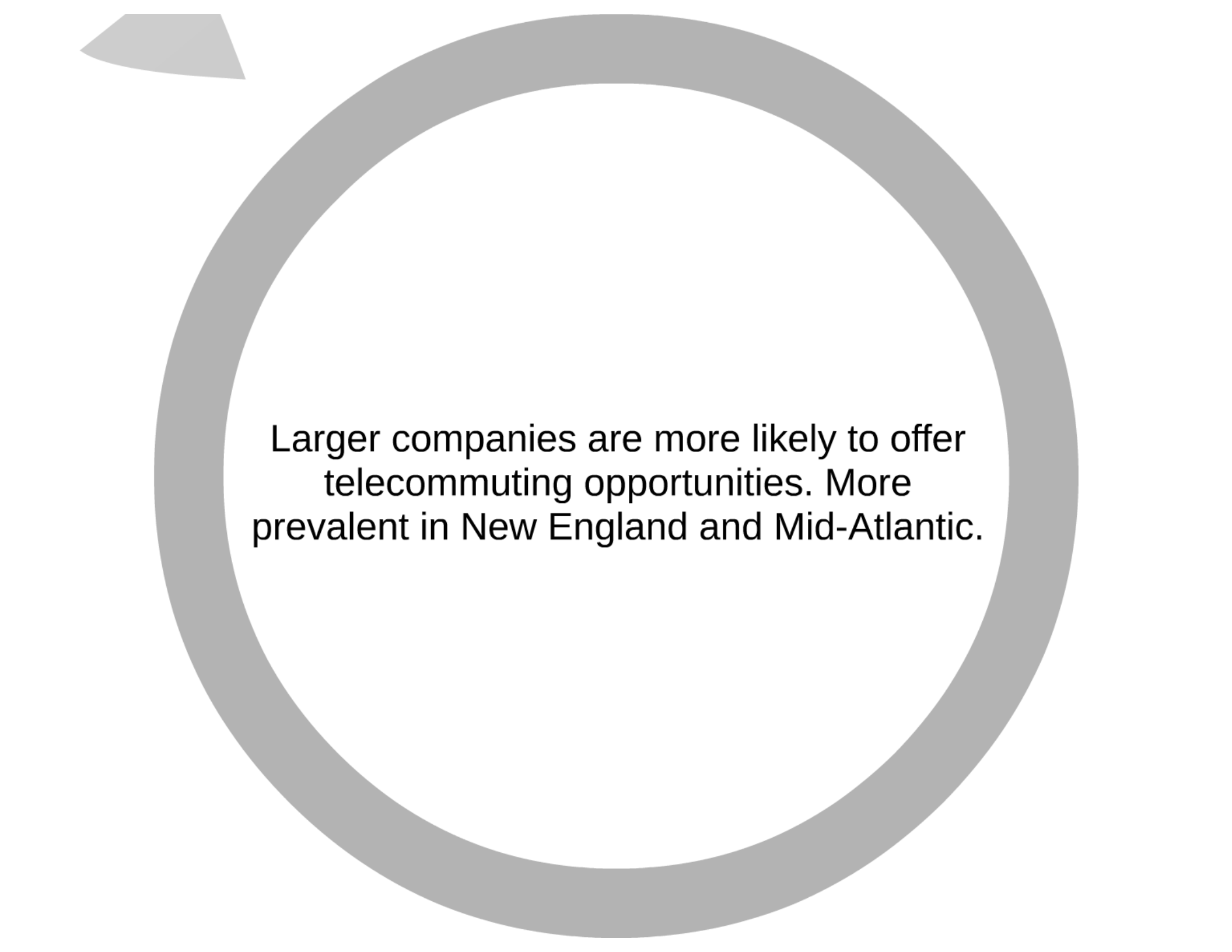


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For the Employee:

- Work/life balance
- Increased productivity – time spent commuting can be spent working
- Savings - \$2-7k a year in fuel, food, clothes

For the Employer:

- Reduction in turnover and absenteeism
- Savings - \$11k per year per employee
- Decreased illness in the workplace
- ADA compliance
- Office Space

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Considerations for Telecommuting: The Traps

OSHA

- One of OSHA's primary directives is to protect workers by maintaining safe workplace.
- How do you do that if the workplace is employee's home?
- In 2000, OSHA published a set of guidelines for Home-Based Worksites (Directive CPL 2-0.125)
 - Department of Labor "strongly supports" telecommuting but...
 - OSHA does not inspect home offices, will not hold employers liable for home offices, and does not require employers to inspect home offices
 - Exception for home manufacturing operations
 - Safety Partnership between employer and employee

Worker's Compensation



ADA

- Americans with Disabilities Act – prohibits discrimination in the workplace based on disability and requires employers to provide reasonable accommodations to employees with disabilities
- Telecommuting may be one form of a reasonable accommodation.
- Do you have to offer telework as a reasonable accommodation?
 - Maybe
 - Can job be done at home?
 - Is regular attendance required for the job?
 - Can you shift duties to other employees to make it a home based job?
- Case law examples →

Cyber Security

- Maintaining confidential nature of documents
- Protecting against hackers
- Solutions?



Jurisdictional Issues

- Insurance coverage for worker's compensation (and applicability of worker's compensation) may vary by state.
- Taxation
 - *In Re Allen*, 100 N.Y.2d 282 (N.Y. 2003); *Gundecha v. Bd. of Review*, 118 A.3d 366, 367 (N.J. Super. Ct. App. Div. 2015) – Terminated employees who telecommuted from out of state were not eligible for unemployment benefits in the state where the employer was located.
 - *Huckaby v. New York State Division of Tax Appeals*, 4 N.Y.3d 427 (2007) – 100% of income Tennessee resident who telecommuted to New York was taxable in New York.
- Zoning
 - Local zoning regulations often prohibit "business use" in residentially zoned areas.

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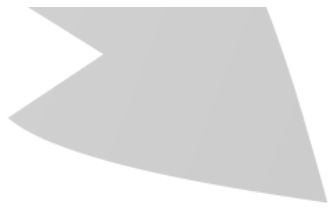
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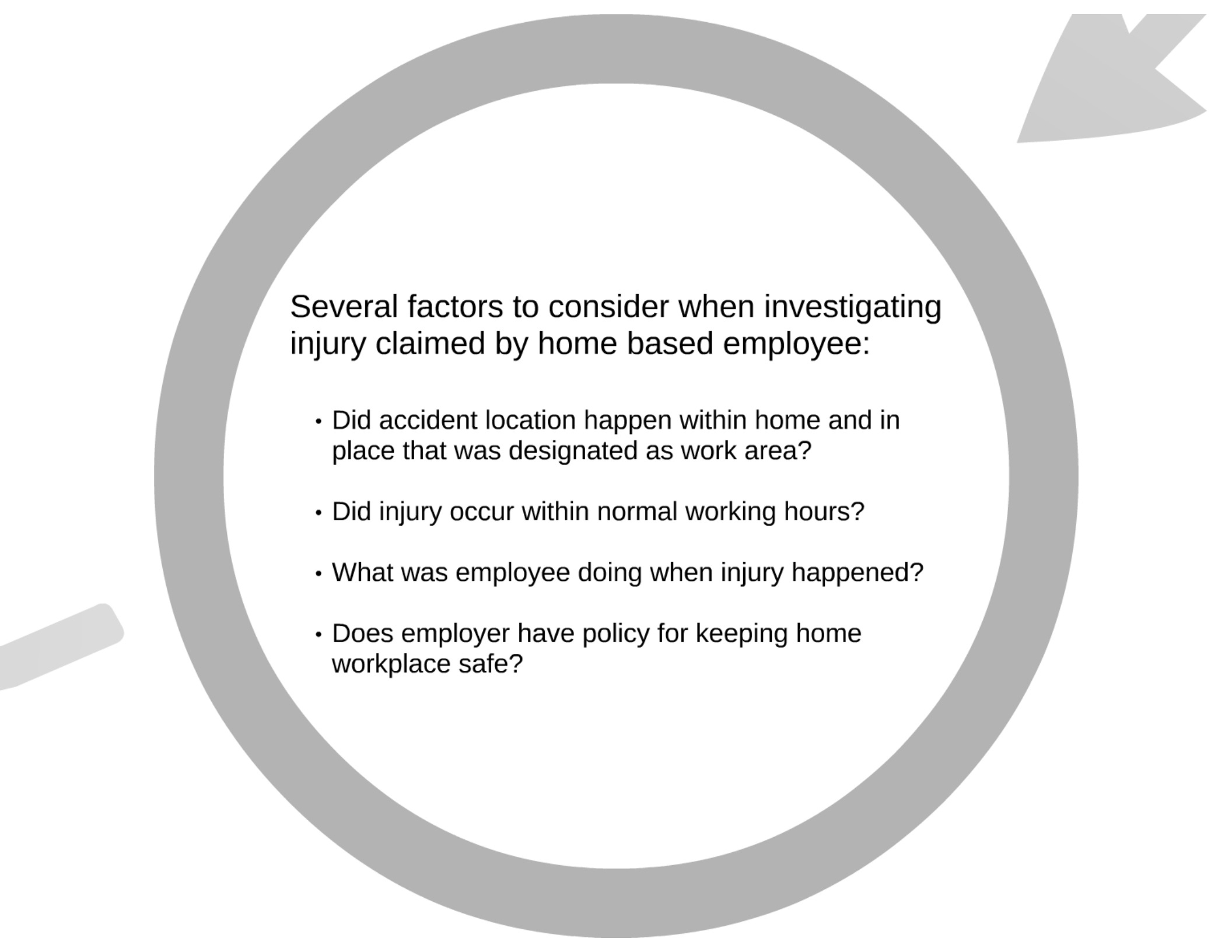
Worker's comp covers injuries that arise out of and in the course of employment:

- within the period and established hours of employment,
- at a place where employee reasonably may be in the performance of employee's duties, and
- while employee was fulfilling the employee's duties or is engaged in something incidental to their business.



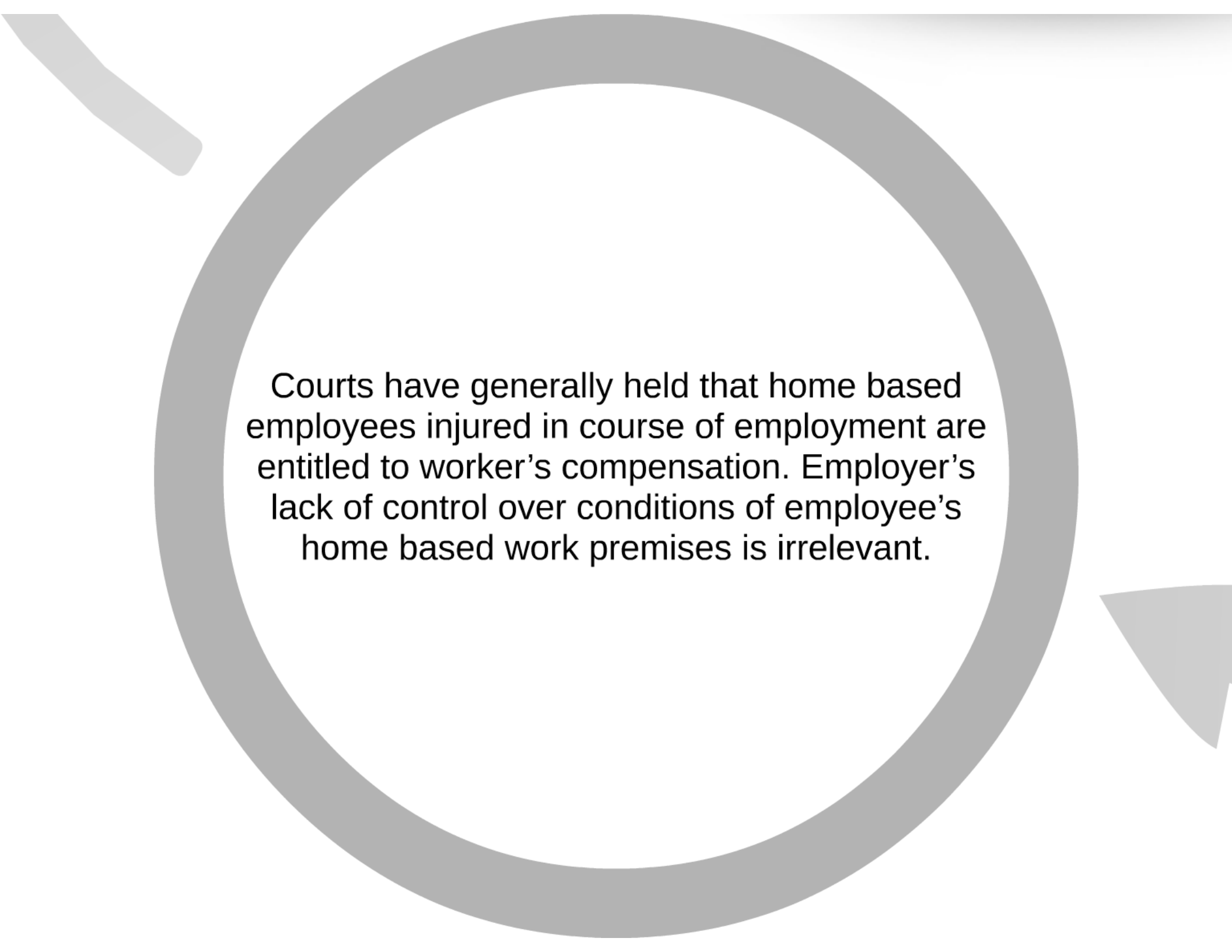
Key Considerations:

Employee v. Independent Contractor



Several factors to consider when investigating injury claimed by home based employee:

- Did accident location happen within home and in place that was designated as work area?
- Did injury occur within normal working hours?
- What was employee doing when injury happened?
- Does employer have policy for keeping home workplace safe?



Courts have generally held that home based employees injured in course of employment are entitled to worker's compensation. Employer's lack of control over conditions of employee's home based work premises is irrelevant.

Case law examples:

- Home decorator who tripped over her dog at home was entitled to benefits. *Sandberg v. JC Penney Co. (In re Sandberg)*, 260 P.3d 495 (Or. Ct. App. 2011).
- District sales manager who slipped and fell while salting his driveway was entitled to recovery. *Ae Clevite, Inc. v. Labor Comm'n*, 996 P.2d 1072 (Utah Ct. App. 2000).
- Employee who fell down the stairs on her way back from getting a drink in her kitchen was entitled to recovery. *Verizon Pa., Inc. v. Workers' Comp. Appeal Bd. (Alston)*, 900 A.2d 440 (Pa. Commw. Ct. 2006).
- Employee was not entitled to recover when, while making lunch during the work day in her home office, a neighbor assaulted her. *Wait v. Travelers Indemnity Co. of Illinois*, 240 S.W.3d 220 (Tenn. 2007)

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- *Meuchem v. Memphis Light & Gas*, 883 F.3d 595 (6th Cir. 2018) – Employer violated ADA by denying request made by pregnant in-house attorney to work from home for 10 weeks due to bed rest.
- *EEOC v. Ford Motor Co.*, 782 F.3d 753 (6th Cir. 2015) – Employer was not required to offer telecommuting to an employee as a reasonable accommodation because the job required “face-to-face interaction and coordination of work with other employees...in-person interaction with outside colleagues, clients, or customers...[and]...immediate access to documents or other information located only in the workplace.”
- *Doak v. Johnson*, 2015 U.S. App. LEXIS 14452 (D.C. Cir. Aug. 18, 2015) – Coast Guard was not required to offer telecommuting as a reasonable accommodation because “being present in the office to participate in interactive, on-site meetings during normal business hours and on a regular basis” was an essential job function.
- *Bixby v. JP Morgan Chase & Co*, 2012 U.S. Dist. LEXIS 32974 (N.D. Ill. Mar. 8, 2012) – Jury question existed as to whether employer was required to allow employee to work from home as a reasonable accommodation.

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What Can Employers Do?

Select appropriate employees

- Someone who is responsible, good time-management skills
- Someone who works well with limited supervision
- Exempt v. non-exempt employees
 - FLSA issues with record-keeping for non-exempt employees
 - Overtime issues for non-exempt employees
 - Thus, if you select non-exempt employees, need to have clear guidelines on time records

Create a telecommuting policy

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| <ul style="list-style-type: none">• Specific work hours• Break periods• Time keeping• Performance evaluations• Non-employee visitations – clients, etc.• Designated work area | <ul style="list-style-type: none">• Procedure for requesting telecommuting• Equipment to be provided – and how to be returned• Destruction of sensitive documents• Expenses to be covered – internet, phone, etc.• Insurance requirements – ensure homeowner's insurance covers employer's equipment/property. |
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How to handle requests for telecommuting

- Application process
- Is this a request for a reasonable accommodation?
- Can the employee do the job from home or is physical attendance an essential function?
- Be consistent



- Skype and video conference meetings
- Periodic checks of home offices
- Monitoring software – to see when logged in to ensure employee is working
- Have IT team set up computer and ensure there are adequate firewalls.
 - Make sure wireless router is protected
 - Use a VPN

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