



Executive Memorandum

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OSHA'S RETREAT DOES NOT END THE THREAT TO WORKING AT HOME

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Even though Secretary of Labor Alexis Herman has withdrawn the Occupational Safety and Health Administration's (OSHA) at-home work compliance interpretation letter, the Department of Labor's policy position has not changed. The withdrawal action does not end OSHA's ability to reach into workers' homes.

According to a January 4, 1999, press release from Secretary Herman, "in cases where employees are doing dangerous work at home and the hazards are well known...the safety and health rules are clear." Therefore, the Occupational Safety and Health (OSH) Act appears to cover anyone who works with a computer at home and is exposed to well-known ergonomic hazards related to their chair, desk, keyboard, and mouse. The 1970 OSH Act makes employers responsible for making sure that workers have safe and healthy workplaces, but it does not define what a workplace is.

This recent policy blunder has left employers in the worst of all possible worlds—legal uncertainty. Many erroneously think that OSHA rules do not cover telecommuters, while others remain confused about their responsibilities. Even the Secretary of Labor admits, "the rules are not so clear."

The Department of Labor's retreat does not end the debate about the extent of OSHA's reach into homes. Despite withdrawing the compliance interpretation letter, Secretary Herman has refused to answer questions regarding an employer's liability

for safety and health violations at home work sites and did not offer any assurances that such a policy would not be reissued in the future. This cloud of uncertainty places nearly 15 million employees who work at home, as well as their employers, in legal limbo and is likely to curtail the expansion of telecommuting opportunities for millions of parents struggling to meet the demands of family and work.

Congress, not OSHA, must revisit the OSH Act to clarify that OSHA's power stops at the front doors of America's homes.

Questions Left Unresolved. The initial compliance letter raised many questions, and its withdrawal raises even more. Although OSHA says it will not routinely inspect homes and has withdrawn the directive, its regulations require employers to pursue all feasible steps, including periodic safety checks of employee working spaces, to protect workers. This leaves many important questions unaddressed. For example, does the OSH Act require employers to make sure that workers are not exposed to known hazards created by their at-home employment? Does the proposed

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ergonomics rule apply to employees who take work home or telecommute? Who pays for remodeling homes that do not meet OSHA standards? Are employers required to conduct home inspections to reduce or eliminate any work-related safety or health problems? Secretary Herman's conflicting statements leave these issues unresolved.

There are other questions as well: If a company incurs expenses in bringing a worker's home up to standards, does it then have a property interest in the home if the employee moves? What changes in the tax law would have to be made? If someone is injured or dies in a home office, is the employer liable even though the company has no right to control the property or access to it? What if a worker chooses to set up a home office in an unfinished basement rather than in a well-lit den with cross ventilation and a nice desk where his children usually play? Is the employer obligated to renovate that basement?

Telecommuting Unplugged by Employer Uncertainty. The uncertainty created by OSHA's recent actions portends terrible consequences for businesses, parents, and communities. No employer will start or expand telecommuting programs in such an uncertain legal environment. The tremendous gains in personal freedom and productivity that technology and telecommuting have given families and the economy over the past 10 years will be cut short. Working parents will no longer be able to be home when their children come home from school. Traffic congestion will increase, and significant time and money will be lost.

OSHA's actions are particularly upsetting because there is no guarantee that the agency will not reissue this policy interpretation in the future. Secretary Herman's call for a conference and inter-agency task force to review issues surrounding telecommuting could open the door to the explicit regulation of home offices.

Uncertainty Compounded by Proposed Ergonomics Rule. The fact that OSHA worked for two years on the compliance interpretation letter while also working on the ergonomics rule strongly suggests that it intends to apply the proposed ergonomics rule to telecommuters and employees who take work home. The now withdrawn letter specifically said that home ergonomic hazards were covered, but the ergonomics rule is so vaguely written that it is not clear whether it applies to home work sites. OSHA needs to revisit the scope of the proposed ergonomics rule. If it does not intend to apply the rule to workers' homes, it should say so. At the very least, OSHA should extend the public comment period for the proposed ergonomics rule to enable employers to consider how their businesses and workforces may be affected.

The withdrawn compliance interpretation letter also raises serious concerns about what types of burdensome directives OSHA will issue—without seeking public comment—after the vaguely written ergonomics rule goes into effect. Such interpretations and directives could substantially increase the scope of the ergonomics rule and significantly increase its costs.

Conclusion. Congress should update the OSH Act to protect private homes and telecommuting from government intrusion. OSHA clearly has departed from any semblance of constructive policymaking. This is what happens when a bureaucracy tries to match a 30-year-old law with a 21st century workforce. Americans can only wonder what new infringements on their liberty will be rolled out of the executive branch under the guise of "security" and "protection" during the last year of this Administration.

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