Chapter I

Telecommuting and the Legal Aspects

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INTRODUCTION

This chapter discusses teleworking/telecommuting from a legal perspective, as applied to the management of teleworkers. The main issues covered are the definition of teleworking, employment relationships and employment contracts for telecommuting, health and safety implications of teleworking, and other legal-related considerations to be taken. Lastly, implications are discussed for both the management of organizations and the legal establishment.

This chapter examines teleworking from a legal point of view. Although it was written from a European (in particular, British) perspective, we have tried to use material with relevance extending beyond the boundaries of one specific country, and the arguments are intended and expected to apply to a much wider audience and circumstances.

THE EMERGING IMPORTANCE OF TELEWORKING

Already in the 1950s the literature on technological change suggested that telecommunications, combined with computing technology, could enable work to be relocated away from the traditional office (Jones, 1957-58). Widespread interest in teleworking started in the 1970s, when the term “teleworking” first came into usage to indicate remote working from the...
office (Nilles, Carlson, Gray & Hanneman, 1976). Today, interest in teleworking is still growing among employees, employers, policy-makers (e.g. transportation planners), communities, the telecommunications industry and many others (Handy and Mokhtarian, 1996). The effective use of teleworking serves as a base for the ‘virtual organization’ (Davidow & Malone, 1992; Chesbrough & Teece, 1996; Peiperl & Baruch, 1997). As happens whenever a novel type of work arrangement is introduced, teleworking challenges the legal system with new issues and questions. More people and organizations are facing situations and problems that have no precedents from which to learn.

The aim of this chapter is to provide guidelines and advice to employers and employees, particularly in relation to two main constructs: employment contracts, and health and safety aspects of teleworking.

WHAT IS TELEWORKING? PROBLEMS IN DEFINITION AND MEASUREMENT

Although teleworking has been discussed for many years, a universal definition still is not in place (IRS, 1996; Moon & Stanworth, 1997). There is not even an agreed term: “Teleworking,” “telecommuting,” “working-at-home,” (or “home-working”), “working-at-a-distance,” “remote work,” and recently “virtual work” are among the terms that have been used to cover different working policies and practices. A variety of definitions for teleworking exist, causing problems of ambiguity, which increase the difficulties for the legal system to deal with the phenomenon. Lack of agreed definition prevents a coherent approach in a way that, for example, precedents based on one type of teleworking may not be relevant for a different type of teleworking. Another part of the problem refers to the title used, but there is agreement on the issue of the technology involved. Teleworking uses electronic media as its main ‘tool’ (Mitchell, 1995; Negroponte, 1995).

Teleworking is usually defined, first, in terms of location and, second, in terms of technology in use. In a pioneering work in this area, Shamir and Salomon (1985) defined teleworking as “working at home.” However, teleworking is not limited to a single location, and certain types of work (e.g. the ‘Rug-industry’ – home-based sweatshops) are not perceived as teleworking. Grant (1985) described teleworking as “a kind of remote working, or doing normal work activities while away from one’s normal workplace,” which covers a wider range but still falls short of stating what constitute “one’s
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