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## **WLF DEMANDS THAT OSHA FORMALIZE AND EXTEND ITS HOME OFFICE EXEMPTION**

*(In Re OSHA Home Office Instruction)*

The Washington Legal Foundation (WLF) this week filed comments urging the Occupational Safety and Health Administration (OSHA) to extend and formalize its new standard, which exempts home offices from inspection and businesses from liability for injuries occurring in home offices.

OSHA's decision to adopt a standard that exempts home offices from inspection and businesses from liability for home office-related injuries has a tortured history. On August 21, 1997, CSC Credit Services wrote OSHA requesting guidance. CSC explained in light of its decision to place more sales executives in home offices, CSC needed OSHA to provide guidance about a company's legal obligations to ensure the safety of home offices. Two years later OSHA replied: "The OSH Act applies to work performed by an employee in any workplace within the United States, including a workplace located in the employee's home. All employers, including those which have entered into 'work at home' agreements with employees, are responsible for complying with the OSH Act and with safety and health standards."

Soon afterward this letter was leaked to the news media, and OSHA attracted widespread public outrage over the prospect of OSHA inspectors making surprise inspections in private homes. Consequently, OSHA withdrew its interpretive letter on January 6, 2000. Less than three weeks later, on January 25, 2000, Charles N. Jeffress, Assistant Secretary for Occupational Safety and Health, appeared in a hearing held by the U.S. Senate Subcommittee on Employment, Safety, and Training. There Mr. Jeffress testified that OSHA's interpretive letter to CSC had "led to some confusion about the issue of safety and health issues relating to work performed at home." On that basis, Mr. Jeffress backpedaled from the interpretive letter, stating that OSHA would not inspect home offices nor would businesses be held liable for injuries and illnesses connected with home offices.

On February 25, 2000, OSHA released Instruction CPL 2-0.125, ostensibly designed to provide "guidance to OSHA's compliance personnel about inspection policies and procedures concerning worksites in an employee's home." Based on the

distinction between home offices and other home worksites, OSHA carved out a three-part exemption for home offices. First, "OSHA will not conduct inspections of employees' home offices." Second, "OSHA will not hold employers liable for employees' home offices, and does not expect employers to inspect the home offices of their employees." Third, "[i]f OSHA receives a complaint about a home office, . . . OSHA may informally let employers know of complaints about home office conditions, but will not follow-up with the employer or employee." OSHA continued to hold employers responsible for reporting requirements, however. "Employers who are required . . . to keep records of work-related injuries and illnesses, will continue to be responsible for keeping such records, regardless of whether the injuries occur in the factory, in a home office, or elsewhere, as long as they are work-related, and meet the recordability criteria of 29 CFR Part 1904."

In its comments filed with OSHA, WLF argued that OSHA's home office exemption ought to embrace reporting requirements. WLF pointed out that the same reasons that justify OSHA's decision to forgo inspections and employee liability also counsel in favor of exempting businesses from reporting injuries and illnesses occurring in home offices. In addition, WLF urged OSHA to submit a modified work office standard for notice and comment. Not only would doing so strengthen and clarify that standard, it would also ensure that OSHA fully complied with its duty under the Administrative Procedure Act, which generally requires federal agencies to submit new regulations for public notice and comment.

"OSHA should do all it can to encourage telecommuting and similar work arrangements by extending its home office exemption to include reporting requirements," said WLF's Senior Counsel for Litigation Affairs Shawn Gunnarson. "We urge OSHA to submit an amended home office exemption for public notice and comment, so that businesses and employees alike will have the legal guidance they deserve."

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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For further information, contact WLF Senior Counsel for Litigation Affairs, R. Shawn Gunnarson, at (202) 588-0302.