



Telecommuting and Working at Home

By: John W. Roland

Working at home is a strong trend in employment. Working Mother magazine reports that 62% of the top 50 law firms allow full-time telecommuting. Historically, companies required that employees show up at the office daily in order to interact with other employees and utilize machinery and technology available at the office. Changes in technology and ways of doing business have allowed many employees to function effectively without physically reporting to the office. While this trend may allow for efficiencies and convenience to the employee, it presents some issues which need to be reviewed by the employer.

In Pennsylvania, there are laws that govern working at home. These laws arose from the abuse of employees, particularly in the textile industry, and were aimed at limiting sweatshops or low wages by paying on piecework production. While these laws are not generally applicable to white collar situations, they should be consulted if the worker is involved in production.

Most employers consider attendance a fundamental issue for employees. Therefore, most companies have attendance policies that limit absences and penalize employees for being late or leaving early. Where employees work at home, the employer must give consideration to the application of the attendance policies to these employees.

Some attendance policies are “no fault” policies that do not regard the reason for the absence. However, “no fault” policies cannot penalize employees for absences authorized by the Family and Medical Leave Act (“FMLA”), and possibly where leave is a reasonable accommodation under the Americans with Disabilities Act (“ADA”).



The FMLA permits absences for an employee’s serious health condition or to care for a relative in a relationship permitted under the ADA to care for a relative who has a serious health condition. One of the factors in determining whether an employee has a serious health condition is whether the employee has sustained three consecutive days of absence. Therefore, attendance records are extremely important in determining whether an employee’s absence qualifies as FMLA leave, even when the employee is working from home. Employers should keep attendance records of employees who are not required to be physically present in the office.

Attendance records are also important for purposes of calculating authorization for FMLA leave. For an employee to be eligible for FMLA leave, the employee must have worked 1,250 hours and have been employed at least one year. If accurate records are not maintained for employees who are permitted to work off the premises, the employer may not be able to determine whether the employee qualifies for leave. Recently, an employer found this out the hard way. In Erdman v. Nationwide Insurance Company, No. 07-3796 (3rd Circuit September 23, 2009), the court held that a jury must rule on whether a telecommuter worked enough hours to be eligible for FMLA leave. The court stated that the employer may have had constructive knowledge of additional hours worked.

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“...employers still have the obligation to keep employment records for non-exempt employees.”



Spotlight On: Shareholder John W. Roland

Meet John Roland, the managing shareholder at Roland & Schlegel! John has been practicing law for 33 years, and has worked at Roland & Schlegel since its inception in 1985. John concentrates his practice in employment and labor law, real estate law and land development, health care law, and general business law.



John received his undergraduate degree from Princeton University in 1972. Following his graduation, he served in the United States Army as an officer in the Signal Corp. John received his law degree from Villanova Law School in 1976 and his L.L.M. in Labor Law from Temple University in 1980. John has received Martindale-Hubbell's highest rating, AV.

John has served on the Lawyers' Advisory Committee for the United States District Court for the Eastern District of Pennsylvania. He is a member of Chapter 179, the Berks County affiliate of the Society for Human Resource Management.

John is very active in the community. He currently serves on the Board of The Reading Hospital and Medical Center, as Secretary of the Board of The Highlands at Wyomissing, and on the Board of the Evangelical School of Theology. He is a past Chairman of the Board of Directors for the Berks County Chamber of Commerce, a former President of the Reading-Berks Conference of Churches, and a former member of the Capital Campaign Review Board. He has also served as a member of the Advisory Committee, the Berks Center for Mental Health, the Board of Directors of the Foreign Trade Zone of Southeast Pennsylvania, and the Greater Berks Development Corporation.

In his spare time, John enjoys reading, jogging and traveling and is an avid sports fan. John is married to Jan, a 5th grade school teacher, and they have three grown children.

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For purposes of the Americans with Disabilities Act, if employees are permitted to work off site, the employer is virtually admitting that attendance is not an essential function of that employee's job. If an employee then asks to work at home as a reasonable accommodation for disability, the employer will not be in a position to argue that the employee must be in the office because attendance is an essential function of the job.

These and other potential legal pitfalls require employers to think carefully and plan in advance how situations will be handled when employees work at home. While often times this situation is mutually convenient, employers must pay attention to the laws that may apply to these new employment arrangements. Employers should consider and adopt in advance policies that deal with telecommuting and the rise of new technologies in the workplace. Please contact John W. Roland jroland@rolandschlegel.com or S. Whitney Rahman swrahman@rolandschlegel.com if you need any assistance developing telecommuting policies that are right for your workplace.



We are on the Web! You can find information contained in this Newsletter, as well as other articles, updates and information about our firm, by visiting us on the Web at www.rolandschlegel.com



Roland & Schlegel News

Roland & Schlegel attorneys are busy in the community, as well as with their law practices. We want to share with you some of the things we are doing.



Appointments/Articles/Speeches

August 14, 2009. Shareholders Edwin L. Stock and Whitney Rahman presented a 1/2 day seminar in Reading. Mr. Stock spoke on landlord/tenant law and Ms. Rahman spoke on anti-discrimination laws in housing and HUD investigations.

September 14, 2009. Shareholder Whitney Rahman was a speaker at the Society for Human Resource Management Pennsylvania State Conference on "Handling PHRC and EEOC Claims in Tough Economic Times."

July 2009. Shareholder John E. Muir was elected chairman of the Western Berks Fire Department Board of Trustees. The Western Berks Fire Department is comprised of four legacy fire companies from four separate municipalities. The Board of Trustees includes elected and citizen representatives from Lower Heidelberg Township, South Heidelberg Township, the Borough of Sinking Spring and the Borough of Wernersville.

Community Activities

August 6, 2009. Attorneys Dante Curtrona and Greg Shantz participated in the Berks County Bar Association's softball game which teamed "senior" Bar Association members against the "young lawyer" members. A rematch is in the works for next summer.



September 26, 2009. Attorney Debbie Sottosanti participated in the Walk to Defeat ALS sponsored by the ALS Association, Greater Philadelphia Chapter. The walk was held in Ocean City, New Jersey.



Looking Ahead

October 13, 2009. Managing Shareholder John Roland will be speaking at the Berks County Bar Association's Mandatory Continuing Legal Education Program on the topic of "Everything You Wanted to Know About the Law of Injunctive Relief...and More." The seminar will provide an overview of the law governing requests for injunctive relief; what is needed to prepare and file a request for injunctive relief; the different types of injunctive requests available under state and federal law; and presentation before the Court. The program is being held at the Berks County Bar Association from 11:45 a.m. to 1:15 p.m.

October 22, 2009. Shareholder Robert Kreitz will be presenting a seminar to the Alzheimer's Association on Elder Law at Chestnut Knoll in Boyertown from 6:30 p.m. to 8:30 p.m.

October 28, 2009. Shareholder Whitney Rahman will be presenting a seminar on "Developments in the ADA and FMLA" at the Berks County Bar Association beginning at 12 noon.

November 6, 2009. Shareholder Robert Kreitz will be speaking at Alvernia College, Bernadine Hall, on Elder Law. The program runs from 2:30 p.m. to 3:45 p.m.

January 12, 2010. Shareholder Whitney Rahman will present a seminar to Chapter 179, the Berks County affiliate of the Society for Human Resource Management on "Handling Claims Before the PHRC and EEOC."



IRS Form 990 Revisions

By: Dante C. Cutrona

Issues surrounding corporate governance and “mismanagement” have become hot topics in light of the recent recession. As regulators have targeted alleged corporate greed and neglect as contributing factors to the economic downturn, businesses have been forced to examine and revisit internal policies and procedures to ensure that corporate officers and directors uphold their fiduciary duties and work to advance the best interests of the corporation. These actions have led to reorganization of corporate boards and the removal of high-ranking corporate officers.

However, away from the headlines of business dailies and the bright lights of Wall Street, similar questions of corporate governance and internal management are being asked by an unlikely sector of corporate entities: public charities and other tax-exempt organizations.

The impetus for this review comes not just from a greater public interest, but from greater scrutiny provided by the revised Internal Revenue Service (IRS) Form 990. Form 990 is the annual tax return that all qualifying federally tax-exempt organizations, including 501(c)(3) private foundations, must file with the IRS. The revisions for the 2008 tax year were the first major changes to the document since 1979.

The revised Form 990 enhances the reporting requirements for public charities and, in particular, includes a new section on the governance of the filing organization (Form 990, Part VI). In the new Part VI, the IRS requests specific information as to whether any officers, directors, trustees or key employees share family or other business relationships; whether the organization has written conflict of interest, whistleblower and/or document retention policies and whether or not the organization contributed assets to or participated in joint ventures with taxable entities.

While the primary goal of the IRS in adding many of these questions was to ensure that the voting members of the organization’s governing body are “independent,” the primary effect of these revisions will be to increase public awareness and scrutiny of the internal workings of charitable organizations. For example, the IRS cannot impose fiscal penalties in the event that a filing organization fails to have a “document retention” policy; however, a donor or constituent can.

Every Form 990 filed with the IRS is a public document. Donors and the general public can access the full content of these filings through websites, such as Guidestar.org, at no charge. With the opportunity for greater disclosure comes an opportunity for greater scrutiny and, in the event that an organization discloses that it lacks a conflict of interest policy for officers or that it lacks a reasonable basis for employee compensation, then the organization will run the risk that a potential or current donor may not approve of the organization and may therefore reevaluate his or her financial commitment.

However, on the flip side, the Form 990 presents charitable organizations with a great public relations opportunity. The required disclosures provide the entity with a public forum to describe in detail all the steps and procedures that it has taken to ensure that its officers and employees uphold their fiduciary duty to the donors and constituents who rely on them to realize and advance the charitable ideals and goals that both they and the organization uphold.

In light of the recent economic crisis, compliance with the changes implemented in the Form 990 has taken on an even greater urgency. Roland & Schlegel has a breadth of experience dealing with the governance and legal structure of non-profit corporations. If you have any questions regarding the applicability of, compliance with, or understanding of the revised IRS Form 990, we would encourage you to contact our office.

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