

City Attorney's Response to Policy and Services' Questions regarding the Potential for Waiver of Workers' Compensation Coverage in the Context of Remote Work

At Policy and Services, the Committee noted that both the SHRM remote work model policy and the City of Palo Alto's remote work policy state that employees are covered by workers' compensation laws when performing work duties at their designated alternate locations during their regular work hours. Committee members expressed concern that alternative work environments are not entirely within the employer's control, with the potential that these environments could carry increased risk of worker injury without the employer's knowledge and ability to take corrective action. Committee members inquired whether it is possible for the City to require employees to waive workers' compensation coverage under these circumstances.

The answer is no. California's Workers' Compensation Act is meant to apply to all workplace injuries, irrespective of the fault of any party.¹ A waiver is a type of contract, and State law provides that no contract, rule, or regulation can exempt an employer from liability for workers' compensation.²

Even if waivers were an option, which they are not, it would likely not be advisable to require waivers for remote work. This is because, in general, workers' compensation liability is often preferable to the alternative, which is civil liability. While the Workers' Compensation Act expands employers' liability for workplace injuries, it also strictly limits the amount recoverable³ and the types of damages available⁴, as compared to the civil litigation system where disputes over employee injuries would otherwise be adjudicated. When workers' compensation applies, an employee may generally only seek damages within the framework of workers' compensation.⁵ Broad application of workers' compensation lowers an employer's exposure to high dollar damage awards, while increasing the employees' access to expeditious and reasonable relief.

As the audit recommends, an employer's best tools to address concerns around the safety of alternative workspaces is to establish policies, educate remote workers, and conduct inspections as needed.

¹ *Farmers Bros. Coffee v. Workers' Comp. Appeals Bd.* (App. 2 Dist. 2005) 35 Cal.Rptr.3d 23, 27.

² Cal. Labor Code section 5000.

³ See e.g., Cal. Labor Code section 4653 ("If the injury causes temporary total disability, the disability payment is two-thirds of the average weekly earnings during the period of such disability").

⁴ See *West v. Industrial Acc. Com.* (1947) 79 C.A.2d 711, 718; 82 Am.Jur.2d (2013 ed.), *Workers' Compensation* § 356 et seq.

⁵ See, e.g., *Melendrez v. Ameron Int. Corp.* (2015) 240 C.A.4th 632, 193 C.R.3d 23 (wrongful death action was barred by workers' compensation exclusive remedy rule, when employee exposed to employer's asbestos at home as well as at the workplace); *Walker v. San Francisco* (1950) 97 C.A.2d 901, 904, 219 P.2d 487 (workers' compensation was exclusive remedy for family of fireman killed in collision with municipal railway car while responding to fire).