



# E&O Exposures: Increased When Working from Home?



Focus is key! From an errors and omissions (E&O) perspective, agents cannot lose focus during this disrupted work setup. Working from home does not change the fact that all procedures and processes that apply in the home office also apply at the “home” office.

From now until we are released from our lockdown and able to return to normalcy, we must remember that every action or inaction has consequences – good or bad. There are a few simple rules or guidelines agencies and agents should follow during this unprecedented moment in time to avoid or lessen the effects of an errors and omissions claim.

## **Rule #1: Document! Document! Document!**

Franklin D. Roosevelt may be the most famous cheerleader of all time (other than Toni Basil). It’s true. As a student at Harvard he was a cheerleader for home football games.

Some years later, he led the country through World War II, using his fireside chats to calm America’s tensions and fears. He was still a cheerleader. Given the

tensions and even insecurity some feel as we live through our current pandemic panic, we need a cheerleader and simply a leader to keep us calm and to keep us focused.

Roosevelt was a forward thinker; he actually wrote a cheer to help agents remember Rule #1 for working from home.

*Are you Ready? OK!  
Document day;  
Document night;  
Document left;  
Document right;  
Document, document, document!  
Yea, document!*

OK, so maybe this isn’t a Roosevelt original, in fact it’s a pure fabrication – but the point is no less relevant. Even when working in a non-traditional space, remember to document every conversation, text, email, yell, whatever. When it involves a client, document it.

## **Rule #2: Keep the Schedule You Had at the Office**

No, this isn’t limited to “open” and “close” times; this refers to regularly scheduled staff and team

meetings. Not being in the same room is no excuse for ending activities necessary for the successful operation of the agency.

Basically, if it was important for the agency and the teams leading up to the disbursement, it still is.

“We have our normal commercial lines staff meeting on Mondays at 10. We go over new and renewal business, lost accounts, cancellations, claims, accounts with issues, industry news and current events and any issues that popped up that need to be addressed,” reports one agent. “We also have individual team meetings for personal lines and employee benefits.”

Another agent tells us, “Zoom is our new contact method for client meetings and for meetings with staff. We have ‘Town Hall’ meetings every Friday afternoon with all employees; producer meetings every Monday morning; the commercial lines, personal lines and employee benefits teams have staff meetings once per week; and the Leadership team has probably had Zoom meetings 10 times over the past three weeks.”

Keeping everyone connected and informed is paramount when everyone is in the office. But when there is no office “atmosphere,” keeping everyone connected and informed is even more important.

A cornerstone of these meetings should be policies and procedures. Pick one errors and omissions topic and remind every person on the call of the office procedure relevant to that topic. This conversation does not have to take more than three or four minutes. One topic, one reminder - this keeps the staff on course.

### **Rule #3: Keep “Them” Close and Informed**

Your clients and your carriers are living in this same altered reality in which you are living. Any sense of normalcy is welcomed.

Stay in contact with your clients and keep them informed. As their agent, your insureds will likely turn to you more now than in the past. News reports, press releases and the problem of “someone told me” will certainly spread a lot of misinformation among your customer base.

To manage and hopefully end the spread of misinformation, you need to know the correct information. Know policy language, know the carrier’s processes and plans, know the insurance regulations, and know when to say “No.” From an E&O perspective:

- ▶ Never answer a coverage question without the insured’s policy in front of you. Even the most “common” policy has “uncommon” endorsement you may forget were attached.
- ▶ Not every carrier is the same; in fact, no carrier is like any other carrier. Know the underwriting guidelines and what can and can’t be done for the client. Don’t



promise something until after you know it can be delivered.

- ▶ Don’t practice outside your licensure. As a licensed agent, your job is to procure and manage the insurance program with and for the client. You are not licensed or qualified to offer an opinion on contract wording or other legal matters.

Remember also, you are not licensed to help complete federal forms unrelated to insurance. Direct the insured to the proper professional; don’t create an E&O problem by being too helpful.

Your underwriters need to hear from you as well. In fact, they may want to hear more from you now than in the past because they may be lonely. Kind of a weird thought, but many underwriters are used to working in an office with other humans; being alone is hard on them. Even field underwriters who normally work at home are accustomed to meeting with and talking with agents face to face on a regular basis.

Keep the underwriters informed when something new is learned

about a client. Talk with them about unusual situations or unusual requests made by the insured. You and your underwriter may be able to find creative solutions that best serve your client and the carrier. You also want to know what the carriers are thinking and planning in regard to renewals. Are there new endorsements coming that may limit coverage? Find out during these “keeping in touch” calls, it may help avoid an E&O situation.

Many insureds are concerned about money as a result of state-mandated lockdowns. Commercial lines clients may essentially be out of business, personal lines clients may be out of a job; the result is the same for both clients - fear. The fear of having to choose among feeding their family, paying the bills or paying insurance premiums. When this question arises, this is a conversation that involves both your insured and your insurance carrier. Everyone must be informed.

When the specter of policy cancellation appears, address it directly and appropriately.

- ▶ Know if your state has enacted any temporary measures regarding cancellation for non-payment. Current information is available here.
- ▶ If a regulation is in place, advise your client of the regulation and give them a copy of the wording.
- ▶ Advise your insured to never cancel any policy and document the conversation.
- ▶ If the insured insists on cancelling any policy, make use of a cancellation notification letter. A copy can be found on this page.

Contact between you, your clients and your underwriter is extremely important, especially during this period of separation. But solid E&O avoidance guidelines must still be followed.

## Rule #4: Recognize Potential Weaknesses

“One of my E&O concerns is our new producers and what they are telling prospects and customers. Are they writing the correct coverages on new and renewal accounts? We do have mentors for each of the new producers and we hope nothing is falling through the cracks,” reports one agent.

This agent’s concern is probably the same as many other agents, what are the new, less experienced employees doing? Are coverages being written correctly? Are questions being answered correctly? Do they know and understand the agency procedures well enough to properly protect the client and us?

These are valid concerns. One drawback of working from home is the loss of “quick confirmation.” Generally, employees have the ability to quickly check their understanding of the policy language, an underwriting guideline or anything else with someone in the office; all they have to do is walk to someone’s desk and ask for help.

Well, unless there is an open-line Bat Phone there is no one to ask and get an answer from quickly. Emails, instant messages and/or phone calls have to be made to get the answer. Some agents feel like the insured is unwilling to wait for an answer and will just “wing it” and hope they are correct, or that if they are wrong, nothing will happen to highlight the error.

Make sure every employee understands this is NOT OK. It is never acceptable to “wing it,” and



the current situation does NOT change that fact.

Train every employee, not just the new employees, that it is acceptable for them to explain to the client that they don’t know the answer or that they want to confirm the answer. Rarely is the insured unwilling to wait for a correct answer. “Mr. Insured, that is a great question. Let me confirm the answer and call you right back. I would rather give you the correct answer the first time.”

Then, do what you promised. Get the answer as quickly as possible and call the insured back as soon as possible. The insured will be satisfied and you will be able to sleep well. (Oh yeah, don’t forget to document the conversation and follow up in writing with the insured.)

## Last Rule: Don’t Forget Your Upbringing

As my kids got old enough to go out with friends and on their own, I would always say, “Remember who you are; whose you are; and who you represent.” My goal was to impress upon them that their actions affected more than just them.

Every employee’s actions affect the agency – positively or negatively. It is necessary to remind your employees, often, that what they do matters; not only does it matter to them, it matters to everyone in the office.

Train them, retrain them, and train them some more on E&O avoidance. Make it part of the fabric of the agency. Make it important. When it is important to the leadership, it is important to everyone.

Now that they are “out on their own,” in some respects, training will show. That statement should bring you comfort, not scare you. If it scares you, let’s talk.

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