

## Flexible working – working from the Office

**2020 hasn't exactly been the year we all expected. COVID-19 has brought significant challenges both financially and emotionally, but if there is one positive that we can take away it is the fact that it was surprisingly easy for a large number of employees to adapt and work from their home environment.**

Working from home is only going to become more common as we adapt and learn from COVID-19. There are risks to businesses that employers will need to identify and manage. This article looks briefly at some of those risks, the health and safety implications as well as practical considerations.

In order to understand the risks it is necessary to consider the types of flexible working arrangements. These can be informal and infrequent where an employee might work from home to get a report completed. Or, it could be a permanent change to the working arrangement. Equally, it could be a formal request for flexible working under Part 6AA of the Employment Relations Act. An employee might want to work three or four days in the office and one or two days at home.

Under Part 6AA employees have a right to apply and there is a corresponding duty and obligation on an employer to consider in good faith. The statutory grounds for declining a request are set out in the Act and include:

- Detrimental impact on quality;
- Detrimental impact on performance;
- A burden of additional costs;

- Detrimental effect on ability to meet customer demand.

There is no automatic right for an employee to challenge any declination and equally no obligation on an employer to agree, but because COVID-19 has taught us that we can work from home, it is going to be difficult for employers to decline requests if they are truly considering them in good faith.

Assuming an employer has granted an employee the right to work from home, then we need to consider some of the health and safety obligations. A home office will clearly fall within the definition of a workplace under the Health & Safety At Work Act 2015 (the Act).

Employees have a duty to look after their own health and safety if they are working at home and equally an employer is responsible for developing policies, consulting with employees and working with them to manage health and safety risks. As with all health and safety it is a question of eliminating risks and if that is not possible then minimizing the risks. A proportionate response must be at the forefront of the employer's mind.

So what is a proportionate? Do you need to bring in a work place assessor to carry out an inspection of the employee's home to ensure health and safety obligations are met? Or, is it perfectly acceptable to work with the employee to identify and address any risks?

If an employer and employee agree that work from home arrangements, this should not be done without a robust policy that identifies and addresses the legal and practical considerations. Here are some of the issues that require consideration:

- The adequacy of the work station in the home office;
- Potential hazards in the home environment – what are they, how are the parties going to manage them and how are they going to report them?

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## Flexible working – working from the Hoffice (Continued)

- Managing workloads, stress and fatigue because there will be less oversight if an employee is regularly working from home;
- How is an employer going to ensure that their employee takes regular breaks at home so that they don't get fatigued? Or, how are they going to ensure that their employee is not taking too many breaks and not concentrating on their work;
- There will be privacy considerations. Some employees may be working on sensitive and confidential information that needs to be kept well away from any visitors or family that might also be visiting the home;
- How can the employee cope with emergencies such as fires, medical situations and earthquakes for example? Is there more than one exit from the employee's home and will there be anyone else present that could potentially assist in the event of a medical emergency?
- The physical location of the home office will also be an important factor. Some of us found ourselves working in bedrooms and hallways during COVID-19 lockdown, but going forward if the employee is allowed to work at home, that may not be a conducive place to carry out productive work and also it may present other health and safety risks if there is a steady stream of people coming and going.
- How is an employer going to monitor performance and any potential disciplinary issues? Should an employer's manager be contacting and calling the employer at the start and end of each day to "check in"?
- Stress will be a potentially serious consideration. If employees are away from the work environment and their colleagues, this may cause a degree of anxiety, which need to be minimised.

Leaving aside the health and safety considerations, an employer will also need to consider who is responsible for setting up and paying for any work station in the home environment.

Does an employer's health and safety responsibilities extend to providing the same ergonomic chair that the employee may have in their office work environment? Who is responsible for paying for and replacing frayed cords and cables? What about heating and air conditioning. In most modern office environments we are lucky to have temperature controlled and ambient conditions that are conducive to safe and healthy working. In the home environment, particularly over any winter period, it is possible that the employee's house or apartment will be significantly colder, which could lead to other health issues. Is an employer required to make a contribution towards the employee's heating costs? Can an employer require an employee if they are working from home to ensure that their house and their work environment is adequately heated?

There are potentially always going to be distractions. Should an employee be allowed to work at home if they are also having to balance children and family life at the same time as they are trying to carry out their work?

All of these factors ought to be considered when an employer is contemplating any decision to allow an employee the right to work remotely.

Ultimately, it's a matter of keeping things in proportion, which can be achieved through good policies and robust good faith discussions with employees. The key will be to identify the potential risks in the home office work environment and then do something about them to ensure your health and safety obligations are met

### Want to know more?

If you have any questions about employment law matters to do with flexible working arrangements, please contact our specialist [Employment](#) Team.