



A&L Goodbody

Guide to

REMOTE WORKING

As a result of the COVID-19 pandemic, large numbers of office based employees in Ireland are working from home – a situation which looks set to continue into the foreseeable future.

In July 2020, the Irish government conducted a public consultation on Remote Working Guidance. Strong themes emerging from the submissions received were:

- health and safety law should reflect modern work practices
- concern regarding the impact of remote working on employees' mental health
- a need for guidance on how to record employees' hours of work and ensure breaks are being taken remotely

The next steps are that the views shared will be used to form enhanced guidance on remote working and also to inform a National Strategy on Remote Work due to be published by the end of 2020. The Department of Enterprise, Trade and Employment recently updated its current guidance to include a [checklist](#) to provide employers with key areas for consideration in navigating the adoption of remote working arrangements. Legislative proposals will touch upon the right to request remote working or homeworking and the right to disconnect. The programme for government already contains a commitment to bring forward proposals on a right to disconnect, with consideration being given to an oversight role for the Workplace Relations Commission in this regard.

The themes which emerged reflect the issues employers have been grappling with since remote working emerged on a large scale earlier this year. We set out below a summary of the legal and practical considerations for employers with regard to remote working.

COVID-19

The government's "Resilience and Recovery 2020-2021 – Plan for Living with COVID-19" (the Plan) outlines five distinct alert levels for the country. It provides as follows in relation to working from home:

Level	Restrictions
Level 1	Work from home if possible. Attendance at work for specific business requirements and on a staggered attendance basis.
Level 2	Work from home if possible. Attendance at work for essential on-site meetings, inductions and training.
Level 3	Work from home unless absolutely necessary to attend in person.
Level 4	Only essential and other designated workers should go to work.
Level 5	Work from home unless essential for work which is an essential health, social care or other essential service and cannot be done from home.

Significantly, no level of the Plan envisages all employees returning to the office on a full time basis. This means that during the lifecycle of the Plan, which is currently anticipated to run until May 2021, staggered attendance is the most that employers are likely to be in a position to implement.



Health and Safety

Employers have the same responsibility and duty of care for the health and safety of employees who work from home as for any other employees.

In October 2020, the Health & Safety Authority (HSA) published [guidance](#) outlining responsibilities for both employers and employees working from home.

It outlines five steps for managing homeworking:

STEP 1: Develop a homeworking policy

STEP 2: Identify and consult with employees who will work from home

STEP 3: Identify what equipment and resources are required

STEP 4: Use the [risk assessment checklist](#) to assess the home work environment

STEP 5: Monitor, review, and communicate with the employees regularly

The HSA's guidance provides details on workstation requirements, outlining that employees should identify a space with suitable light, heat and ventilation, make sure it is tidy and free from slip, trip and fall hazards. Employers need to identify what equipment is required. The guidance highlights the risk of upper limb disorders and the importance of assessing the workstation in this regard.

Each employee's homeworking environment will be different and an individual risk assessment should be carried out. The HSA outlines a two-step process:

STEP 1: The checklist is sent to employees to identify equipment and resources required

STEP 2: The assessment is carried out in consultation with the employee and this may be done online

The guidance also addresses the isolation which homeworking can cause and work related stress. It suggests steps employees can take to reduce such stress, such as structuring their day and communicating with their manager. It emphasises the use of video-conferencing to allow for face-to-face discussion and taking time to disengage from work. Guidance for employers includes arranging updates and taking measures such as scheduling time for informal conversation at the beginning and end of video conference meetings; providing employees with information on when it is important for them to contact their manager; and encouraging employees to maintain contact with co-workers, by having virtual coffee breaks, for example.

Data protection and Confidentiality

There are increased data protection and confidentiality concerns for employers when employees work from home.

The Data Protection Commission (DPC) has issued some helpful [guidance](#) for employers to assist them to protect their data when employees are working remotely.

Employers should ensure that any devices that employees are using to work remotely have adequate security software installed. Employees should also be provided with information and training to ensure confidential company information is kept safe and secure when working remotely.

The Guidance emphasises the importance of remembering that Data Protection applies to not only electronically stored data but also to personal data in manual form such as paper records and these records must also be kept secure and confidential and disposed of securely when no longer needed.

Remote working entails the widespread use of video-conferencing and the Data Protection Commission has published [tips](#) for organisations and individuals on how to use those platforms in a way that is safe and secure, and ensures an adequate standard of data protection.

Effective HR management

In order to ensure business continuity, employers must take steps to put a good communications system in place with employees so that important messages are received by employees and workflow can be reviewed as normal.

Performance improvement plans, investigations, disciplinary and grievance procedures can still be carried out where employees are working remotely, and in many cases should be carried out without delay, albeit in an adapted format where necessary.

Processes can be adapted and conducted via email/phone/video conference as applicable. For example, a disciplinary meeting and any subsequent appeal can usually be carried out by phone or video call, along with an exchange of emails to ensure the employee has had every opportunity to participate and submit all relevant information to the decision maker. The employee's companion and a note taker can be present on the call. Employers should review their policy documents to see if any amendments should be incorporated to provide for virtual hearings and necessary procedural differences.

Particularly during any lockdown period, employers should be mindful that employees may be experiencing increased levels of stress, juggling family responsibilities and other personal commitments. These factors need to be considered so that any necessary adjustments can be made to any process including extending timelines, ensuring regular support from management, HR and perhaps an Employee Assistance Programme or occupational health.

The key principle of reasonableness, which underpins all dealings an employer has with its employees remains and will be the standard employers are benchmarked against in any employee complaint about the fairness of a process.

Working time

The obligation on employers under the Organisation of Working Time Act to ensure that employees are availing of statutory rest periods and not exceeding maximum weekly working hours also applies in respect of those working remotely. There is no exemption from the onerous obligations in this regard due to COVID-19.

Employees enjoy certain statutory rest break entitlements, including the right to a rest break of 15 minutes after 4.5 hours' work, 30 minutes after 6 hours' work (which may include the 15 minutes referred to), and 11 consecutive hours in a 24 hour period. The average maximum working week for an employee is also 48 hours.

The Organisation of Working Time Act requires employers to keep a record of daily and weekly hours worked and states that employers have a legal responsibility to ensure their employees take breaks within the day, as well as minimum daily and weekly rest. Employers should adopt systems and methods of working that allow them to monitor working hours for remote workers. A failure to maintain adequate records may make it extremely difficult for an employer to defend any claim under the Organisation of Working Time Act. It may also result in corrective action being taken by the Workplace Relations Commission.

This area is increasingly important as numerous surveys show that employees working from home are working longer hours than normal, may be more inclined to log on outside their normal office hours, can find it hard to disconnect from work and more broadly are finding it increasingly difficult to separate their work and personal lives. It is important that employers reinforce the importance of taking rest breaks and switching off.

Working at home from abroad

The COVID-19 pandemic and the move to working from home en masse has resulted in many employees returning to their home country and working from home there, as opposed to in Ireland.

A variety of issues, such as tax, social security, immigration and employment law, arise for consideration when employees work remotely from another country.

Employers should be mindful of compliance with immigration obligations and will need to consider whether restrictions are in place. Such restrictions are typically inflexible, and subject to frequent changes. Employers should therefore ensure compliance and keep an eye on developing local requirements.

When employees work from home abroad, this could have serious tax and employment law implications. If an employee is resident in a country outside of Ireland and working remotely for an Irish employer, they may benefit from the protections of Irish employment laws as well as the mandatory employment laws in the country in which they are based. These issues are complex and specific legal and tax advice should be sought.

Employers should make it clear to employees that they must not work abroad without express permission and make sure to take tax advice, immigration advice, and employment law advice in Ireland and the home country prior to formally approving any working from home from abroad requests.

Remote working policy

Remote working on a prolonged basis is new to most employers and employees and it is important to establish the ground rules and ways of working at an early stage.

This will help employees to know what is expected of them and be of benefit to employers when it comes to maintaining standards of performance and holding employees accountable to those standards.

Certain HR policies such as annual leave, sick leave, dignity at work, grievance, and disciplinary policies may need to be updated to take account of the realities of homeworking.

A Remote Working Policy is outlined as a necessity in the HSA's recent guidance. It should reflect the considerations highlighted in this briefing, along with the organisation's own remote work strategy, which may include details of the approach to requests for remote working and the process to be followed. From a health and safety perspective, it should include information on the arrangements put in place to assess risks and the responsibilities of employees to report risk and work-related accidents to the employer. It should set out details of expectations regarding communication and when attendance at the office may be required.

Such policies will undoubtedly need to be amended and updated and employers should expressly provide for this in the policy. It is important that staff buy into any new policy and therefore prudent to consult them before the new policy is rolled out. Employers should also ensure training on the new policy is provided and regular and consistent communication of the employer and employee's responsibilities under the remote working policy.

CONCLUSION

Remote working is here to stay. The COVID-19 pandemic has accelerated its adoption by employers, with many employers still getting to grips with the seismic shift in duties and responsibilities of an employer when it comes to employing a remote workforce. However, with the National Strategy on Remote Working on the way, employers would be well advised to prepare now for the likely permanent changes that will arise if the government follows through on its stated intention to legislate for the right to remote work. Employers can take the first step now by ensuring compliance with the obligations summarised in this guide, design their own remote working strategy and then roll out a remote working policy that takes on board applicable legal requirements but is fit for purpose for their organisation.

For more information on remote working guidance and the development of bespoke remote working policies, please contact a member of our Employment and Health & Safety teams.



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