

# Top five takeaways from "Making Remote Work"

The Irish government recently published its strategy for national remote working, called "[Making Remote Work](#)" (the Strategy).

The Covid-19 pandemic has accelerated the drive towards more remote working and the objective of the Strategy is to ensure remote work is a permanent feature in the Irish workplace in a way that maximises economic, social and environmental benefits. It was developed to harness the opportunities remote work has to offer. We outline below the main considerations and key takeaways for employers arising from the Strategy.

## 1. Legislation on the right to request remote working

The Strategy outlines a commitment to introduce legislation which will provide a framework around which employees can request remote working. It will provide clarity to employers on best practice in dealing with such requests. The legislation will likely require an employer to balance its own interests with those of the employee in dealing with such requests and to provide objective business reasons if refusing a request. This concept is not new; similar provisions already exist in legislation, such as the Parental Leave Acts, where employers must consult with an employee and provide business related reasons if they are not granting the employee's application for the dates requested. It is also expected that the legislation will require employers to establish a review or appeal process for requests which are turned down.

The devil will be in the detail of the legislation, which is due to be enacted later in the year. In the meantime, employers should consider the suitability of remote work for their business model. While the spirit of the Strategy is to harness the opportunities that remote working has to offer, the Strategy acknowledges that not all roles are compatible with remote working arrangements; for example, roles in which employees undertake a large number of manual tasks or employees who need to be physically present onsite to do their work. Many employers may be unlikely to be in a position to facilitate

full-time remote working, but perhaps will be in a position to offer 'blended' working, involving both working remotely and at the office.

## 2. A code of practice on the right to disconnect

A 'right to disconnect' already exists in a number of EU jurisdictions, most notably in France where it was introduced in 2017, making it mandatory for companies with more than 50 employees to develop a charter defining employees' right to disconnect from workplace communications. It may eventually become a right at EU level, with a proposed resolution on the right to disconnect due to be voted on by the European Parliament this month.

The right to disconnect, according to the Strategy, is a worker's right to be able to disengage with work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours and holidays. The Strategy acknowledges that mixed views were received on this topic during the public consultation, particularly with regard to whether new specific legislation on the right to disconnect was required. Concerns were raised through submissions that over-regulation of remote working could undermine its flexibility, which is seen by many as one of its fundamental benefits. In response, the government has asked the Workplace Relations Commission to draw up a code of practice in this area. Failure to follow

a Code of Practice is not usually an offence, but adherence to the Code will be taken into account in employment disputes and adjudications. A public consultation on the new Code is currently underway and the deadline for submissions is this Friday, 22 January 2021<sup>1</sup>. The Code is expected to be introduced in the first quarter of this year.

### 3. Tax treatment review

Currently employees working from home may either (i) be paid €3.20 per day by their employer to cover their expenses; or (ii) claim for costs incurred in relation to electricity, heating and broadband apportioned on the basis of business and private use. In the context of Budget 2022, which is not likely to be announced until October, the Department of Finance will review tax arrangements for remote working for employers and employees and assess the merits of further enhancements.

### 4. Infrastructure

The Strategy outlines the government's commitment to making a significant investment in remote work hubs and infrastructure in underserved areas to underpin the development of a national hubs network. The Strategy states that remote working hubs offer the chance for employees to work closer to home but still within an office environment. This initiative is a work in progress and it remains to be seen how the use of hubs may facilitate the realities of remote working, depending on the nature of the work. If, and when, employers are considering the use of a hub, they would need to assess all associated risks, such as health and safety and business confidentiality, prior to facilitating this option for employees.

### 5. Equal opportunities

Remote work is viewed in the Strategy as having the potential to improve labour market participation among people with disabilities, older workers and people with caring responsibilities. The Strategy makes particular reference to remote working presenting an opportunity to address some of the barriers to the full

participation of women in the workforce. At the same time, the concerns of remote workers that their career could suffer as a result of reduced office availability are recognised in the Strategy. It will be important that employers monitor the diversity of their workforce engaged in remote working and make sure to avoid any indirect discrimination. Employers should ensure equal opportunities for career development and progression among remote and office-based employees.

### What should employers do now?

Although the actions outlined in the Strategy will take time to implement, employers should nonetheless have a remote working policy in place. For more information, read our guide to remote working [here](#). Employers should consider their approach to employee requests to work remotely and their review and consultation process in dealing with requests.

Employers should also consider their approach to a right to disconnect and how disconnecting could be implemented in their work environment in a way that ensures flexibility is not undermined. Approaches might include having a workplace policy on communications outside of working hours and implementing measures to facilitate effective disconnection.

The Strategy emphasises that remote working implemented as a result of the COVID-19 pandemic should not be conflated with remote working in a regular scenario. Therefore, while it is currently imperative that employers facilitate remote working due to the current public health situation, they should prepare for the eventual easing of COVID-19 related restrictions and consider how remote working can be adopted by their organisation in a way that harnesses the benefits for both staff and business in the longer term.

For more information in relation to this topic, please contact [Noeleen Meehan](#), Partner, [Triona Sugrue](#), Knowledge Lawyer, or any member of the [A&L Goodbody Employment team](#).

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<sup>1</sup> For details see [here](#).