

## Future Facing Disputes – The Future Risks of the Remote Workplace

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The way we work is changing. The traditional concept of the 'workplace' and the nature of workplace disputes is therefore changing too. As the working world adapts and looks to establish increasingly innovative working practices, employers must ready themselves for the inevitable challenges and risks that the changing world of work will bring.

We have already seen an exponential rise in remote working across many sectors of the UK economy, which looks set to remain (at least in part) for many industries. As organisational practices have evolved, employers have developed an unprecedented reliance on technology which has led to the emergence of new legal, regulatory and commercial risks. In this article, we consider some of the potential employment disputes which may arise from the changing workplace.



### Location, Location, Location

Technological advances have afforded the flexibility of agile and remote working, meaning for many organisations their workplace has expanded, either to employees' homes in the UK or even overseas. For most businesses, this different working dynamic has created a range of new challenges which, if ignored, could lead to disharmony in the workforce and potential legal claims.



### Action required?

Employers should be aware that changing an employee's contractual place of work, absent agreement, can create legal risk as an enforced change is likely to constitute a breach of contract. Wider issues to consider include whether employees working remotely satisfactorily comply with employers' obligations under commercial contracts with clients or regulatory requirements. Maintaining clear policies and engaging in effective communication with the workforce will be crucial in order to seek to mitigate the potential risks in this area.

Markets dictate that employees undertaking the same/similar work for the same business may be paid different amounts depending on where they work, partly reflective of disparities in the cost of living across different locations. With the "where" now becoming less important, many employers are assessing the risks associated with significant pay disparity between its locations from both a legal, cultural and practical perspective.

Remuneration is a sensitive topic for most employees. In the UK, any change imposed by an employer to reduce an employee's pay without agreement, including because of their location, is likely to lead to employee relations issues and potential legal claims, for example, for constructive unfair dismissal, breach of contract and/or unlawful deductions from wages. Employees may also raise 'equal pay' allegations.

Overseas working can pose a further myriad of legal issues, particularly from a tax, immigration and health and safety perspective, with the additional complexity arising from Brexit. For further discussion on the legal pitfalls associated with overseas working, please see [here](#).



## Managing remotely

Although developments in technology provide employers with the opportunity to manage their staff remotely, many organisations are still grappling with the issue of how to effectively measure performance and monitor staff behaviour in a remote environment, whilst navigating the associated legal and regulatory risks.

**Effective management** – trust and confidence is essential in every employment relationship, for both employers and employees, although managers may still need to use technology to monitor the behaviour and effectiveness of their team in a remote work environment. Many workplace disputes arise from both effective and ineffective performance management.

**Security of data and confidential information** – as a result of increased mobility and flexibility, with employees travelling around and working permanently from different locations, there may be an increased risk of breaches of confidentiality and data security issues to consider.



## Action required?

Organisations should ensure that their internal policies and procedures are sufficiently clear and appropriately adapted to changes to the working environment. In the context of performance management, any formal procedure should be complemented by regular and documented communication with staff. Working practices and processes must also be considered from a regulatory perspective.

Conducting any monitoring of staff could raise concerns regarding data privacy, as employees may allege such activity is not in accordance with data protection principles. This could lead to employee grievances, complaints to the Information Commissioner's Office or even litigation.

Data breaches can have serious consequences for any commercial organisation. If a business does not have sufficient systems in place to protect the security of its data, combined with a clear data breach policy and strategy, it is more likely to encounter problems and suffer loss in the event of a data breach. We offer the [CMS Breach Assistant](#), an innovative and unique mobile platform which provides the necessary information and guidance to deal with a data breach.

Although these types of issues are not unique to a changing working environment, arguably there is a greater risk that they will occur when employees are working with increased flexibility. Employers should therefore be alive to these issues in order to help reduce the risk of disputes, as well as the business disruption and significant time and costs associated with them.



## Employee wellbeing

A remote workplace poses a number of risks to worker wellbeing. For example:

- many employees working in physical isolation;
- it being often unsuitable, not having been designed as a workplace; and
- homeworking eroding the boundaries between employment, unpaid care work and leisure time.



### Action required?

The mental health risks posed by the remote workplace should not be underestimated and it is important that employers understand the legal obligations that they owe to their employees from a health and safety perspective.

Employers have a legal duty to provide, so far as is reasonably practicable, a safe working environment for their employees (wherever they work) which includes maintaining mental as well as physical wellbeing. Breach of this duty is a criminal offence, with the potential for unlimited fines (both at individual and organisational level), imprisonment and director disqualification. Health and safety failings can also lead to action from staff as well as the Health and Safety Executive. See [here](#) for consideration of a recent case in which an employer was criminally prosecuted for failing to manage staff wellbeing.

Employers are also prohibited from discriminating against employees who are disabled, which can include mental as well as physical illnesses. In addition to the legal risks associated with unlawful discrimination in the workplace, where an employer risks the possibility of an Employment Tribunal claim and an order to pay compensation for an unlimited sum, there are also cultural and public relations risks. The obligations that employers owe their employees in this regard are not alleviated by the virtue of a remote and changing working environment.

To alleviate these risks, employers should review their health & safety and mental health policies to ensure they are fit for purpose in a remote and changing working environment, allow for regular and open communication with employees on the topic of mental health and keep a paper trail of all steps taken when issues arise. Please see [here](#) for a more detailed discussion on employer duties around mental health.



## Looking to the future

In recent years, we have seen cultural shift with increased importance placed on issues such as diversity and inclusion, including the #MeToo campaign and the Black Lives Matter movement. This heightened awareness, and the establishment of a “speak up, listen up” culture, is likely to contribute to the continued rise in Employment Tribunal claims alleging whistleblowing, workplace harassment and discrimination.

As the working world adapts to this changing global environment, fresh challenges and risks for organisations will continue to emerge. Organisations’ capacity to meet these challenges and thrive will determine not only their own destiny but the future world of work.

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