

The future of working from home in the post-COVID world

At the beginning of 2020, employers and employees were hastily forced into a new working environment. Nearly half of people in employment did some work from home and the vast majority of those did so because of the pandemic. As this level of wide-scale home working was unexpected and largely unplanned for, it was inevitable that many employers had no robust policies to manage working from home effectively. Research indicates that most employees do not wish to return to their old way of working, but would prefer at least some level of home working. This change in attitudes means that employers need to consider what the workplace will look like after the pandemic. This article explores employment, and health and safety legal considerations for employers in this new age of remote working.

Moving to permanent home-working

Working from home due to the pandemic, pursuant to government guidelines, did not require changes to contracts of employment. However, we have seen some employers taking the decision to reduce office space with the intention of moving to home-working on a part or full-time basis going forward. In those circumstances, employers do need to consider whether their existing employment contracts allow for them to require home-working. If not, they may need to consult with employees with a view to reaching agreement on the change. If they cannot reach agreement, they should consider whether more draconian methods should be adopted to effect the required change.

Flexible working requests

Employers are seeing a rise in requests from employees wanting to work from home, for either some or all of their working time. Many have put in place agile working policies, allowing employees to work remotely for a certain amount of the week or when working on specific projects. Others are relying on the statutory flexible working request procedure. Employees have a right to make such a request if they:

- have 26 weeks' continuous service;
- have not made another flexible working request in the last 12 months;
- make the request in writing, and
- are not an agency worker or employee shareholder.

Key considerations

- Be prepared to update contracts of employment.
- Have systems in place to recognise and deal with flexible working requests.
- Check that insurance policies provide for home working.
- Confirm that all internal policies are up to date and provide for the workplace post-COVID, including homeworking, expenses, data protection and flexible working request policies.
- Ensure that employees working from home on a permanent basis are subject to the same DSE assessments as those in the office.
- Offer specialist equipment to home workers to minimise the risk from working with DSE.
- Provide training and instruction to workers on how to minimise stress in the workplace and how to recognise the signs of those struggling with their mental health.
- Review lone worker policies to ensure those working from home do not become isolated.
- Ensure that managers keep in regular contact with those working from home, providing an opportunity for concerns to be raised.

Even if an employee does not meet the above criteria, they may still be able to make a non-statutory request if the employer's policies provide for this.

Once a flexible working request has been made the employer has three months to respond and must deal with the request in a reasonable manner by assessing the advantages and disadvantages, holding a meeting with the employee, and offering an appeal process. The employer does not have to agree to the request if they have a good business reason for not doing so, but there are a limited set of circumstances that will be considered a "good business reason". Given that the employee has likely been working from home at least some of the time for the past year it is arguably more difficult to refuse a request going forward.

Employers should also be wary of discrimination risks if they do not agree to a request. If the employer is seen to be putting a person with a protected characteristic at a disadvantage, even if indirectly and unintentionally, the employee may be able to bring a discrimination claim for which damages are uncapped. It is advisable that, even where employees have less than 26 weeks continuous service, employers should still consider their requests to avoid any accusations of discrimination.

An agreed flexible working request will also need to be reflected in the employee's contract of employment.

Data protection and confidentiality

The extent of a company's data protection policy should also be considered in an environment where working from home features heavily. Given that employees are working outside of the business premises, employers and employees may be exposed to a greater risk of data breaches and cyber-attacks. It is far harder for an employer to be certain its confidential information and any personal data are stored securely when they are in an employee's home.

Therefore, employers may wish to consider updating their policy to ensure that, at a minimum, it covers: devices used by employees, use of encryption, regular password protection, system monitoring and safe storage of documents, or even limits on what can be removed from the employer's premises. Further detail can be found in our briefings [The data security perils of home working](#) and [The new normal for subject rights of access – Prepare for increased data compliance risk](#).

Employers should also think about the protection of the employee. Video calls have replaced most face to face meetings in the past year and are likely to continue to be used if employees are not physically present in the office in future. This presents a host of problems for employees, including if they do not want others to see their home environment. Employers need to think carefully about how such problems can be overcome in a way that still allows for some face to face interaction.

Health & Safety

Employers are required to protect the health and safety of their workers, including when they work from home. Employers are under an obligation to complete a risk assessment in respect of those working from home to establish what, if any, action is reasonably required to ensure the protection of workers' health. If working from home continues and/or becomes a permanent part of their working practices, employers should ensure that their health & safety policies and risk assessments are reviewed and, where required, updated to reflect the new ways of working. In particular, employers should consider display screen equipment, specialist equipment and mental health and wellbeing.

Display screen equipment

Employers are under an obligation to protect their workers from the risks of working with display screen equipment (DSE). The Health and Safety Executive stated that there is no increased risk from DSE work for those working at home temporarily, though provided no guidance on the definition of temporary. HSE guidance further suggests employers should provide workers with advice on completing their own basic DSE assessment at home and it collated a checklist to assist with this. Training and instruction should be provided to workers on how to complete the self-assessment and how they can minimise the risk, for example by taking regular breaks, regularly changing position and stretching throughout the day.

If working from home becomes a permanent part of the contract of employment however, whether for one hour a week or full time, then a full DSE workstation assessment should be completed.

Specialist equipment

An employer must provide the equipment required for workers to perform their job safely. As part of a DSE assessment it may become apparent that specialist equipment is required to ensure the risk from the use of DSE is minimised. Specific equipment required may include a keyboard separate to the screen and display screens with stable images, adjustable brightness and free of reflective glare and reflections.

It is recommended that, where a self-assessment highlights such need, specialist equipment is provided to a worker wherever possible. The HSE homeworking guidance suggests that workers be allowed to take home chairs and other equipment from the office for use at home. Employers may want to consider other options for communicating safe working practices to the workforce, for example by providing online training on working from home and desk set-up or ensuring managers regularly check in with workers so any concerns can be raised. DSE arrangements should remain under review throughout the period of homeworking.

Mental health and wellbeing

The employers' duty to ensure, as far as reasonably practicable, the health, safety, and welfare at work of all their employees and those affected by their business extends to the protection of workers' mental health. HSE has published Management Standards for demonstrating good practice and simplifying risk assessments as regards mental health, as well as guidance on identifying signs of stress. Employers should consider implementing the approach of the HSE Management Standards when completing risk assessments and holding discussions with employees in relation to mental health and wellbeing.

Though there are no additional requirements specifically arising out of the pandemic, working from home can cause work-related stress or otherwise impact on an individual's mental health. The HSE suggests the following positive actions which should be taken to aid in the protection of employees' mental health during the pandemic:

- **Keep in touch:** put in place procedures so that managers and employees can keep in touch, this will allow employees to feel supported and ensure managers have an opportunity to recognise any employee who may be struggling.
- **Emergency point of contact:** let employees know who to contact should they need help or assistance.

Ensuring a separation between home and work can be difficult, but doing so can improve mental wellbeing and employees should be encouraged to take time away from work. Initiatives to promote the benefits of physical exercise or socialising, in accordance with any local or national restrictions, may be of interest. Employers can offer training or wellbeing sessions on dealing with specific stressors such as domestic abuse, parenting, or home schooling. Employers may also want to consider providing training to staff on identifying the key signs of work-related stress, such as sickness absence, decrease in performance or motivation, increase in complaints and grievances, employees starting work later, being more nervous or withdrawn, or being increasingly emotional, tearful, sensitive or aggressive.

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