

Remote Working Briefing

May 2020



Since the introduction of a “lockdown” and the imposition of restrictions on many workplaces in Ireland last March due to the outbreak of Covid-19, the landscape of the workplace has changed significantly. With the closure of offices all over the country, huge numbers of employers and employees throughout the economy have embraced remote working as the new norm. There is now a suggestion that legislation may be introduced in the UK placing an employee’s right to work from home on a statutory footing as part of the UK government’s return to work package, particularly for employees who feel it may be unsafe for them to return to the workplace. It will be interesting to see how this develops and if similar legislation is introduced in Ireland. Also worth watching in the Irish context is the recent suggestion that income tax incentives could be introduced to encourage people to work from home in the long term, and whether this might be legislated for once a new Government is in place. We outline below some practical guidance on remote working for employers.

Likely timeline for continuation of remote working

On 1 May, An Taoiseach, Leo Varadkar, announced the Government’s Roadmap for Reopening Society and Business. The Roadmap sets out a five-phase timeline for the reopening of the Irish economy and society:

Phase 1 (18 May)	Outdoor workers (e.g. construction workers and gardeners), with social distancing requirements continuing to apply.
Phase 2 (8 June)	Phased return of workers, such as solitary and other workers that, due to nature of work, can maintain 2-metre distance constantly, with social distancing requirements continuing to apply.
Phase 3 (29 June)	Organisations where employees have low levels of daily interaction with people and where social distancing can be maintained.
Phase 4 (20 July)	Organisations whose employees cannot work remotely. The Roadmap currently advises that, depending on business, organisations should consider operating shift work or staggered hours in order to increase the proportion of the workforce available to them for work in any 24-hour period, as long as they can limit the number of workers interacting with each other.
Phase 5 (10 August)	Phased return to onsite working for all employees. Higher risk organisations that by their nature cannot easily maintain social distancing should implement plans at this stage for how they can eventually progress towards the onsite return of all staff.

Both the Roadmap and the Return to Work Safely Protocol (see our separate briefing, ‘Getting Back to Business – The Return to Work Protocol’ [here](#)) state that employers should maintain remote working for all workers and businesses that can do so until at least Phase 5. By this time, many businesses will have been operating on a remote work basis for almost 6 months and a permanent shift in work patterns may well have emerged.

The Government is anxious that not all of the population should go back to the workplace at the same time and it appears at this point that unless a 2-metre distance can be maintained between staff, a full return to pre-COVID 19 onsite working arrangements is not envisaged on 10 August 2020. Furthermore, the Government has said that employers should enable vulnerable or ‘at risk’ workers to work from home where possible. If businesses can continue to operate using remote working practices, therefore, this is likely to be of significant benefit to them over the coming months.

A key principle for employers and employees to remember is that, where employees are working remotely, the terms and conditions of the employment contract continue in the same way as they would if the employee was working on the employer’s premises. There are nonetheless certain legal and practical considerations that employers should be aware of in the context of implementing or retaining remote work practices:

- **Remote Working Policy** - Employers should have a robust remote working policy in place, which reflects best practice and the organisation’s own remote work strategy. The policy should set out the employer’s expectations of employees who work remotely, as well as how remote working is intended to work in practice. Policies can be amended and updated over time to reflect any necessary changes. When writing or reviewing their remote working policies, employers should also consider the topics set out below.
- **Safety, Health and Welfare at Work Acts** - Under the Safety, Health and Welfare at Work Acts, all employers are required to take steps to ensure that their employees are working in as safe an environment as is reasonably practicable. Given that remote work appears likely to remain in place for many workers for a number of months to come, it is vital that employers familiarise themselves with their ongoing health and safety obligations, which apply regardless of whether employees are working in the office or remotely. Employers should continue to monitor Health and Safety Authority guidance in this regard, which includes a helpful set of [FAQs](#) on remote working.

A key aspect of compliance with health and safety obligations is the carrying out of a risk assessment, which should underline the risks specific to the workplace and set out appropriate preventative and protective measures that can be put in place to minimise those risks. Employers should develop a specific remote work risk assessment to be completed by employees, which might include the following questions:

- Does the chosen remote work station provide sufficient lighting, heating and ventilation?
- Are there sufficient and safe sockets for any additional wiring required by the conversion of home space into a remote work station and is there a functioning smoke alarm and planned escape route in case of fire?
- Is the chosen remote work station conducive to ergonomic safety?
- Is the employee taking adequate rest breaks?
- Has the employee experienced any aches or pains, or blurred vision since beginning to work remotely?

With employees now in their third month of remote work and likely in many cases to be working from home for at least another three months, employers who have not yet assessed the appropriateness of their employees' remote work stations should do so as soon as possible. By identifying and rectifying at the earliest possible stage any safety issues that are flagged by employees, employers can avoid the potential for remote working teething problems to evolve into more serious, long-term problems.

Essentially, the outcome of the remote work risk assessment should be that an employer has satisfied itself that:

- All employees are aware of any specific risks regarding working from home;
- Each employee's work activity and remote work station are suitable and safe;
- All employees have suitable equipment to enable their work to be carried out safely; and
- Employees are aware of the appropriate point of contact for any safety concerns.

It is important to emphasise that employers' obligations under the Safety, Health and Welfare at Work Acts relate not only to the physical environment but also to the emotional environment of a workplace. We consider employee wellbeing in the remote working context in more detail below.

- **Confidentiality and Data Protection** - Remote working raises certain confidentiality and data protection concerns that might not arise in the same way if employees were working in an office. For example, employees may be sharing a home with other people who may overhear conference calls. There are a number of measures that employers can take to protect confidentiality and address data protection concerns including reminding employees that their confidentiality obligations do not end when working from home and ensuring that effective access controls are in place to protect employees' access to the virtual working environment. These measures are set out in further detail in our separate [briefing](#) on "Covid-19: Data Protection Issues in the Employment Context".
- **Organisation of Working Time Act** - The Organisation of Working Time Act continues to apply in respect of employees who work remotely. Employees are entitled to their usual breaks and rest periods as defined in the Act and cannot work in excess of 48 hours per week, over a set reference period. Employers continue to be bound by certain record-keeping obligations regarding working time of remote workers as set out in the Act. It is important therefore for employers to establish a system to monitor the hours, breaks and rest periods of their remote workers if this is not already in place. The most appropriate system will vary between employers depending on the nature of their business and may involve investment in time-keeping software or, for example, manual record keeping by employees on a daily basis with reports to be sent by email to Human Resources at the end of each working week.

Employees previously unfamiliar with working from home may find that they struggle to disconnect from work because of the convenience of their devices and others' expectations of an immediate response, regardless of the time of day or night. However, the working time obligations on employers still exist and employers should therefore ensure to remind employees that they are to take their breaks, rest and not work excessive hours.
- **IT Infrastructure** - Employers need to ensure that employees have access to the IT infrastructure such as laptops/software required to enable them to work effectively and successfully from home including attending on and hosting conference calls. It is also important for employers to ensure that they have appropriate IT security arrangements and IT support teams in place to facilitate remote working for employees.
- **Management Practices** - For both the employer and the employee, the current inability to meet face-to-face will require a new approach when the time for monthly, quarterly or annual performance reviews comes around. Similarly, managers may find it more difficult to monitor the performance and progress of their employees remotely, while employees may be less inclined to seek out feedback or guidance in the absence of being in a position to call into a supervisor's office in an informal way. Human Resources teams will have to plan around these limitations over the coming months and, in the absence of in-person meetings, video calls are strongly preferable to phone calls when employees are receiving feedback or performance reviews.

Employers should ensure that their management practices for remote workers encourage collaborative working, trust and autonomy and team members should feel like they know what is expected of them in their roles. Managers could consider making their calendar visible to all team members and should encourage a virtual open door policy for when employees need support. Frequent communication is also important so that employees feel like they know what is happening within their own team and at the organisational level because, when employees are at home, they are more likely feel disconnected from team dynamics and organisational matters.

- **Employee Wellbeing** - It is important to emphasise the positive aspects of remote working, such as the elimination of commuting times and greater family time, as well as extra time for exercise and pastimes. Nonetheless, employees who are working remotely can miss out on the daily small-talk and ‘watercooler’ interactions and so it is important for employers to make time for some social conversations with these employees, for example, at the beginning or end of virtual meetings. It is important to check in with team members on a personal level and gauge how they are feeling about working remotely. These actions can reduce feelings of isolation. If an employee starts acting differently or is becoming disengaged, it could be a sign that they are stressed or not coping well with working remotely. Good mental health in the workplace is crucial to ensuring the success of the organisation. Employee assistance programmes, awareness campaigns and resilience programmes can all contribute significantly to the wellbeing of employees, especially those who may feel slightly removed from their colleagues when working remotely.
- **Company Policies, Disciplinary Issues and Workplace Investigations** - Finally, employers should take this opportunity to review their annual leave, sick leave, dignity at work, grievance and any other internal human resources policies to ensure that they are fit for purpose in the remote working context. Employees should be reminded of their entitlements and obligations under these policies, and that these remain notwithstanding the switch to remote work. For example, to ensure that they adequately address the prevention of workplace bullying and/or harassment, an employer should have a dignity at work policy in place and employees should be reminded of its content and its continued application in their absence from the office.

Should any disciplinary matters arise during the current period of remote working, employers will need to consider carefully how and whether to proceed with a remote investigation. Employers must be able to satisfy themselves that any investigation carried out remotely can proceed in a way that is procedurally fair to those involved; otherwise, it may be necessary to postpone the investigation until such time as the individuals concerned are back in the office. Whatever the decision - whether an investigation proceeds remotely or is postponed until the workplace reopens - the rationale behind the chosen course of action should be documented clearly.

Conclusion

Employers throughout Ireland are facing a further period in which they will need to operate their business using remote working practices. This is unlikely to change for a number of months. Even after restrictions are relaxed and employees are permitted to return in large numbers to offices, it is likely that many employers will receive requests from employees to be allowed to continue working remotely either some or all of the time. Furthermore, until a vaccine to protect against COVID-19 is widely available, employers will be expected to show flexibility towards ‘at risk’ employees or employees with vulnerable family members in allowing those employees to continue to work remotely where this is practicable. It is safe to say, therefore, that the landscape of the workplace has evolved and that remote working is here to stay for the foreseeable future. In this new environment, employers will need to take steps in light of the considerations identified above to ensure that they can continue to comply with their employment law obligations, which remain binding whether their employees are working from the office or from home.

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