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### Home and Hybrid Working – A Guide for Employers

As working life slowly returns to a more 'normal' pattern following the COVID-19 pandemic, increasingly employers may need to make permanent some of the practices adopted during the last eighteen months. In many cases businesses have discovered that allowing their employees to work from home has had no significant disadvantages and perhaps many pluses. Productivity may have risen significantly, and if nothing else there has been the opportunity to try a style of working that business owners may have been too nervous to try otherwise.

The government's advice or instructions on compelling employees to return to office environments is ever changing, and we may see more return to traditional working than some experts predicted. However, many businesses are still actively looking to embrace home and hybrid working options as permanent offerings to their employees, so here we take you through what, as employers, you should be considering if you are looking to introduce permanent order to interim policies that have seen you through the last year and a half.

#### **Seeing the bigger picture – have one policy, not multiple**

If you are going to offer home or hybrid working it will be better by far to take an overall approach that ensures everyone receives fair and equal treatment. Taking each request on a case-by-case basis may cause problems, now or down the line.

#### **Don't be afraid of discussing the practical issues**

No one is suggesting that there are no challenges to this and there are numerous considerations. If your dialogue with your employees is good – and we would strongly advise a consistent and ongoing feeling of collaboration and consultation – everyone needs to be aware of the practicalities. Depending on your business you may be able to offer your employees the freedom to do all of their work from home, albeit it is much more likely to be essential that they attend a workplace from time to time. Perhaps you need everyone to be in the office at least one day each week, or maybe you need everyone to be clear that if they are not on leave you have the right to ask them to come in when you need them. The advice here is simple – consider the practicalities at the outset and make everyone aware. The problems come when employees find out down the line that you have expectations of which they were unaware.

#### **Is your workplace actually fit for purpose?**

Many employers moving to hybrid or home working models may decide that there is no longer a need for all of the office space they owned or leased pre-COVID. Before you take decisions in this regard, question whether you are retaining/obtaining facilities that actually fit the needs of your new-style team. If, for example, you have downsized, can you actually have the entire workforce in the office at the same time if you need them? Cost saving options where real estate are concerned may have consequences for what you can and cannot ask of your workers.

### The devil in the details – staying on the side of the angels over contracts

If you are changing contracts for pre-COVID employees to include a home-working option, or setting up new contracts for new hires, do your due diligence. Home or hybrid working that is initially non-contractual or discretionary can easily become an implied contractual term, talk to us to ensure that you don't inadvertently fall into making changes contractual when that wasn't your intentions.

UK employment law does not (yet, at least) provide automatic right to work from home, but it does include many protections for employees such as rights to ask for flexible working and be protected from discrimination. If an employee is requesting to change their place of work, we would normally suggest that you treat it as a flexible working request to ensure that you have followed a clear and process; enlightenHR can offer all of the advice and guidance you need.

To an extent, changing an existing contract is a more fraught process than setting up a new one. But, again, having a good dialogue with your workers will avoid many pitfalls. If the worker requested a change then, logically, they are unlikely to object to it, however you will need to be careful and consult fully when considering imposing changes that have not been requested; talk to us about ensuring your undertake consultation "fully and meaningfully". Here are three of the likely areas where you may be looking to make changes:

- **Place of work:** whether in an office, a production facility, at home, in a co-working space, or elsewhere, the contract should define all permissible work locations and any requirements to attend specific locations at specific times. It is acceptable, even advisable where the nature of the work requires it, to set limits on how far from a workplace an employee may live. It is also important in this context to consider the handling of confidential information. Certainly, there should be a contractual clause that covers the return of all confidential material to an employer on the contract's termination, but employers should also consider who might have access to the information in a home or co-working space. The expectations for the use of any confidentiality tools from digital encryption to the humble paper shredder should be set out and clearly explained.
- **Hours:** depending on the work, these may range from completely flexible through to fixed, and all points between. Employers must take account of family and other personal commitments, and employees must be clear on how they are required to regulate their own working time (e.g. mandatory breaks) when they are not being supervised. It is acceptable to require employees to keep a record of their working hours, and if appropriate to log in and out of a computer system that keeps the record for them. It may be reasonable for an employer to expect to be able to talk to an employee on the telephone at any time that they can be seen logged on to a computer system (for security, they should log out when not working) or during agreed set hours. Again, the key here is that communicating clearly in advance what is expected on both sides should avoid major problems. Even when working out of a supervised office, you still have a responsibility for your employee's health, safety and wellbeing so make sure that you agree with the employee when they will/won't be working and respect that.
- **Salary, benefits and expenses:** broadly speaking, if an employer is offering home working employees should not be disadvantaged financially. But this is not so straightforward as just paying on site workers and home workers the same. What if your place of business is in the

middle of a major city? The on site workers will have travel costs and time costs, so could be paid the same but be much worse off. It may, therefore, be possible to pay home workers at a different rate, but both this and the justification for it needs to be made clear to all concerned at the outset. If handled correctly, there is no reason why an employee who has previously worked on site and now wishes to work from home would not accept a reduction in salary in return for the travel costs saved and the additional independence gained. Where expenses incurred working from home are concerned it is for the employer to decide what to reimburse. There is no legal requirement to reimburse any, but a goodwill gesture may be valuable in more ways than the merely financial. Again, talking over the options and being certain that employees are clear on the policy at the outset is key.

- **Trial periods and reversion:** trial periods for any new arrangement are perfectly acceptable, but they should be made clear and the employee must understand the criteria by which you will judge whether things are satisfactory or need to revert. To revert you will need to provide reasons, so set out your assessment framework clearly from the start.
- **Illness:** Home and hybrid workers have the same entitlement to sick pay as other employees but you may need to look at how it gets reported. There is evidence to suggest that home working reduces instances of employees taking sick leave when they are not ill, so the bigger issue may be monitoring your staff to ensure that people are not still working when they are sick.

Remember, consultation is the key to success; clarity, conversation, listening and agreement make change successful.

### Confidentiality and data protection

If your employees are working off site, whether at their home or anywhere else, you will need to consider confidentiality and data protection. These are separate things, but the challenges they present are sufficiently similar that dealing with them together might be best. It may be possible in an employee's home for their friends and family members to see information relating to your business, so do not be afraid to tackle this subject and make employees aware of their obligations. If you are not satisfied that the risk of a data security breach is negligible, you may have grounds to refuse the request.

### Equipment

This is connected with data protection also. Who provides the employee with the equipment needed to work from home? If it is the employer then there is greater scope for controlling access and protecting data security, but there will be cost implications. If it is the employee it will be cheaper, but they will need to satisfy you that their equipment is reliable and secure, and you may need to assess it on an ongoing basis.

Speaking of standard equipment such as a computer, an employer is not legally required to provide this for a fully able-bodied employee who asks to move to home working. Things become more complicated, however, if it is the employer who is seeking to change the contract. Then it may be appropriate or necessary to facilitate an employee's working off site by providing everything they need, and employees with a disability may require all of the same facilities to be available in their home as are provided in the workplace.

A computer provided to home worker will not incur tax provided that any use of it for other purposes is negligible. You may wish to specify terms of use as a condition of providing it.

Don't forget that if you own the equipment you need to insure it, and you need an agreement in place that guarantees you get it back on termination of the employee's contract.

### **Social media**

This may not be an obvious issue but employees working unsupervised at home, with charge of their own time, are likely to access social media throughout the working day more than employees working on site. It need not be a problem, but a policy may be needed to ensure against posts that may be damaging to the reputation of an employer, or that may breach data security even accidentally – a photograph of someone at their desk, for example, might include files, documents, or their computer screen. Compliance with the Company's Social Media Policy should be highlighted to employees.

### **Right to enter**

This needs careful handling, but again clear communication from the outset is essential. If an employee is to keep anything whatsoever in their home that belongs to your business, you should make provision for 'right to enter' [their home or wherever they are undertaking work for you] in order to ensure that you can recover it. This also includes carrying out risk assessments and dealing with equipment.

### Appraisals, discipline procedures, and grievance

The concern about whether employees working unsupervised from home are going to be as effective is not going to go away, so devise a suitable reporting and appraisal system. Make sure that employees understand your expectations of them, how you will monitor them, and how you will deal with problems. Remember that home or hybrid workers must be equally eligible for promotion, so a good appraisal system will guard against any claims of preferential treatment of on site workers.

You should already have disciplinary and grievance rules in place, and these can be amended to suit home or hybrid working. It is good to be very clear from the outset about what you expect of your employees regarding when they work for you. Is your policy that provided the work gets done you don't care when they do it; or is it better for you to define working hours and set limits on what other things employees may do during those hours?

### Health and Safety

This will, of course, vary from employer to employer and from place to place. Be aware, however, that the safety of your employees during the hours when they are working for you remains your responsibility. You should be satisfied that their home working area is fit for purpose, insist on changes as a condition of allowing the home working if necessary, make sure risk assessments are completed, conduct onsite visits to view and assess working areas (homeworker sitting on a stool at the breakfast bar will not comply with H&S requirements!) and keep policies under constant review. As home and hybrid working models become more common, the regulations on health and safety will increase. So be ready.

### Tax

Employees working from home may be eligible for certain deductions against tax, and HMRC has guidelines for this. To be eligible, any household expense needs to be demonstrably and unequivocally incurred because of work, and it must be clear that this would not otherwise have occurred. In practice that means that many expenses that your employees might think they can claim are not applicable, but there will be occasional instances where something is legitimately tax deductible. It will not apply to work done from home occasionally or for convenience. Remember that any payments made to home workers to reimburse expenses claimed are not subject to tax, provided that working from home is a regular and agreed arrangement. In all instances of uncertainty employers should consult HMRC for guidance.

We hope that this guide has provided useful information and answered many of your basic questions. We have also included a Checklist for you, which we hope is also helpful.

For all of those specific concerns that have not been covered here, please get in touch with us and we will be delighted to help.

### **Our Support and Advice**

We are always happy to debate the pros/cons, dos/don'ts with you so please do talk to us if we can help in any way, we are here to support you.

Please note, this briefing is accurate at the time of writing, it is not intended to replace advice so please do call us if you have any queries.