

Mitigating the risks associated with Remote Working Employer and employee responsibilities while working from home

Organisations in the Community, Voluntary and Not-For-Profit Sectors need to consider the risks that may present from a remote working setting both from a health and safety and personal injury perspective. Insurance Ireland, the body representing insurance companies in Ireland, warned earlier this month that employers could be exposing themselves to legal claims if they fail to ensure employees have a safe working environment while remote working. It highlighted that there is a danger that remote working could become too expensive due to the risk of “*frivolous claims*”, exposing employers to considerable financial liabilities.

According to Eurofound, an EU labour think tank, Ireland had the second highest rate of employees working from home last year and this trend is unlikely to change in the immediate future. This includes thousands of employees from the not-for-profit sector who continue to work from home, but with so many people working away from their normal place of work it drastically increases issues around personal injury claims and pay-outs.

Fundraising and revenue generating opportunities for charities and not-for-profit organisations have been severely impacted so any financial claims made against them could be detrimental to their future viability. Therefore, it is crucially important that extra care is taken to ensure a safe working environment.

Employer Responsibilities

Under the *Safety, Health and Welfare Act 2005*, an employer has a duty of care to provide a safe workspace for their employees regardless of where the employee is working from. Employers are required to provide the right equipment that employees need to carry out tasks in a safe manner, including ensuring computers or electrical equipment is in proper working order. On top of that the necessary training and instruction required to carry out work must also be provided by the employer. Failing to do so means the employer is in breach of legislation, liable for fines and penalties while also risking personal injury claims. It's worth noting that the average award for personal injuries in 2019 was €29,859; a significant amount for any not-for-profit organisation.

In normal circumstances, these responsibilities are straightforward but what does it mean for employers when employees are working from home?

Remain compliant with Legislation

Employers are still bound by the legislation and have a duty to manage work-related activities that are carried out while ensuring the health and safety of the employer where reasonably practicable. Therefore, the employer is responsible for ensuring a safe workstation while also carrying out a risk assessment to ensure it is a safe and suitable workstation.

This is not always possible or practical when employees are working from home so needs to be managed initially through remote self-assessments on the part of the employee and then followed up by the employer with a virtual training and assessment. It is important to note that the legislation refers to the workstation only, not the place or venue per se. In other words, a risk assessment relates to the workstation only and not the room or home in which the employee is working.

Employee responsibilities

Employees also have responsibilities while working from home including following instructions set out by employers and to communicate and check-in regularly. Employees must also take reasonable care to protect themselves and others from risk of injury or harm during the course of their work and, in the instance of an injury, it must be reported immediately to the employer.

Taking rest breaks and the Right to Disconnect

Employers are also reminded of their obligations under the Organisation of Working Time Act 1997. They are required to communicate the normal working time information for employees including starting and finishing times, rest breaks, daily breaks and annual holidays, which can be recorded electronically or in manual form. The current situation does present some difficulties for employers to accurately record working time, which is it obliged to do under the legislation. We would advise to pay attention to is capturing annual leave as well as working outside assigned working hours, particularly over weekends and overtime.

Employers must also remember that employees have the right to switch off also known as the Right to Disconnect. While technology has enabled people to work from pretty much anywhere and at any time, that does not mean that they are “always on”. Employees should not feel pressured in answering emails or calls outside of their agreed working day unless absolutely necessary.

Conclusion

Even if the government move to ease restrictions in the coming months, we expect many employees to continue working from home. This isn't without its challenges for employers who will need to continuously assess the situation in line with their evolving organisational strategy and ensuring they remain compliant with the legislation.

It's imperative that employers and employees work together and continuously meet their responsibilities under employment legislation, ensure they have the correct policies and procedures in place and prepare for future working practices. This will certainly help mitigate any potential issues and future claims.

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