

Key Considerations of Managing Employment in the Current Health Crisis

Frequently Asked Questions

1. How should employers address the health and wellbeing of a blended workforce?

Under the health and safety legislation employers must maintain the health, safety and welfare of all employees through the implementation of measures under the Work Safely Protocols. Where an employee assistance programme exists, this should be communicated to staff and all resources relating to health and wellbeing should be centralised and promoted to all employees. If necessary, ensure occupational health referrals are made and update all relevant policies on a regular basis.

2. What are the employer obligations in terms of a blended workforce when employees are working in a remote setting?

There are a number of obligations that an employer must address in this setting to comply with the Display Screen Equipment Regulation 2007. Employers must;

- Carry out an analysis or risk assessment of employee workstations.
- Provide information to employees in relation to measures which have been implemented.
- Provide training to employees in the use of workstations before commencing work with display screen equipment and whenever the organisation of the workstation is modified.
- Perform a further analysis or risk assessment where an employee transfers to a new workstation or significant new work equipment, change of equipment or new technology is introduced at an individual's workstation.
- Ensure that the provision of an appropriate eye and eyesight test is made available to every employee.

3. For employees working from home, are employers responsible for risk assessing the entire dwelling?

No, the employer is responsible for assessing the immediate workstation of the employee.

4. Are employers legally obliged to carry out DSE assessments?

Yes, DSE assessments are a legal requirement under the current legislation.

5. How should DSE assessments be documented to ensure compliance?

Employers are required to document assessments and should include overview of the tasks completed at the workstation, evidence that all elements of the workstation were included in the risk assessment, details of any issues and corrective actions and a copy of the completed analysis should be provided to the employee.

6. Who should carry out the DSE assessment of an employee's workstation?

Any risk assessment must be carried out by trained and competent professionals. A person is deemed to be competent if he or she possesses sufficient training, experience and knowledge appropriate to conducting a risk assessment of a workstation.

7. To what extent can we monitor and record vaccination when it becomes available to our staff?

As part of assessing the risks, employers will naturally want to know who has or has not been vaccinated before getting people back to the workplace. In order to process personal data, there must be a legal basis to do so, the grounds for which are set out in Article 6 of the General Data Protection Regulations. While employees are not obliged to provide personal medical information in the main, employers may seek vaccination information on the basis that they are meeting their legal obligations under the Safety, Health and Welfare at Work Acts. Realistically it will be up to individual employees to volunteer this type of information to their employer.

If employees volunteer information about whether or not they have been vaccinated, employers should take care not to disclose to other employees who has or has not been vaccinated. In the event that an employee volunteers the fact that they have not nor intend to avail of the vaccine, it should be highlighted, that there may be legitimate medical reasons why someone may not receive the vaccine.

8. How do we manage COVID precautions in the workplace if some of our staff choose not to vaccinate or cannot for health reasons?

There is little an employer can do if an employee refuses to get the vaccine. However, understanding their concerns is important and finding solutions that meet the organisational needs without infringing on their rights is crucial in managing their integration into the workplace. Extending the term of remote working may be an option but this may not be feasible for all organisations within the Community and Voluntary sectors. In any case, employers need to think carefully about any action they take, and the potential legal consequences associated with these actions.

Employees have protections under the Employment Equality Acts 1998 – 2015 from discrimination on nine grounds, including religion, age and disability. An employee may decide not to get the vaccine for a number of reasons that would come under these specific grounds, such as a medical condition or their religious beliefs. Any mandate by an employer that employees need to take the vaccine could constitute discrimination under the Act.

9. Where an employee is not managing to do their usual fulltime hours – perhaps due to home schooling and we are funded to pay the fulltime hours, and want to do that, how should we manage that in a way that is good governance?

In this situation it is important to remember the contractual obligations which set out the working hours and seek to balance this with some form of flexibility to support employees in this situation. One solution could be to agree to staggered work hours or early or late start

and finishing times.

10. Is there a legal requirement to provide staff with IT equipment rather than them using their own? Also is there a legal requirement to provide them with office furniture e.g., chair/desk etc.

Under the Safety, Health and Welfare at Work Act, 2005 employers must evaluate the health and safety of workstations, with particular focus on physical difficulties, eye sights issues and mental wellbeing. Employers must:

- Carry out an analysis or risk assessment of employee workstations.
- Provide information to employees in relation to measures which have been implemented.
- Provide training to employees in the use of workstations before commencing work with display screen equipment and whenever the organisation of the workstation is modified.
- Perform a further analysis or risk assessment where an employee transfers to a new workstation or significant new work equipment, change of equipment or new technology is introduced an individual's workstation; and
- Ensure that the provision of an appropriate eye and eyesight test is made available to every employee.

A typical modern workstation comprises Visual Display Unit (VDU) or Display Screen Equipment (DSE) – typically a desktop computer, chair, telephone and desk. Under the legislation, it is the employer's duty to examine and assess the standards of health & safety of an employee's workstation and take any corrective action necessary. Once this assessment has been carried out, it may be determined that an employee does not have the appropriate IT equipment or office furniture whilst working from home, and therefore there would be a requirement for an employer to provide same.

11. What do you mean by pre-arranged means of communication with home workers, can you give an example?

From the remote work setting it is essential that there is a pre-arranged means of contact to ensure the lines of communication remain open between the employee and employer. A nominated contact person could be assigned so that all employees are aware who they can contact should an issue arise. Separately all organisations should ensure there is a communication plan in place in relation to changes to government restrictions or public health advices and this will promote employee engagement as well as support mental health wellbeing.

12. Should the risk assessments/ergonomic assessments be carried out for staff who are only doing training courses from home until they can safely return to work in March as opposed to long-term working from home office staff?

If staff are carrying out training in connection with their employment this would be considered as working time and an employer has legal obligations under the Safety, Health and Welfare at Work Act, 2005 to evaluate the health and safety of workstations.

If some staff are working from home temporarily for a very short period of time, an Organisation may request employees to self-assess their workstations as a temporary measure instead. However, following almost a year of some form of remote working it is essential that all organisations comply with the legal requirement to assess the workstations of those working remotely from an ergonomic standpoint.

13. Where it is suggested that people should work from home even at level 1, it is hard to justify, on business grounds, why people should return to the office, even in hybrid way. I think it is then down to pushing the positives for being in shared space again and appealing to their need for human interaction, any advice?

At present the government have outlined at level 1 of restrictions employees should work from home if possible. However, it is also provided that employees can attend work for specific business requirements and on a staggered attendance basis at level 1 of the restrictions, which should of course be balanced with full health and safety compliance of the work safely protocols. Where an employee is required to attend the place of work for specific business requirements then there should meaningful dialogue between the employer and employee to outline the rationale for same.

14. Would an existing sick leave policy cover leave associated with a Covid 19 positive result?

An organisation's sick leave policy should cover any absences related to illness and/or injury, and this would include a positive case of Covid-19. Many employers have opted to update their sick leave policies specifically in relation to the pandemic, for example, any absence related to a positive case of Covid-19 or close contact will be paid for. Such a policy has been recommended by the government to financially assist employees during such a time, hence ensuring that employees who may be feeling unwell do not come into the workplace.

If an Organisation does not provide sick pay for absences related to Covid-19, they should remind employees that they may be eligible to claim the Covid-19 enhanced illness benefit from the Department of Social Protection.

15. Is it possible to get the new code of practice re. bullying in the workplace?

A copy of the new Code of Practice for Employers and Employees on Prevention and Resolution of Bullying at Work can be found online at www.irishstatutebook.ie. There is a requirement for employers to update their policies to reflect the new Code of Practice so the current policy in place should be reviewed as soon as possible.

16. How about insurance? Is an employee working from home covered?

Any employees working from home should check that their home insurance provider covers this. Due to the unprecedented nature of the current times, and the somewhat forced remote working that is upon us, a lot of the insurance company have 'permitted' this for the moment.

17. I'm wondering about working from home policies as I know several people will not want to come back to the office long-term.

While we remain in the current pandemic organisations should ensure that they are not making permanent decisions in respect of permanent home working arrangements. The government's national strategy on remote working will ultimately lead to legislation which will prescribe what the legal requirements are. Until such time as legislation is passed all arrangements relating to remote or homeworking should be treated as temporary in order to align to current government advices on the restrictions.

18. How to measure employees working hours while working from home? I suspect my employee does not work effectively. Would you advise any tools?

Employers have a legal obligation under the Organisation of Working Time Act, 1997 to record all employees working time, this includes when employees are working from home too. Options can include timesheets which are submitted on a daily / weekly / monthly basis, or it may be prudent for the organisation to look at implementing a time and attendance system software. An employee is bound by their contractual arrangements relating to a set number of working hours and while remote working arrangements are in place employees could be gently reminded that apart from this temporary arrangement, all other terms and conditions remain the same.

19. Is it acceptable/unacceptable that an employee sends a sms message to their line manager on a weekend - (as a pre-empt) for absence?

This may depend on the organisation's policy on absence notification. It is common that employers' policies on absence notification will indicate that a text message is not an acceptable form of notification, and such notification must be done personally via phone. If this is the Organisation's policy, it is recommended that the employee in question is reminded of the procedure and their expectation to adhere to same.

20. Is it the same level of providing equipment (desks/chairs etc.) if staff are at home three days per week (level 5) or two days per week in level 3?

Yes, you will need to ensure that your employees' workstation is sufficient for working 3 days a week from home, as well as 2 days a week from home.

21. How do you undertake a risk/ergonomic assessment for employees remotely - do they fill out a form or what's the best way to do it?

Under the Safety, Health and Welfare at Work Act, 2005 employers must evaluate the health and safety of workstations. This evaluation is by way of carrying out an analysis or risk assessment of employee workstations. Such risk assessment should be carried out by a competent person. The legislation outlines that a person is deemed to be competent if he or she possesses sufficient training, experience and knowledge appropriate to conducting a risk assessment of a workstation.

22. Should the employer pay towards the cost of heat/light/power. The current revenue rebate doesn't really cover the added costs.

While there is no legal requirement at present owing to the ‘temporary’ nature of remote working, an employer may decide to provide some contribution to the employee. It is important to understand that if a decision is made to introduce this type of contribution it may form part of the terms and conditions of employment and will certainly set a precedence in the future. A current Member Bill at committee stage of the Dáil does make provision for a flat rate expense to be paid so if this is introduced into legislation there could be a legal requirement in the future.

It is also worth noting that as part of Budget 2021 the following expenses will be covered as an allowable home expense for e-working tax relief. This begins in the tax year 2020 and applies for the duration of the COVID-19 pandemic:

- 30% of broadband costs for days worked at home.
- Other vouched expenses where they are “wholly, exclusively and necessarily” part of your work.

These expenses can only be claimed by an employee if the employer does not already make payment towards the expense. Provision for tax relief is also made on expenses like light, heat, telephone and broadband in the amount of €3.20 per day without paying any tax, PRSI or USC on it. Please consult the revenue website for details of qualifying criteria and application procedures.

23. How much parental leave can employees take per year?

As and from 1st September 2020, all qualifying Employees who are natural or adoptive parents of, or who are persons acting in loco parentis to, a child under the relevant age have an entitlement to avail of up to 26 working weeks parental leave in respect of that child over a defined period of time.

The relevant age of the child in respect of whom leave may be taken may vary depending on certain factors. Parental leave is allowed in respect of a child;

- aged under 12 years of age, or
- within two years of an adoption order where the child is adopted between the ages of 10 and 12 years, or
- aged under 16 years in the case of a child with a disability/ long term illness.

24. What entitlements are available to an employee who is remote working and caring for an elderly adult?

In this instance, the employee may be eligible to apply for Carer’s Leave, which is a period of unpaid leave from employment to fulfil caring responsibilities where appropriate as determined in conjunction with the relevant state Department.

To be eligible for leave the employee must have completed 1 year of service and be approved by the relevant state Department to provide full-time care to the relevant person. The Department also determine whether the person is deemed a relevant person.

An employee may continue to work up to 18.5 hours per week while on Carer's leave, as long as they earn less than €332.50 per week.

Carer's leave of at least 13 weeks and up to 104 weeks may be applied for. This may be extended to 208 weeks in respect of two persons in need of care in certain circumstances. Carer's leave may be taken as a continuous block of leave or broken into shorter periods of leave. Where the leave is broken down, the Employee may not commence a subsequent period of leave until 6 weeks have elapsed since the termination of the previous period of leave.

Disclaimer – The information in this section is provided for reference purposes only to assist Employers with the government protocols and guidance and must be read in that context and should not be used for or interpreted as a legal definition of any of the information provided. Some of the information provided is per information published on the government websites at www.gov.ie, www.hsa.ie. Professional advice should always be sought before making any such decisions.