



Public Consultation on the Introduction of a Right to Request Remote Working

The purpose of this consultation is to seek your views on the introduction of a statutory right for employees to request remote working. The background to this initiative is set out in the attached consultation paper, which also provides you with an opportunity to provide your views on important relevant issues including: reasonable grounds for refusing a remote working request; the right of complaint; provision of necessary equipment; and monitoring of activity by employers.

The document provides space for your responses to the questions set out.

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Please indicate if this submission is made in a personal/employee capacity, an employer capacity or on behalf of your institution, organisation or group.

Made on behalf of the Law Society of Ireland

Name of company, institution, organisation or group covered by this submission:

See above

Respondents are requested to make their submissions by email to:

Remoteworkingrequest@enterprise.gov.ie

The closing date for submissions is Friday 7th May at 3pm.

For telephone queries please contact John Simmons on 087 4351917.

Question 1: Timeframe for employer to respond

a. What timeframe for response should apply to employers on receipt of an employee's complete request to work remotely;

- 1 month
- 2 months
- other?

Having reviewed how the Right to Request Remote Working is dealt with in other jurisdictions, it seems clear that Ireland aligns most closely with the UK.

In the UK, there is an ACAS Code of Practice around handling requests to work flexibly in a reasonable manner (which includes requests to change place of work) under the Employment Rights Act 1996.

It provides that all requests, including any appeals, must be considered and decided on within three months from first receipt. Given that requests to work remotely may require input from a number of stakeholders within an organisation, we consider this a reasonable timeframe to apply in Ireland.

It should be considered whether a shortened timeframe for response to requests made in emergency circumstances (e.g. inability to travel due to an accident) or for remote working arrangements for a temporary rather than permanent period of time, should be specifically addressed in the legislation.

Question 2: Length of service before having entitlement

- a) What minimum length of service is appropriate for an employee to have served in the employment of the employer before having an entitlement to make a request for remote work?**

Most employment contracts include a probationary period of 3-6 months, with flexibility to extend.

It is generally acknowledged that allowing employees to work remotely, when it is does not form part of the terms and conditions of the role, needs a high degree of trust between the parties, including for the employer to have confidence that the employee can work effectively at home with the required amount of supervision.

On that basis we recommend completion of a 6 month/26 week service requirement before a request can be made (which is also in line with the UK).

- b) After what duration can another request be submitted if the first request was declined?**

In keeping with the UK, it should not be possible to make more than one statutory request during a 12 month period.

The 12 month period should run from the date that the request is submitted in writing, not the date of the employer's decision (which could result in a 15 month gap if a decision, and any appeal of same, is provided three months after a request is made).

However, the legislation should specify that continued interaction between an employer and employee in relation to a request, does not constitute a fresh request for the purposes of this calculation.

Question 3: Risk assessment of a proposed remote workplace

As an employer, how confident would you currently be in carrying out a risk assessment of an employees' proposed remote workplace? What, if any, additional information, guidance or assistance might you require?

Legislation

A key recommendation of the [Society's August 2020 submission](#) on the need for further guidance on remote working was that legislative change will be necessary to ensure that both employers and employees have a clear understanding as to their responsibilities, rights and duties under the Safety, Health and Welfare at Work Act, 2005 ('the **2005 Act**'). This extends to providing employers with a legislative basis to conduct remote workplace risk assessments.

Guidance

Currently, remote workplace risk assessments are guided by principles and a checklist outlined in the HSA's "Guidance on Working from Home" publication (October 2020). In practice, employers tend to be unsure as to their ability to cross the threshold into an employee's home in a way that is respectful of an employee's constitutional right to privacy. A guidance document cannot compel an employee to provide their employer with access to their home (either physically or virtually).

Employers are slow to complete risk assessments, unless expressly requested by employees. Many employers are asking employees to self-certify, which carries a significant risk of future claims under the 2005 Act.

The HSA guidance document assumes that an employee will provide access, either in person or virtually, to their employer to complete the risk assessment. The checklist is helpful, but clarity is needed around what qualifies a "competent person" to conduct the risk assessment. Based on the HSA publication, an individual only requires sufficient training, experience and knowledge on display screen equipment risk assessment and it would appear that no further qualification, training or experience is currently necessary.

Assistance

While larger employers may have the scope to train and designate responsibility to specific employees, smaller employers require prescriptive information to support them in managing remote working through their existing resources. HSA approved training (online and in person) would be welcome in that regard.

Question 4: Remote work policy requirement

Should there be a provision inserted in the legislation that employers must have a policy on remote work which can be inspected by employees and the Workplace Relations Commission? (The policy could set out details such as the type of work that may be suitable for consideration of remote work and equally work that is not appropriate or suitable for remote work. In some companies the potential for remote work may be zero or extremely limited.)

This type of provision is already in use. For example, Section 20 of the Safety, Health and Welfare at Work Act 2005 requires employers to prepare, or cause to be prepared, a written “safety statement” and a copy of a safety statement, or relevant extract of it, shall be kept available for inspection.

A legislative provision requiring that employers produce a policy on remote work would be helpful.

It is recognised that not all roles/workplaces will be conducive to remote working arrangements. As such, not every employer will require a comprehensive policy on remote work, however their Employee Handbook should address the possibility of remote working for particular roles.

A prescriptive list of points to be addressed in a template Remote Working Policy, with scope for an employer to select the relevant options for its business, would also be helpful.

Question 5: Reasonable grounds for refusal

a) **What are reasonable grounds for refusing a remote working request? Please list. In order to strike a fair balance between the rights of employees and the requirements of employers we consider that the following are reasonable grounds for refusing a remote working request.**

1. Where, due to the particular nature of the role and the responsibilities which the employee is tasked with, the role cannot effectively be carried out outside the workplace/employer's premises;
2. Where granting a right to work remotely would have a substantial adverse effect on the operation of the employer's business. This may include a detrimental:
 - a. effect on the ability to meet customer/client demand;
 - b. impact on the quality of products or services; or
 - c. impact on performance.
3. Where the burden of additional costs required in order to facilitate remote working cannot reasonably be met by the employer;
4. Where having given the matter due consideration and having carried out an appropriate risk assessment, the employer is not satisfied that the required health and safety standards can be met;

Note – as above, the Society considers that prescriptive information and HSA-approved training would be useful in ensuring that employers are fully equipped to carry out the required risk assessments. Alternatively, if a request to work remotely is refused because the employer is not happy that the remote work location is safe for the purposes of its obligations under the 2005 Act, consideration could be given to obtaining an independent assessment, with clarity on who bears the cost for same - it may be possible to provide same through the HSA?

5. Where the employee is undergoing an apprenticeship or "on the job" training;
6. Where the employee is still within his/her probationary period;
7. We submit that where a request to work remotely has been rejected, the employee should be afforded a right to appeal that decision.

b) **Is it acceptable that an employer offers an alternative hybrid working pattern with a combination of remote work and onsite work, in response to any request for remote working? (For example, if an employee is requesting 50% remote working and an employer wishes to offer 20% or a lower percentage than the amount requested.)**

In the event that an employer is considering refusing a request to work remotely, employers should be encouraged to, wherever possible, offer an alternative hybrid working pattern which combines remote work and onsite work. For example, there may be certain aspects of a role which can be carried out remotely and employers should be encouraged to facilitate this as far as is reasonably practicable when dealing with a request to work remotely.

It should be stipulated that any alternative suggestions around hybrid working which are put forward by an employer will be considered as part of the referral of a dispute to the Workplace Relations Commission.

Question 6: Withdrawal of remote working

It is intended that any accepted remote working arrangement will be granted subject to ongoing review by the employer.

- a) If an employer seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?

At least two months, subject to a request for an extension of time by the employee, which request must be considered by the employer and reasons given for any refusal by the employer to grant an extension.

- b) If an employee seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?

At least two months, subject to an employer being able to extend the period by a further two months if they are unable to reasonably facilitate the return to the workplace within the initial two month period.

- c) If an employer seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?

At least one month during which time the employer should, if necessary, consult with the employee on the planned change.

- d) If an employee seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?

At least one month during which time the employer shall consider the request being made and the impact of same. The employer should, having taken all matters into consideration (including those listed in response to Question 5), decide whether it can accept the proposed change and should inform the employee of its decision.

Question 7: Provision of equipment

Should the employer bear the cost of providing all equipment for a remote working arrangement as well as covering the cost of maintenance? [It should be noted that the employer cannot require the employee to install programmes or applications on devices owned by the employee, or to use these devices for remote services.]

There will be a significant cost for employers in providing equipment for remote working arrangements e.g. practical physical equipment such as desks, chairs, computers, monitors, printers, scanners and additional costs (such as the risk assessment/ergonomic assessments mentioned above, insurance and maintenance).

A lot of employers will not be able to afford the cost of funding office and home office work stations, for those involved in blended/hybrid working arrangements. As such, consideration should be given to grants/funds to enable employers to invest in the equipment necessary to support employees wishing to work remotely and to cover further costs such as maintenance, insurance and IT support.

If the cost of the provision/maintenance of equipment is to be borne by the employer, but exceed what can reasonably be met by the employer, then, as mentioned in the response to Q5(3), such should be considered in the context of a reasonable refusal to allow remote work.

Question 8: Monitoring of activity

Should the employer have entitlement to monitor the activity of the employee?

[It is proposed that the employer should have entitlement to monitor only to the extent necessary to verify the compliance of labour obligations and duties.]

An employer's duty of care includes an obligation to provide a safe place of work, and safe system of work. As such, an employer actively monitors an employee while present onsite at the employer's workplace. As the remote workplace falls within the definition of a "place of work", we believe that remote monitoring is required. By way of example, the Organisation of Working Time Act, requires an employer to ensure that employees are taking rest and break periods and are not working excessive hours. This will require a form of monitoring.

To address the potential Constitutional challenges around monitoring an employee in their own home, the legislation must prescribe how such monitoring may be conducted by employers.

There are obligations on employers, particularly as regards lone workers, from a health and safety perspective to protect the health and safety of a lone employee. In that context, monitoring to some extent will be required. Any monitoring will need to be proportionate and appropriate.

For security and GDPR compliance, as regards sensitive data and ensuring safe compliance and protection in respect of such data employers will need to be able to monitor this.

Any other comments:

1. Governing Legislation

It has not yet been identified under which legislation the Right to Request Remote Work will be enacted, or whether it will be entirely new legislation.

2. Claims/Compensation

- We note that no detail has been provided around how employees who are dissatisfied with the interaction with their employer, or the unreasonable refusal of a request, can refer the matter to a third party? For the purposes of the below, we assume that such complaints will be to the WRC.
- We recommend that, with regard to the potential orders that might be made by the relevant adjudicatory body, no provision should be included which would force an employer to allow an employee to work remotely, given that the legislation will only afford an employee the right to request remote work, and does not confer an absolute right to work remotely. We consider that the furthest any such order could go, would be to require an employer to reconsider a request.
- In the circumstances of such an order being made, it should be made clear that the employer's decision is final.
- Regarding compensation, if it is deemed appropriate for inclusion in the legislation, we note that the maximum award under the UK ACAS Code of Practice is 8 weeks' pay and recommend a similar level of compensation or, in the alternative, the limit on compensation for breach of provisions regarding flexible work under the Parental Leave Acts i.e. 20 weeks' remuneration.
- The legislation should also include a provision prohibiting the penalisation of employees for having exercised their right to request remote work.

3. Remote Work Arrangements

Employers should be reminded of the factors to include in any policy or arrangement regarding remote work. For instance, if an employee who works remotely is required to come to the employer's place of business, any time spent travelling there will not be deemed working time, and whether expenses for that travel will be paid.