

Hybrid working after COVID-19: home is where the work is

The government mandate to “stay at home” during the COVID-19 pandemic has triggered a shift in the way that many people work, with remote working becoming commonplace in 2020 (see feature article “Homeworking in the wake of COVID-19: issues for employers”, www.practicallaw.com/w-027-8073). As restrictions begin to ease and employers plan the reopening of their workplaces for mid-2021, many employers are evaluating their current operations and are moving towards a hybrid working model (see box “Hybrid working”). However, hybrid working brings its own issues and employers will need to consider these before implementing any new way of working.

Legal implications of hybrid working

Before introducing a hybrid working model, employers must consult with their employees on the proposed changes. The employer will need to consider whether hybrid working is mandatory for all or some employees, or only optional, and whether attendance in the office will be required for a set number of, or particular, days, or whether the arrangement will be more flexible.

Employers will need to review their existing contracts of employment, and in particular any mobility clause, to ensure that they have the necessary flexibility to amend an employee’s place of work from the office to a mixture of office and remote work. An amendment may also be required if the employer wants to set specific days on which the employee is required to attend the office. The employer will need to obtain employees’ consent to any formal changes to the terms and conditions of their employment. Consideration will also need to be given to what the employer will do if an employee refuses to accept a change to the terms and conditions. This could mean terminating and re-employing on new terms and conditions, which may require collective consultation.

Employees with at least 26 weeks’ continuous service with their employer can make a formal request for hybrid working through a flexible working request (see Briefing “New flexible working regime: open to all”, www.practicallaw.com/8-572-1207). Employers will need to ensure that any application is considered fairly and that there can be no claim for discrimination.

Hybrid working

Hybrid working is a flexible form of working that allows employees to split their time between working in the office and working remotely, usually from home. Hybrid working offers significant benefits for both the employer and the employee. For employers, this may include cost savings on office space, reduced absence rates, and it may be easier to attract and retain talent. For employees, hybrid working may provide more autonomy, a better work-life balance, improved focus with fewer distractions, greater ability to manage family and other commitments, and saved time and costs associated with not having to commute to the workplace.

Employers need to be careful to avoid a two-tier workforce. Employees who are working in the office may be treated differently to those working from home and this could result in indirect discrimination claims; for example, if women are overly represented in the hybrid model. Employers must ensure equality in performance management and benefits, unless any difference can be objectively justified. It may also be necessary to adjust other benefits linked to working in the office when introducing a hybrid working model, such as commuting costs, company cars or catering and food vouchers. This again may result in changes to employees’ terms and conditions of employment, but employers must consider any discrimination claims that could arise as a result of these changes.

Employers generally have an obligation to provide their employees with the tools and equipment needed to perform their work, such as a laptop and mobile phone. However, employees regularly working from home may require additional equipment and employers will need to consider whether it will provide that equipment or reimburse employees for these additional costs. In addition, employers will need to ensure that they carry out reasonable adjustments for employees who are disabled. This means providing any adjustments both in the office and at home.

The parity of treatment must also apply to technology available to ensure that employees working remotely can continue to participate in meetings and more casual discussions with employees who are in the office.

Hybrid working policy

A hybrid working model can take many forms, and what is appropriate for each employer

will depend on the nature of their business. The hybrid working policy can be a standalone policy, or can be included in an existing flexible working policy. The policy should contain the following information:

- The employees who are eligible for hybrid working; for example, the policy could apply to all employees or only those roles that are suited to this form of working.
- Whether hybrid working is mandatory or optional. If optional, the policy should explain how to request hybrid working.
- The number of days per week that employees are expected to work in the office, as compared to the number of days that they can work remotely. It is a good idea to build into the policy a degree of flexibility in order to accommodate for individual circumstances, the nature of the role, operational needs or available space at the workplace. For example, it may be appropriate to require junior employees, who are more likely to benefit from being in the workplace and working with others, to come into the office more frequently than senior employees.
- Any pre-attendance requirements such as desk booking; for example, where the employer no longer has office space for the entire workforce, attendance may need to be co-ordinated.
- An outline of the circumstances in which employees will be required to attend the workplace, such as in-person training, meetings with their line managers and performance appraisals.

- Any limits on where an employee can work remotely; for example, the employer may want to impose limits on working in public places if there are data protection concerns. Employers may choose to permit employees to work elsewhere, including overseas, for a certain number of weeks per year. If this is the case, the policy should require employees to disclose to the employer the details of any new work location, as there may be tax, immigration and regulatory issues in working from a different jurisdiction.
- Guidance on what is expected of employees while working remotely, including how performance will be monitored and measured. In particular, the policy should address core working

hours and the importance of maintaining a work-life balance.

- Any data protection and confidentiality obligations while working remotely, health and safety requirements and any financial assistance that will be provided by the employer.

Employers may also need to review and adjust other policies already in place, such as policies on working time, expenses, use of IT equipment, data protection and business travel.

Managing workplace culture

Employers, and particularly team leaders, will need to consider the impact of hybrid working on workplace culture and employees'

wellbeing. Team leaders will need to explore new ways of bringing their team together in order to maintain performance and productivity, enable continued collaboration and ensure that all employees feel connected. This could be by way of regular in-person or video meetings, set days when all team members are required to be in the office, lunchtime wellness activities, after-hours in-person or virtual social events, weekly round-up emails or newsletters, or annual team away days or retreats. Employers should seek regular feedback from employees, for example by carrying out an anonymous survey on their experiences and ways to improve the hybrid working model.

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