
Practical Tips For Hybrid / Remote Working



The Department of Enterprise, Trade and Employment conducted a public consultation on the introduction of a statutory Right to Request Remote Work in April this year and the [report outlining the results](#) ("the Report") was published on the 20 August 2021.

The Report indicates that 86% of participants felt it was acceptable for employers to offer a hybrid working arrangement. The Report was part of the Irish Government's [National Remote Work Strategy](#) which aims to ensure that remote working becomes a permanent feature in the Irish workplace.

The Irish Congress of Trade Unions (ICTU) has responded to the Report, outlining that ultimately it is of limited use where it is demonstrative of only a small sample of the population. Also, there is no legislative change or code of practice currently and we will need to wait to see what the Government decide to publish before finalising any arrangements. A code of practice similar to the one provided on the Right to Disconnect would certainly be of assistance to both employers and employees.

However, there is no doubt that many employers and employees have embraced remote working and wish to retain the improved work-life balance that come with this arrangement. Realistically, many employers will opt for the "hybrid model" of working from home on some days and the office on others for the foreseeable future. So, what do employers need to consider if they choose to adapt this new model of working and what are the potential legal issues they will need to address?

Practical Considerations

The initial consideration is what type of hybrid working model are you willing to undertake as an employer and how will you manage the workforce in this new model? Will it be a completely flexible model with employees having complete authority to choose where they work from? Or will it be something more prescriptive, such as employees working at least three days per week in the office or, alternatively, working set days in the office and set days from home?

Remote/Hybrid Working and Policies

Either way, it is advisable that employers consider how this new model will roll out. As this will be a change to working practices it may be a preferable approach to have a comprehensive Flexible Working/Remote Working Policy ("the Policy"). Creating a tailored Flexible Working Policy can cover the myriad of issues, including potential legal issues, that might arise in relation to flexible working. Furthermore, 84% of respondents to the Report stated that they would be in favour of employers being obliged to have such a policy.

Individually, employers will need to set out the terms of the new working model, including changes to location, any specific days the employee is required to work in the office and any provisions in relation to flexibility of hours. The Policy will also need to outline the process for agreeing or refusing any remote working requests and, ideally, should document that it is subject to change depending on the prevailing business requirements. The Policy will provide clarity around the terms of the new working arrangements which will protect both parties in case of any conflict arising in relation to those terms. Finally, consideration should also be given to implementing the provisions of the [Code of Practice on the Right to Disconnect](#).

Some employers may be concerned about new remote working arrangements evolving into a contractual arrangement but provided the Policy documents that the new working arrangements are subject to operational requirements, review and the prevailing public health situation, then this should not be an issue for them. However, it is still advisable to review any existing contracts, company handbook and policies to see if they require amending to reflect the new working arrangements.

Health and Safety

An employer has a duty to provide a safe place to work to their employees under S.8 of the Safety, Health and Welfare at Work Act 2005, including those who are working remotely or from home, and any Policy will need to pay heed to the [HSA Guidance on Working from Home for Employers and Employees](#).

Data Protection

Data Protection is another key area that will need to be addressed when employing a hybrid working model and a Data Protection Impact Assessment (DPIA) should be conducted to assess any risks in relation to the processing of data when working remotely, with mitigating measures put in place to address any risks discovered.

Conclusion

Many employers and employees have discussed returning to work on a hybrid basis over the past 18 months, however the practical implications of doing this are complex and require due consideration. Once you have considered what type of hybrid or flexible working

model is right for your organisation, it is important to then consider the various legal obligations that arise in relation to implementing that model. If planned carefully, with all legal documentation amended to reflect the new model of working, you can avoid any potential pitfalls and ensure a successful return to the new “hybrid” workplace.

If you need assistance in drafting a Flexible Working Policy, please contact one of the team in CC Solicitors. CC Solicitors is a market leading specialist employment and partnership firm in Ireland. Colleen Cleary has been recommended as a global leader in labour and employment law and is referred to as “an outstanding employment law expert” who is “very experienced and excellent to deal with” in Who’s Who Legal 2021.

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