

## Post Pandemic Workplace Arrangements Your Questions Answered



### 1. Will home-based employees travel to work, do employers have to provide mileage reimbursement, or is it better to change their contract to reflect hybrid working?

To achieve clarity on this question, an employee and employer should agree this in the contract of work.

If the employee's home is their default place of work, an employer may wish to reimburse expenses associated with travelling to the office or to other required locations. However, if the primary workplace is at the office (but with significant scope for home working) the employee will typically be required to fund their own travel to and from their place of work.

### 2. Employers are not obligated to pay for employees' home costs of heating and lighting.

Employers do not need to pay employees for the increased costs associated with working from home.

Indeed for many employees, home working is often significantly cheaper due to reduced transport costs due to a lack of commuting.

Larger employers could consider a hardship fund for employees to support those that are struggling with bills. This is often more important during the colder winter months.

### 3. I had a colleague who said their wife is taking half term off but often I have considered that maybe the wife is saying the same to her employer?

As an employer it is usually best to avoid getting involved with employees' personal lives as much as possible. With childcare and holidays, one should try to be as flexible as possible as childcare needs can sometimes change at short notice, particularly during the pandemic. Speculating about the details of employees' partners' employment is best avoided.

### 4. Can you use a policy in conjunction with the employee contract to cover the new flexible homeworking policy, if some employees are unable to work from home?

It is certainly possible to have multiple policies to reflect employees who, by the nature of their role, will have different requirements and parameters within the meaning of flexible working. For example, a site manager is unlikely to be able to work from a different office or work location but might be given flexibility in terms of days and hours in the week to work.

It may be advantageous to maintain a standard contract and policy to cover most employees, with those that require different terms having amended contracts or policies. If there is a large cohort of employees that must work from the office or other workplace, the employer could consider alternative means of offering work flexibility.

### 5. What custom and practice implications are there for those who have been working two or three days per week from home for over 12 months, to us as employers asking for them to build up to being back in five days per week? We're planning on doing this over a three month period to support our teams getting used to normality again.

Custom and practice describes the process where there may be implied amendments to contractual terms and will usually require the same practice having taken place for a significant period of time. A year or eighteen months is unlikely to lead to such a change especially when it has been in response to a pandemic.

The plan for a phased return to the office is wise, as it will take some time for employees to adjust to the change of being back in the office. Consider creating some communication and learning resources to ensure employees have good knowledge of the social distancing/safety measures in place in the office, and how to adhere to them.

A video of the office showing any changes could be useful and may help to quell any anxiety from workers who are nervous about returning to the office after a prolonged absence. The pandemic is not over, and employers should make efforts to understand employees' concerns, and to make changes to protect their physical and mental health during this time.

### 6. Do you have any recommendations about how we can better communicate all of these planned changes to adjustments to our new ways of working?

Working remotely can come with new challenges. It's no secret that very long emails can often lead to information being missed, or simply deleted from inboxes if under time pressure to complete other tasks.

Rather than just writing about the measures in place to maintain safety, why not show them? Demonstrate where the sanitiser and the masks are stored and show them what to expect at their workplace if the layout or procedures have changed. This will hopefully inspire confidence that their safety is being taken extremely seriously.

### 7. What are the possible risks in adopting a much more hybrid approach for most of our workforce, with the possibility of some workers being 100% home-based?

There are two significant risks that we have identified that could occur across all workplaces:

The first is an increased risk in employees missing out on the social aspect of work. This could mean a lack of conversation with colleagues, missing out on the opportunity to join in work social events and activities, missing out on supervision and mentorship, or a general feeling of loneliness.

The second issue is around promotions. Employers that have employees that work partially or wholly from home should have policies in place to ensure that such employees are not denied promotions and advancement due to their lack of visibility in the office. Employers must be careful to avoid favouring the workers who are present more often in the office over their home-working counterparts if the quality of the work is the same.

### 8. Where we are taking a hybrid approach going forward, should we ask employees to submit a flexible working request where they want to make the changes permanent, or could we use a more informal process?

Yes, it would be sensible especially where employees are sure that they want the changes to become permanent. However, it is important to remember that going down the statutory flexible working request route does have limitations (i.e. an employer can only submit one request in a 12 month period. So once a request is granted, if the employee changes their mind, they will not be able to submit another request for 12 months).

However, you could take a more flexible approach whereby the employee discusses the arrangements with a manager, and where the manager agrees, the discussion is recorded and followed up with a contract variation as necessary.

This more flexible approach does follow the statutory procedure in so far as a meeting and discussion takes place, but it is not as rigid as the statutory procedure. If for any reason an employee was not satisfied with this informal approach, then of course they could submit a flexible working request in any event, in line with the statutory process.

### 9. How can an employer deal with conflict arising between those employees returning to work in the office and those who will continue to work from home, particularly where the employer is not planning to enforce a full return to work at the office?

It is important going forward that employees understand the workplace culture that they are trying to foster as an employer. Communication is key and having a hybrid working policy in place will help employees to understand the reasons behind why some might be working from home, whilst others need to work from the office.

This will help to prevent conflict from arising. It is important to be alert to the risks of overlooking homeworkers when it comes to social events or promotions etc.

However, where conflict does arise, it will be necessary for managers to have conversations with employees and to be open and transparent about the employer's policy and business needs balanced against the needs of individual employees.

If conflict continues and employees fail to follow reasonable management instructions, disciplinary processes can be followed based on employee conduct.

### 10. Is it reasonable to request employees to purchase certain equipment such as furniture themselves if they 'choose' to work from home going forward?

Yes it is a reasonable request, particularly where employees choose to work from home and the office. Therefore, the employer would not be responsible for the cost of duplicating equipment in the employee's home if they work from the office as well, particularly if it is the employee's choice to work from home.

However, if the employee intends to work exclusively from home, and the equipment has been bought by the employer, then it would be reasonable for the employee to keep the equipment already being used in the home until such time the situation changes or the employee no longer works for the employer. In which case, the employer could recover its property from the employee.

### 11. Post pandemic, if employees continue to work from home do employees need special home insurance to continue working from home?

No. The employer is already required to have employer's liability insurance. You will not be setting up a business.

Employees should check their home contents policy to ensure their property is covered. If there is any increased premium, it would be reasonable for the employer to pay for the extra.

However, the employer will still need to periodically carry out work station risk assessments for those employees working from home, because this is the employer's responsibility under the health and safety at work legislation.

### 12. Would a policy in conjunction with the contract cover the new flexible homeworking policy, if the policy is not relevant to all employees due to the nature of their positions?

We are definitely finding with some of our clients that there is flexible working envy between those who have to attend the workplace and those able to work from home. It's also wise to be alert to the risk of overlooking a homeworker for promotion, or effectively excluding them from social events organised to take place near work.

Employers will need a combination of contractual changes for those affected with an overall hybrid, flexible working, or homeworking policy.

It should include reference to those who have to work at the workplace, because flexible working does not just include homeworking but could include flexibility on hours worked and should include the statutory procedure.

## ANSWERED DURING THE WEBINAR

### 13. If it is recommended that employee's contracts are not changed until employees are sure of their plans, should something be put in writing to cover their trial period?

It's absolutely right that you wouldn't want to change contracts frequently and employers should not do so several times during the year when things aren't working.

So if you do want to have trial periods, it is wise to put those in writing to employees.

If possible, employers should indicate how long each trial period might be, and if required there might be several trial periods as employees adjust to new ways of working. At all times, it's always worth making sure that all employees know what's expected of them and are kept well informed when things might change.

### 14. Do you have any examples or templates to survey staff prior to a post-COVID return to the workplace?

Providing templates of this nature can be difficult, as they often need to be very specifically tailored to the type of business in question, and the work that their employees do.

For example, a professional services plant will have a totally different approach to an office based business, and there are a number of course businesses where employees go out to client sites as well.

We can certainly assist in creating a customised survey or planning document to assist your business during this transitional period and returning employees to the workplace. Please get in touch with us to arrange this.

### 15. Even though they do if an employee is refusing to return to the office, what can you do if they have been assured that the offices are COVID safe?

The first thing to do would be to find out why the employee doesn't want to return to the office and understand their reasoning. Try to be understanding in your approach, as the pandemic has been a scary and potentially traumatic time for some.

If the problem is around general issues like "I'm worried about catching the virus at work", try to reassure the employee that you have taken precautions against this. These will include things like social distancing policies, sanitising workstations and equipment, and ventilation of work areas. If none of those things work, then there may come a point where employers will need to give that ultimatum and demand a return to work.

Ultimately, if they totally refuse to come back then they are disobeying a reasonable instruction to return to work and, of course, that's potentially gross misconduct and can potentially lead to dismissal. You'd want to go through a number of steps before proceeding to that disciplinary stage as outlined above.

### 16. If someone is working both at home and in the office, due to their own choice to have a hybrid arrangement, is the employee obliged to provide duplicates of everything - for example, monitors, chair, desk and keyboard?

No, there's certainly no requirement to do that at all.

You would need to think about what's actually necessary in order to do the work and they're going to be with the basics, for being able to do their work. But if it's their choice that they're going to provide their own working, you may well want to provide a hardship fund for those people who would find it difficult to expense that sort of arrangement, but actual paying for the cost, there is no need to do that.

### 17. For those working from home is it reasonable for the employer to recover costs from the employee for equipment, if the employee leaves within the probation period?

This would only be permissible if you've told them beforehand that that's what you might be going to do in the event of the employee leaving before the end of the probation period.

However, this scenario seems fairly unlikely, as most employers should seek to recover that equipment at the end of the probationary period and be able to re-use that equipment for another employee in due course.

### 18. With mileage and expenses, what are the recommendations around mileage or travel for employees who work in a hybrid way or are home based? For example, can commuting from home to the office be classed as work time?

This is all about where people are based for their work arrangements so you've got a number of considerations; you've got the tax issue and you've got working time.

Working time will not include time when you are commuting to your workplace. Therefore if your workplace is not your home and you're going to the workplace, that will not be defined as working time. But thereafter once you're going from the office to somewhere else, that would be working time and a minimum wage would be payable in those circumstances.

Whether it's better to have the workplace designated as a home or not will depend on a whole lot of arrangements, and hybrid working arrangements will undoubtedly need some kind of discussions with HMRC about whether or not they're going to charge tax in relation to those situations.

For most people that work in a hybrid working manner, there will clearly be one place that they work at more than the other. For many it would be, for example, three days at home and two in the office or the other way around.

There will be a few, of course, where that doesn't work out, but that consideration may determine where you are best to place that employee's place of work. This is one of those things that's pretty tricky and unique for each circumstance.

### 19. What is a reasonable notice period to give employees for the changes in contract that are going to take place?

It depends on what the changes are and what needs to take place if it's a fundamental change in the contract of employment. The best advice for an employee who is uncertain about upcoming changes would be to speak to your manager and ask about their intentions going forward.

If it's a minor change it may only need a few days or a week.

### 20. Our office may be safe, but in places like London where employees are concerned about public transport safety, does the employer have any responsibility?

No, there's no responsibility for the employer in terms of people getting to work, that's their responsibility, but obviously it's sensible to talk with employees about their concerns and whether those are well placed.

Employers can talk about what should be done to alleviate those concerns, for example, during the height of the pandemic many employees changed working hours; people could come in a little later and finish later or earlier to avoid busy public transport times.

As the population gets to a point where the vast majority are vaccinated, of course, hopefully these types of things will become less of an issue.

It is useful to think about these things in terms of risk assessment: what is the risk, and why are people concerned? Is the concern for the employee themselves personally, or because they are looking after people at home, who have higher vulnerabilities?

We always say it is worth sitting down and trying to understand and explaining the circumstances to the employee before imposing anything on them.

### 21. If you make the vaccination mandatory for your organisation and staff refuse due to religious belief, where would the organisation stand?

It's a difficult issue that you have to deal with, and it's often best to look at why you are considering making the vaccine mandatory for staff. If it's a case where you've got vulnerable members of staff or clients and that's the reason for mandatory vaccines, then you are likely to be able to enforce this.

For workplaces such as a care home or similar, they might well want to mandate vaccinations. However in most other places mandating vaccination will be difficult, especially in circumstances where there is no national law and no stated government intention of imposing a law on people that they should be vaccinated.

Bear in mind that religious belief is only one of the possible reasons that people might use to refuse.

If you've got a good reason for a vaccination policy that insists on vaccinations taking place, then you may be able to impose it, however if you haven't got a reasonable justification for the policy, you wouldn't be able to do so.

### 22. Is there any guidance for phased returns to the office, while most businesses have social distancing in their offices and operations environment?

This is regarding what employers are doing in terms of their workplaces to prepare for employees returning, and are they properly risk assessing them? For example, are they setting up appropriate arrangements for hygiene and social distancing?

As an employer, you have a responsibility to do a clear risk assessment, so people should know what they're going back to. As an employee, you would be entitled to see the risk assessment.

If after any questions have been answered by the employer, an employee would only be entitled to say they were at risk and refuse to come to work if there was an excessive risk. This might be something like non-enforced or non-enforced social distancing rules that are ineffective.

These sorts of circumstances are likely to be extremely rare, because most employers will do the risk assessments and will ensure that the precautionary measures are adhered to.

Whilst there were problems in the early days of the pandemic, there have been less problems reported from workplaces in recent times, because people have recognised their responsibilities for doing things correctly and the serious consequences of not doing so.

### 23. If an employee has moved locations - for example, two hours away from the office and they no longer want to travel to the office, can the employer insist that they must work in the office?

There is no reason why an employer can't insist that the employee attends the workplace if that is required for their contracts. Those that aren't happy to exercise their rights to require workers to go back to the arrangement that they operated under before the pandemic.

Clearly, it is wise to take into account the individual employees' particular circumstances and the reasons why they might have moved.

In fact, in recent months many have realised they can work successfully from home so have moved house many miles away from where they were before, because they have been able to carry on their work remotely.

However if that was a unilateral decision from the employee, the employer certainly could insist that they return to the office when safe to do so, if it's appropriate for the role and for the business.

The employer could also consider the possibility of a transition to a 100% remote working arrangement for the employee, but there is certainly no obligation on the employer to adopt this.

### 24. With a hybrid working approach is it possible for hours to be flexible, and not having set days of when to come into the office? If so, how should this be reflected in the contract?

Yes, employers absolutely can be adopting a varied approach. It depends on how you want to implement that in the contract.

With the good work plan you've got to state the days of work ideally, but for instance some flexibility can come from certain numbers of varied hours in mornings, evenings or even weekends if appropriate.

It's perfectly possible to arrange a contract that works flexibly, but having to state particular days of work is a slight curveball.

It can be reasonable to have different terms and conditions based on different job roles. For example, those that are customer facing the expectation would be for them to work on site, and this should be written into their contracts. Those that aren't customer facing will be able to have a hybrid approach and will have separate terms and conditions.

### 25. Can employers make use of multiple different contracts of employment for employees with different working arrangements that will vary because of the nature of their role?

Yes, absolutely. The reason why employers don't have a lot of contracts is because it can get unnecessarily complex and cause an administrative burden.

In theory, you can have as many as you want, and in the situation described it may well be worth having one that's office based, and one that is hybrid, not to mention potentially a third contract for completely remote workers who are 100% home based.

It may be that a whole new contract for each of the above situations is not required, and employers can alter the particular clauses of the contracts in question.

### 26. If we made the decision for all of the office to work from home and give up our premises, what should we include in contracts as the place of work?

If they are working from home 100%, then their home address is their place of work and that is what should be on their contract.

### 27. Can we ask employees to explain their exact childcare arrangements, for example, the hours and days?

Intervening in what people have in their personal lives is something that, on the whole, employers should avoid doing but, clearly, in some circumstances, in order to understand what's best for the employee and the employer in terms of their workplace arrangements, it may be necessary to ask about childcare arrangements.

If the employee won't tell you, then you just have to set the arrangements according to the needs of the business and it's up to the employee then whether they want to share the information about their childcare position.

Bear in mind that some childcare can be changed quite quickly so some employees will be able to adjust their arrangements and others won't.

Ultimately if the employee has entered a contract to perform work then that's the most important part as well as the employer is concerned.

### 28. What do you do if you find that someone's home work area is not set up well and is cramped? We pay each employee £12 a month for working from home expenses which our accountant advises as being the government recommended amount for home working. What are your thoughts?

You have got firstly a health and safety question. You've got to make sure that they are set up at home correctly from a health and safety point of view, and that they are able to use their equipment correctly. Is their posture correct in terms of whether they're seated correctly, facing the screen at the right height and all of those sorts of things?

As an employer, you're entitled to ask to go into the home to do that risk assessment because you're required to do it, so you could check it that way. Another way that lots of employers have been doing is to carry out health and safety risk assessments remotely. This involves asking the employee to show, through a video screen, what their arrangements are - how they're set up, and if you're not satisfied, you can ask them to adjust their setup.

If they don't do that then it's a matter of discipline, so far as employees are concerned, because the employer has that responsibility ultimately. There is a risk of an insurance claim as a result of an accident that might occur so it's very important that you get employees set up appropriately.

The fact that the employees have actually paid them some money to be able to set things up appropriately makes it even more important that the employer carries on doing what they're supposed to do.

### 29. Agile working, unlike flexible working is not a change to your contract of employment. Is this true?

Agile working is based on a principle of complete flexibility to improve performance and productivity, and it would depend on how far the organisation wants to go with agile working.

Employers need to consult with their employees if they are considering making changes that would be seen as fundamental. The best advice for an employee who is uncertain about upcoming changes would be to speak to your manager and ask about their intentions going forward.

### 30. Do you have a sample hybrid working policy?

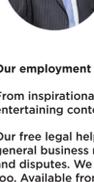
Yes we can certainly provide that. Please get in touch with us and let us know what you need.

It will need to be adjusted, obviously, to make sure it is specifically tailored to your organisation and workforce, which is something we would be happy to help with.

### 31. What discussions and considerations are needed for returning to offices for those who have been working at home and shielding, if others have not yet been vaccinated or do not want to be vaccinated?

The key considerations would be to ensure that rules of social distancing are adhered to and making sure that visitors are taking precautions such as:

- wearing face coverings
- making sure work surfaces are kept clean
- staff and visitors sanitise regularly
- increased ventilation
- complete a risk assessment and ensure it is shared with staff



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