



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

Health and Safety Issues in the Remote Workplace

by **Sinead Byrne**

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The provisions of the Safety, Health and Welfare at Work Act 2005 (the 2005 Act) and the Safety, Health and Welfare at Work (General Application) Regulations 2007 to 2021 apply to the remote working environment.

However, as they were not drafted with remote working in mind but rather at a time when attendance at a traditional, physical workplace was the norm, the question arises as to whether the current framework of health and safety legislation in Ireland adequately supports remote and hybrid working.

The Risk Assessment

Health and safety legislation requires all employers to ensure, as far as reasonably practicable, that their employees are working in a safe environment. The employer is responsible for the safety of the 'place of work', which is defined in the 2005 Act as any place where "work is carried on whether occasionally or otherwise". As part of this duty, a risk assessment must be carried out of the employee's workspace, including any remote workstations. To assist employers during the pandemic, the Health and Safety Authority (HSA) issued Guidance on Working from Home for Employers and Employees with an appended Homeworking Risk Assessment Checklist which provided that a risk assessment should be carried out of the workstation/display screen by a competent person, where necessary.

The HSA defines a 'competent person' as someone with "sufficient training, experience and knowledge who can carry out the Display Screen Equipment risk assessment of an employee's workstation". The assessment can be carried out online, with the use of a camera device so that the assessor can get a live view of the workspace. The employer should then implement any necessary safety measures in response to hazards and risks that have been identified from the risk assessment. The workstation includes the work desk, the work chair, the screen and other IT accessories provided to the employee in the course of their employment.

To adequately assess the work environment, should the entire room that the employee works in be inspected and perhaps also the hallways immediately outside the room? Clear guidance as to what precisely should be assessed is needed as employers face new issues such as balancing the requirement to carry out a risk assessment with an employees' right to privacy in their home.

Remote 'Workplace Injuries' and the Remote Commute

A workstation that does not comply with standards could result in injuries and loss of earnings, which an employer may be ultimately liable for.

A recent case in Germany saw an employee successfully claim on the workplace accident insurance for a slip, which occurred at home. Interestingly, this was considered a workplace accident and it was deemed that the employee was 'commuting' when moving around the home. It was decided by the German court that the policy of insurance would cover insured activities carried out in locations other than the company premises.

In Ireland, at present, it is unclear where the responsibility lies for insuring an employee's home when it is also a place of work. The 2005 Act places an obligation on employees to report to employers on anything that may put their health and safety at work at risk. What this means in practical terms in the changed world of home and remote working is not clear. Does the potential hazard have to relate to a work activity? Employers will then also have to consider how investigations should be carried out at home, as opposed to at the office, in response to any report submitted.

Provision of Desks and Chairs

The HSA guidance states that employers need to identify and agree with employees on the resources and equipment which may be needed by the employee, to effectively work from home. However, clarity is needed on this. If a desk or chair allowance is provided, an item that an employee chooses to purchase may not comply with standards for office furniture. In respect of the provision of resources, the costs associated with remote working are not currently legislated for. It is prudent to provide adequate resources and equipment from a risk and safety perspective and this may help to reduce the employer's exposure to potential claims.

Penalties

The HSA have authority under the 2005 Act to take enforcement action and to issue fines for failure to comply with the legislation.

A contravention of health and safety legislation may be tried summarily in the District Court, where the maximum penalty is €5,000 per charge and/or up to twelve months imprisonment, or on indictment in the Circuit Court where the maximum penalty is €3,000,000 and/or imprisonment for a term not exceeding two years.

What Changes are Coming Down the Track to Address These Issues?

Draft Scheme on the Right to Request Remote Working Bill 2022

The Draft Scheme on the Right to Request Remote Working Bill 2022 (the Draft Scheme) includes certain safety provisions within the draft heads.

It is envisioned that safety checks may be required to be carried out which will help frame a request to remote work decision. Once the legislation has been finalised and enacted, there will be an obligation on employers to have a remote working policy.

What does the Draft Scheme say about safety?

- **The self-assessment:** In order to support their request to work remotely, an employee would be expected to carry out a "self-assessment" of the proposed remote working location including an assessment of the "ergonomic suitability of the proposed workspace and any equipment and furniture requirements". How an employee is expected to assess this is currently unclear from the Draft Scheme
- **Engaging experts:** The Draft Scheme recognises that there may be a need on occasion to engage health and safety consultants, who presumably may need to assess the remote working location but does not specify when it is envisaged that this may be needed. Moreover, how the assessor's duty is to work alongside the self-assessment carried out by the employee is unclear.
- **Declining a request:** One of the identified business grounds identified in the Draft Scheme for rejecting a request for remote working is for "Concerns for the suitability of the proposed workspace on health and safety grounds". Again, the Draft Scheme does not provide detail around what might constitute an unsuitable workplace which is unhelpful, but it does appear that the safety checks required to be carried out as part of the risk assessment under the 2005 Act may impact the remote working request.
- **The penalties:** The Draft Scheme envisages no penalties in respect of breaches of health and

safety, but employees may have a remedy under the 2005 Act.

Conclusion

As remote and hybrid working has become the reality for more and more businesses, the practical issues and the safety concerns that arise when considering a remote working request become more apparent. As part of the Draft Scheme on remote working, a code of practice is due to be published by the WRC later this year which will hopefully provide guidance on remote working policies and how to adequately carry out health and safety checks to allow the right to request remote working become a reality for many. Whilst the HSA guidance provides some assistance, the exact scope of the employer's duty remains unclear, and it remains to be seen whether the insurance and liability issues will be addressed with the proposed legislation.

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