



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

Remote Work – What to Expect in the Next 12 Months

by **Jennifer O'Neill, Aoife Bradley**

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The COVID-19 pandemic has led to a dramatic increase in remote working since March 2020.

As the current lockdown has been extended until at least 5 March 2021, such working arrangements are unlikely to change soon, and the Irish Government's advice is that employees should continue to work from home unless they are essential workers who must attend their work premises in person.

Remote Work and Covid-19

A recent decision of an adjudication officer of the Workplace Relations Commission in an unfair dismissal case (ADJ-00028293) is illustrative of the issues facing employers in relation to COVID-19 and the burden placed on them to protect the health and safety of their employees. In this case, the employer had rejected the employee's request to work remotely from home during the first COVID-19 lockdown. The adjudication officer held that the employee had "no real option but to resign" after the employer failed to take reasonably practicable steps to mitigate the risk posed by COVID-19 in the workplace and failed to adequately consider the employee's proposals. The employee had suggested that the work could be carried out in the safest way possible by rotating the attendance of each of the three employees in the office.

It is clear that employers need to seriously focus on the working arrangements they put in place to protect the health and safety of their employees. Even in the case of essential workers, consideration should be given to viable remote working options, such as rotating required attendance in the workplace, if at all possible. Providing a safe place of work is a fundamental term of the contract of employment and the employer must seek to eliminate or reduce risks to its employees through 'reasonably practicable' steps.

Remote Work – Here to Stay

The Government has just published "Making Remote Work: National Remote Work Strategy", a strategy which aims to ensure that remote working is a permanent feature of the Irish workplace in a way that maximises economic, social and environmental benefits.

The strategy document recognises the benefits to society from increased remote working and the potential advantages and disadvantages for employers and employees. The Government is committed to increasing remote work in a way that reaps the benefits and mitigates any negative side effects. In addition to identifying different steps that need to be taken, the strategy document also identifies timelines within which it is envisaged these steps will take place. These are summarised below:

Quarter 1 of 2021

- Introducing of a code of practice on the right to disconnect.
- Extending the mapping and classification of hubs across the country to develop national data on the hub infrastructure.
- Exploring how the national broadband plan can be accelerated to deliver connectivity as soon as is feasible across rural Ireland as a central part of the remote work infrastructure.
- Raising awareness of existing remote hub infrastructure in Ireland.

- Promoting remote work with businesses, which will include advising and raising awareness in relation to related issues such as remote work training, skills interventions and equal opportunities in remote settings.

Quarter 3 of 2021

- Legislating to provide employees with the right to request remote working.
- Reviewing the current tax arrangements for remote working in respect of employees and employers and assessing the merits of further enhancements for consideration in Budget 2022.
- Considering data on commuters, skills, and childcare facilities in the context of hub development decisions and identifying metrics to track the impact of remote working.
- Investigating existing hub classifications to include consideration of how they align with transitioning to a low-carbon economy.

Quarter 4 of 2021

- Investing significantly in remote work hubs and infrastructure in underserved areas.
- Developing national data on remote work frequency to assist with the development of future policy.
- Establishing a centralised cross-departmental knowledge base on the costs and benefits of increased remote working and its impact on employment, transport, carbon emissions, broadband and equality.
- Requiring public sector employers, colleges, and other public bodies to achieve 20% home and remote working in 2021.

Throughout 2021, it is also proposed to provide employers and employees with ongoing up-to-date guidance on remote working.

Recommendations for Employers

The strategy document is a welcome development which recognises that remote working is becoming a permanent fixture in the workplace. Clearly planning and implementing increased national remote working arrangements will be a key part of this Government's activities over the next 12 months.

Employers are advised to be informed and follow developments in this area. They should have a remote working policy in place, which is updated as necessary in line with key changes in law and best practice.

It will be of interest to most employers how the right to disconnect, which aims to assist employees in maintaining a boundary between personal lives and work lives, will impact in practice on future working arrangements. It remains to be seen how the principles in this new code of practice will be balanced with the strict legal requirements on working hours and rest breaks under the Organisation of Working Time Act 1997. Keeping up to date with developments in this area will be key to ensuring ongoing compliance with best practice on working time requirements.

Improvements in local infrastructure such as broadband, local hubs or childcare facilities may affect how employees perceive remote working and on the feasibility of such arrangements for businesses. As employees will soon have a right to request remote working arrangements, employers will need to evaluate their business requirements and the impact of long-term remote working on those requirements. It is important that where a request for remote working is made by an employee that proper consideration is given to the request by the employer. The fact that many employees have successfully performed their duties remotely over the last 12 months may make it more difficult for employers to refuse requests for remote working.

In light of the rapid change to employer obligations and employee rights in this area, it is recommended that employers stay abreast of the latest guidance and developments and participate in available training. By taking such steps employers will be in a better position to meet their obligations to employees and remain legally compliant, amidst all of the ongoing changes.

Need Assistance?

If you require assistance with managing a remote workforce, please contact a Jennie O'Neill at joneill@lkshields.ie or Aoife Bradley at abradley@lkshields.ie.

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