

UK Employment Flash

Insights into the latest employment news

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Considerations for Continuing To Work From Home During COVID-19

The persisting risk of COVID-19 means that, even as offices reopen, many white collar workers will, by choice or necessity, continue to work from the safety of the home for part or all of the working week. Below, we provide a brief summary of some of the most important considerations for UK employers managing employees working from home for periods beyond the initial lockdown.

Health and Safety

Employers continue to be responsible for the health and safety of any employee who works from home and must take all reasonable, practicable steps to protect this. The Health and Safety Executive has provided helpful guidance on employers' responsibilities for homeworkers.¹ The guidance states that there should be no increased risk from using display screen equipment (DSE) for those working from home temporarily. While this means that employers do not currently need to undertake a full home workstation assessment for each employee, a general assessment to identify the potential risks from working at home (for example, inadequate equipment or space, or lack of ergonomic equipment that might be available in the office) should be carried out. The employer should provide guidance and information on health and safety risks arising from home-working and ask employees to assess their risk in general terms (including in relation to the use of DSE).

Employers should also actively tell employees of the simple steps they should be taking to reduce their risk from DSE-based work. This includes: (i) breaking up long spells of DSE work with rest breaks (at least 5 minutes every hour) or changes in activity; (ii) avoiding awkward, static postures by regularly changing position; (iii) getting up, moving or doing stretching exercises; (iv) avoiding eye fatigue by changing focus or blinking from time to time; and (v) checking desk, chair and screen height.²

It is equally important to remember that employers also have a duty of care towards employees in relation to their mental health as much as their physical health. As part of this duty, employers should encourage employees to take regular breaks during the day, take holiday and annual leave (regardless of whether they are likely to travel) and ensure regular contact to help with stress management while working from home. Some employers have also provided guidance on video call etiquette. For example, it is now increasingly common to not require people to turn on their video if they do not feel comfortable doing so.

¹ See the Health and Safety Executive's "[Protect Home Workers](#)" guidance.

² See the Health and Safety Executive's "[Display Screen Equipment \(DSE\) Workstation Checklist](#)."

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Security

Working from home presents new challenges for security and confidentiality. Employees should be reminded to keep both hard copy and soft copy information safe when working from home. Some employers may consider arranging for periodic collection of hard copy materials in order to ensure that they are properly disposed of. To protect soft copy information, it is important to remind employees of the need to use effective access controls such as strong passwords and multifactor authentication for devices such as phones and laptops.

Aside from the security of hard and soft copy information, there is also a potential issue of security with regard to new platforms and software used to facilitate working from home. It is important that employers conduct a thorough review of the privacy and security features of the services that employees are expected to use and ensure that employees use the latest versions of any software providing such services.

Many data protection regulators, including the UK's Information Commissioner's Office and Ireland's Data Protection Commission, have published guidance to aid employers and employees in protecting confidential information, including personal data.³ Employers are well advised to review their data protection, computer use and confidentiality policies to ensure that they adequately anticipate the additional risks of working from home.

Working Abroad

The ability to work remotely may encourage some employees to consider working abroad. While short periods working abroad are unlikely to be problematic for employers, longer periods could create tax risks such as employees becoming tax residents in other countries or potentially creating a taxable presence of the employer in another jurisdiction.

In addition to the tax risks, there may be immigration implications connected with living and working abroad. This is not only a concern with regard to the country that the employee is working from remotely but could also affect an employee's ability to apply for resident status or even citizenship in the UK. While immigration concerns do not currently apply to UK or European Economic Area (EEA) citizens working within those jurisdictions — they have the right to live and work in the UK and in any EEA country — this may change following 31 December 2020, when the Brexit implementation period is set to end.

³ See UK Information Commissioner's Office's "[Data Protection and Working From Home: What You Need to Know](#)"; Ireland Data Protection Commission's "[Protecting Personal Data When Working Remotely](#)" and "[Data Protection Tips for Video-Conferencing](#)."

Employees may also start to benefit from local employment protections if they have lived and worked in a foreign jurisdiction for long enough. This could affect basic employment rights such as minimum pay, termination rights and holiday entitlement.

If the employee is undertaking work in a regulated industry, there may also be regulatory implications for the employer arising from an employee undertaking work on a medium- or long-term basis in another jurisdiction.

Finally, an employee could travel to work remotely from a country with no quarantine restrictions imposed against it by the UK government, only for that to change with short notice. While a quarantine is unlikely to be problematic for employees who can carry out their roles effectively from home, the potential for an additional two-week quarantine period should be factored into any anticipated return date. The potential for further lockdowns should also not be discounted and could significantly increase the time an employee spends abroad.

In light of the above risks, it is important to have a system to record any overseas remote working and require employees to obtain prior authorization before doing so. Ideally, an employer should have a written arrangement addressing the above risks with the employee who is seeking to work abroad. For example, the arrangement could make clear that the employee will be responsible for any additional taxes that arise from working overseas. A relatively simple way of managing the risks is also to ensure that employees are allowed to work from abroad only for short, restricted periods with a documented return date.

Special Cases

Where individual employees raise working from home issues that are specific to their circumstances — for example the need for reasonable adjustments if they have a disability or an adjusted work pattern because of child care commitments — the usual considerations and processes will apply to ensure a company is complying with its obligations under the Equality Act 2010.

Expenses

Certain business expenses are tax-deductible for the employer and nontaxable for the employee, including home office expenses such as home office equipment and stationery. Employers will, however, need to take care to ensure that the way in which office expenses are met limits any tax exposure for them or their employees. In many instances, costs should be borne directly by the company rather than paid by the employee and then reimbursed (for example, printer cartridges, paper, mobile phone bills), and private use by employees of certain employer-provided equipment should be limited, where possible.

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In light of the considerable increase in homeworking, HM Revenue & Customs has published guidance on what equipment, services or supplies it considers to be taxable for employees working from home.⁴

Human Resources Processes

Human resources processes such as performance reviews or disciplinary and grievance hearings are typically designed around in-person meetings. Consequently, they may have been placed on hold at the beginning of the pandemic, when the

timeline for being away from the office was unclear. Now that it is likely that work-from-home arrangements will continue for a significant period of time, employers should establish ways of carrying these processes out remotely.

As it becomes clear that working from home was not just for the initial period of lockdown but is likely to continue for at least the duration of the pandemic, employers that have not already done so should consider putting in place a more fulsome work-from-home policy. Such a policy will provide an effective way to address many of the legal considerations at play.

⁴ See HM Revenue & Customs' "[How To Treat Certain Expenses and Benefits Provided to Employees During Coronavirus \(COVID-19\)](#)."