

WORKING FROM HOME (“WFH”) WHAT SHOULD I CONSIDER?

The First Consideration – Who Can WFH?

WFH is not suitable for all roles. The key is to discuss the option and to think flexibly in the current circumstances. Subject to the this, on 16th March, the government strongly advised everyone should WFH where possible, especially: -

- *Individuals aged over 70 years or*
- *those with underlying health conditions e.g. chronic respiratory, heart, neurological, or kidney diseases; or those with diabetes or a weakened immune system; and*
- *pregnant women*

Will It Be A Variation of Contract?

Technically, even a temporary change in the employee’s place of work may amount to a variation of contract if there is no contractual right to change the place of work and WFH is not common practice for an individual already. However, in most cases, such a variation is likely to be agreed following consultation, especially where the alternatives are potentially SSP or no pay and bearing in mind that there are potential benefits for both the organisation and employees i.e. business continues, and employees maintain their income and job security.

You may already have a policy that covers permanent changes to an employee’s place of work e.g. a Working from Home or a Flexible Working policy. If so, these may provide useful guidance as to the process of considering and agreeing a temporary WFH arrangement.

General Considerations for Employers

The following is not an exhaustive list, but it identifies some related matters to consider:

- 1. Health and Safety** – *“so far as reasonably practicable” a risk assessment is required for home working (Health and Safety at Work Act 1974).*

Given the exceptional circumstances and timescales, it may not be possible to undertake risk assessments for everyone immediately. Therefore, priority should be given to those who may be at higher risk due to personal circumstances or their role. Vista’s view is that there is a balance to be struck between the risks of WFH and managing the risks of COVID19 and a formal self-assessment may suffice initially. In any event, it is worth reserving the right to visit the worker’s home to undertake a risk assessment or electrical (PAT) testing etc, when discussing WFH. Especially if an initial risk assessment identifies a hazard.

From a HR perspective, it is also worth considering regular communications from HR and line managers are implemented with those WFH. This will not only reduce feelings of isolation but also help to manage any potential “stress” implications that may arise from the new temporary ways of working.

2. **Data Protection** – *Data protection and security requirements still apply to the processing and security of data whether held electronically or in hard copies. The ability and security of the IT infrastructure both within the business and at home should also be reviewed. Again, a simple data privacy impact assessment is worth implementing initially to cover areas such as access to and security of personal data which will include how personal data will be transferred e.g. encryption etc.*
3. **Insurance** – *Ensure employees check their home insurance allows for WFH. Also check the business' insurance covers any work equipment or other risks, e.g. data breaches, away from its premises.*
4. **Expenses** – *Whilst travel is unlikely for obvious reasons, if appropriate, consider where such expenses will be calculated from and discuss this and any tax implications with finance and employees.*

If expenses arise from additional equipment, be clear who will bear the costs of the equipment and its installation. Also consider reserving the right to enter the home to install or recover any company property, if the contract of employment does not already provide for this.

Some employees may ask whether extra costs, e.g. utility bills, will be covered by the business? You may wish to resist this based on the extraordinary circumstances and that it is only a temporary measure. However, it is worth being prepared for such a question and to ensure any policy or practice is applied consistently to avoid grievances or allegations of discrimination.

5. **Hours of Work** – *It is worth emphasising to employees that their usual hours of work (unless otherwise agreed), together with provisions on performance and conduct will continue to apply.*

A common issue is: what if the employee has carer responsibilities at home? In light of COVID 19, employers may need to be slightly more flexible than they may be in normal circumstances. However, this is subject to the needs of the business and customers. It will be a question of what is reasonable in each case. There may come a point where performance or conduct reaches such a level that it needs to be addressed through the usual informal and formal procedures.

6. **Reporting Procedures** – *Be clear that the usual absence procedures will still apply regarding any leave or sickness but specifically regarding COVID 19, it is also worth emphasising to whom and when an individual should report if they become symptomatic?*

It may be worth having a designated contact or team. That person or team can then update the business and colleagues on any guidance and measures to be taken as things develop over time. They may also be the first point of contact for any PR or Health Authority matters, if required?

7. **Reserve the right to bring the temporary arrangements to an end** – *Emphasise any measures agreed are temporary and subject to review at the business' absolute discretion e.g. once the exceptional circumstances improve, if business circumstances change or if performance or conduct issues arise.*

8. **What if an Employee refuses to WFH** – *There may be grounds to consider disciplinary action for “failure to obey a reasonable instruction” particularly if the circumstances around COVID 19 escalate. However, this will need to be considered on a case by case basis depending, for example, on the individual’s specific reasons for any objection and what alternatives may exist.*
9. **Grievances and Discrimination** – *Remember the risks of treating people differently or less favourably. The more obvious examples here may be those with disabilities or decisions based on age. This may lead to grievances or even claims e.g. for discrimination. Even a policy or procedure implemented with the best of intentions may be challenged. Always consider whether the steps proposed are a proportionate means of achieving a legitimate aim. Protecting the workforce is legitimate but are there any better, less drastic, ways of doing that?*

Vista Employer Services Ltd
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