



COVID-19 and remote working

What do you need to know as a director?

This article has been created exclusively for members of IoD Ireland.

"You should continue to go to work if you can but where possible should work from home." – Statement by An Taoiseach on measures to tackle Covid-19, Washington, 12 March 2020.

Prior to the COVID-19 crisis businesses that were able to offer remote working to their staff were in the minority. COVID-19 has been an accelerator of change and businesses have quickly adopted to new technologies to enable their teams to work in a remote environment.

Currently, under level 5 restrictions, businesses must ensure their employees work from home unless their presence is required for an essential function.

However ensuring your employees work from home is only the first of a multitude of issues which may be faced by the employer. The purpose of this document for the IOD is to help directors understand their duties and responsibilities under employment and health and safety law.

What are the obligations on employers and directors?

It is a useful reminder that the same rules that applied in the office will also apply at home. That means that employers, and directors in particular, have responsibility for their employees under both employment and health and safety law.

Key employment law considerations

Many employers paused disciplinary, grievances or performance discussions in the early stages of this year when we were all getting used to working from home.

Given where we are now; back in level 5 for a period of time, it is unlikely to be acceptable to continue to pause such

conversations. Many businesses have become accustomed to Zoom for team meetings and there is no reason not to carry on important employee meetings remotely.

It is imperative to quickly investigate any allegations of bullying, harassment and sexual harassment. It is equally important to investigate and provide outcomes of grievances raised by employees, even where they do not seem particularly important in light of what your business may be currently facing. If these issues are not investigated, you risk claims under the Employment Equality Acts for harassment and/or discrimination where awards of up to two years pay can be made.

Further, if there are performance or disciplinary issues with your employees, you are still expected to have a meeting in line with your policies close to the time of the issue. There will be a grace period if you did not follow up on an issue in March or April. However, as lockdown continues, you will be expected to promptly inform and hold disciplinary meetings with employees. The outcome of a meeting, whether it is a verbal warning, final written warning or dismissal should be as close as possible to the incident and following a full investigation under your process.

The final point to remember is the impact of Covid-19 and working from home on the wellbeing of your employees. Many employees are really struggling. Reported mental health issues have dramatically increased in the last few months. This is

having an impact on day to day work, concentration levels are lower and employees can become overwhelmed very quickly. In our experience, we have seen over reactions or outbursts from high performing employees over trivial or small events. The key point to remember is that employees may be coping with significant personal stress at this point and to "be kind" more than ever.

Health and Safety obligations

The Safety, Health and Welfare at Work Act 2005 (the "**2005 Act**") and associated (General Application) Regulations 2007-2015 regulations (as amended) (the "**Regulations**") apply to all places of work, which includes working from home. An employer must do what is "*reasonably practicable*" to ensure the safety, health and welfare at work of its employees. There is no flexibility in terms of the performance of these duties as they apply to the home working environment but when coupled with the reality that employers have no right to inspect the home working environment, it seems online risk assessments will also become the 'new normal'.

The following general duties listed in the 2005 Act apply to in relation to home working, namely to:

- manage and conduct all work activities to ensure, as far as reasonably practicable, the safety, health and welfare of employees;
- provide safe systems of work that are planned, organised, and maintained;
- assess risks and implement appropriate control measures;
- provide safe equipment including personal protective equipment, where necessary;
- provide information, instruction, training and supervision regarding safety and health to employees; and
- have plans in place for emergencies.

Correspondingly, employees working from home must continue to:

- co-operate with their employer and follow instructions;
- protect themselves and others from harm during the course of their work (eg take care of any display screen equipment provided and report any defects immediately);
- report any injury arising from work activity immediately; and
- follow any procedures that have been put in place.

Many businesses will have reminded employees of their obligations (eg via a revised written policy on working from home) as not all employees may be as aware of them as they ought to be.

Specific regulations for 'desktop employees'

In light of the nature of work currently being undertaken from home many traditionally office-based employees will be entitled the additional protection afforded under the Display Screen Equipment Regulations of 2007.

Insofar as it applies to employees (eg it does not apply to temporary use of laptops) the key requirements are to:

- carry out an analysis or risk assessment of employee workstations (whether that workstation is in an office, or now more likely, a home). Employees have transferred to a new workstation (their home set-up) and may be using new work equipment or new technology;
- provide information to employees in relation to measures which have been implemented (eg inform of new policies and risk assessments);
- provide training to employees in the use of display screen equipment ("DSE") (and fresh training if the workstation is modified); and
- ensure that the provision of an appropriate eye and eyesight test is made available to every employee.

Online assessment appears to be the solution and the safety statement will need to be suitably amended.

Practically many employers are adopting a phased risk based approach specifically on DSE equipment, which might look like the following:

- Re-issuing online or electronic self-assessment risk assessments to the workforce.
- Arranging for video/virtual assessments to take place by trained assessors for those identified as higher risk, who had adjustments and specialist equipment at their workstation in the office or where an issue is identified that needs further review.
- Prioritise the provision of equipment or adjustments to those who identify as high risk including for reasons of existing medical conditions, which would be made worse by delayed action.
- Set out a plan and timetable to provide equipment or adjustments to others on a risk based basis.

The Health and Safety Authority has stated that a person with sufficient training, experience and knowledge should conduct a risk assessment and advises that it is not sufficient for employees to assess their own workstations. Some employers are undertaking ergonomic risk assessments that include, as part of the fact gathering phase, an employee questionnaire to capture information such as the type of equipment needed by each employee for their home workspace and information on whether or not the employee has any musculoskeletal discomfort such as neck or wrist discomfort.

Work equipment

Employers must assess whether the equipment already in use in the workplace (eg laptop, mouse, monitor, keyboard and headset) can continue to be used for home working. If you are providing equipment, it must be in good condition and suitable for the work activity.

Utilities

Clarification is needed in respect of how the parties can agree on a fair contribution to a percentage of home utilities for enduring and mandatory home working arrangements. In many situations employers are already paying rents and utilities at a workplace and should not be required to incur a double cost for these utilities. Equally employees may feel that their utility costs would be lower but for the home working arrangement. The Government has announced some supports in the Budget 2021 that may assist employees and employers in this regard.

Vulnerable workers

If requesting an employee from a sensitive risk group to work from home, employers must consider the suitability of the person to the work in the context of their home working space. Ultimately work tasks and working conditions must not adversely affect the health of employees with a disability, pregnant employees and young workers.

Update documentation and prepare new policies

It will be necessary to ensure that any new written policies in respect of working from home that may be prepared work in unison with your existing safety statement. In addition, it may be necessary for new training to be rolled out.

Home/lone working

Home working can mean lone work for many people and lone workers can face greater risk of some hazards as they usually will not have anyone to help or support them. It is advisable that you factor this into any project plan to promote home working and prepare updated guidance around how managers should keep in touch with lone workers.

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