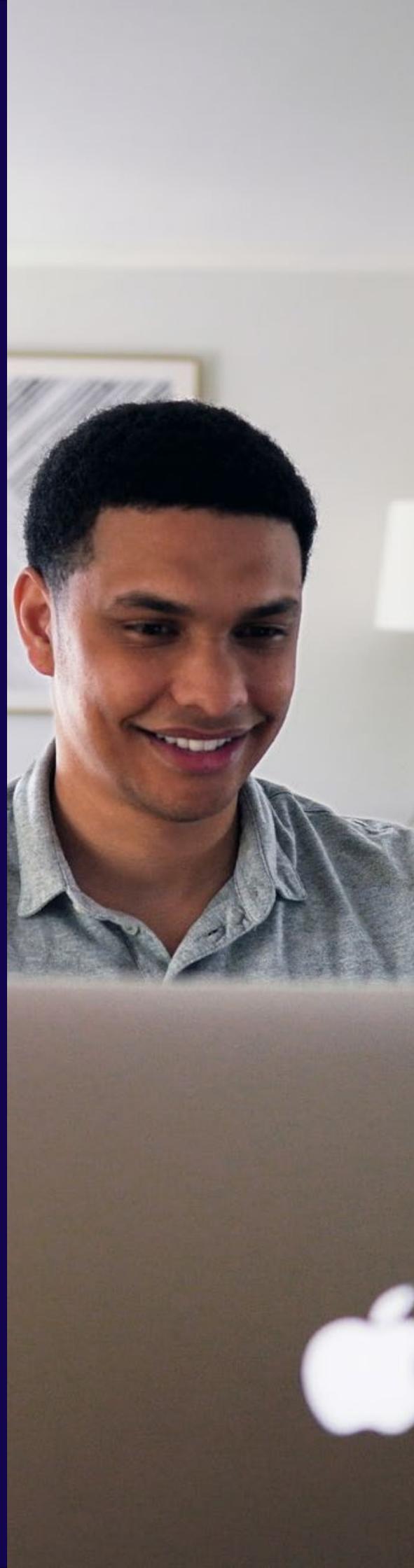


Homeworking and Employment Law Guide

The employment law issues around
homeworking and the relaxing of restrictions

Homeworking



Introduction

This guide should be read in conjunction with our [Homeworking and Health and Safety FAQ](#).

During the COVID-19 pandemic, it has been necessary for employers to think about other ways of working – for office-based staff, this included working from home where necessary and possible. Now that England has set out its roadmap for removing the restrictions currently in place, thoughts will be moving to getting staff back in the office or whether to allow employees to continue to work from home. The information regarding easing of restrictions in other devolved nations is less clear, but the considerations in this note will still be relevant.

There are pros and cons to working from home for both employer and employee. Long-term advantages include financial savings to both employers who no longer need to occupy space within a premise to the same extent, and employees who see the benefit as they have reduced travel to work costs. However, there are disadvantages of having your workforce primarily working from home. Employers will need to consider the potential health and safety implications of remote working and how they can continue to meet their duty of care.

Once restrictions start to be lifted, it may well be that employees who have been working from home wish to continue doing so, whether full or part time.

The following document – which should be used in conjunction with our template [Homeworking Policy](#) and [Homeworking Checklist and DSE Risk Assessment](#) (available via our Coronavirus Advice Hub) – answers some of the questions you may have about how to deal with staff being able to come back into the office and the considerations to bear in mind if employees ask to maintain current homeworking arrangements.

What are the timetables for restrictions to be lifted?

As mentioned, England has set out its roadmap to removing restrictions currently in place, which has a date of no earlier than 21 June 2021 before all restrictions could be lifted (see [here](#)).

Other devolved nations are taking a more cautious approach at this time, with no date being given for possible lifting of all restrictions.

This is an evolving situation and a lot will depend on how the gradual lifting of restrictions affects rates of infection, hospitalisations and deaths, along with the efficacy of the vaccines being administered. It's important to check official government guidance regularly to ensure you understand what restrictions are in place. Until further notice, social distancing rules remain in place.

When it is safe to do so, can I require staff to come back into the office?

Yes, provided that is their contracted place of work. If you have subsequently agreed to an employee working from home on a permanent basis, you will need to get the agreement of the employee in order to change that back (subject to there being a contractual right to change without agreement).

If an employee refuses to return to the office, it will be necessary to investigate and find out why. If the employee's reasons are not reasonable, then it may be necessary to consider disciplinary action. However, as mentioned below, if the employee requests to continue to work from home, this may amount to a flexible working request, which should be dealt with in a reasonable and non-discriminatory manner.

Before taking any action, please speak to your WorkNest Adviser. If you are not an WorkNest client and would like advice and support, please call 0345 226 8393 or email enquiries@worknest.com.

What if an employee asks to remain working from home?

It may be that, having worked from home for a period of time, the employee finds it works well for them. The employee may ask to continue to work from home on their current working pattern, or perhaps want to have a mixture of home and office-based working.

If an employee asks for this, it will probably amount to a flexible working request (subject to qualifying criteria – see [here](#) for more details). Therefore, there are a couple of important points to note:

- Any such request must be dealt with in a reasonable manner.
- It must be dealt with within three months of the request being made.
- It can be only be rejected on certain business grounds, and it will be important to ensure that it is not rejected for discriminatory reasons.

We have put together a template [Homeworking Policy](#), which can be found on our Coronavirus Advice Hub, in order to assist with this process. This sets out:

- The possible benefits of working from home.
- The process that should be followed by the employee if they wish to request homeworking. The policy asks that this is put in writing, setting out what information must be included in that request. It also suggests that it may be best, in the first instance, for the employee and employer to discuss the request informally in order to see if there are any obvious problems with the request. The process from there will depend on your view of the request:
 - If you can accommodate the request, you can simply confirm this in writing to the employee using our template letter, located on the Hub, which confirms a permanent change to terms and conditions of employment. No meeting or other formalities are required.
 - If agreement cannot be reached, then it will be important to bear in mind the obligations regarding flexible working and deal with the request under that procedure.
- The factors that would make it unlikely that such a request would be granted, for example a poor performance or disciplinary record.
- The conditions relating to homeworking should the request be granted.

What are the potential problems of rejecting a request?

There are three main risks:

- If there has been a breach of the flexible working provisions of the Employment Rights Act 1996 (referred to above), a Tribunal could order that the employer reconsiders the request and/or award compensation of up to eight weeks' pay.
- If the employee has two or more years' continuous service, they may be able to resign and claim that they have been constructively dismissed if there has been a fundamental breach of their contract. This will be difficult for the employee to prove unless they can demonstrate that rejecting the request destroyed the relationship of trust and confidence between the parties.
- Discrimination – if a request has been rejected because of a protected characteristic, for example sex or disability, this will amount to direct discrimination. There may also be a possibility that if the reasons for rejecting leads to more of a disadvantage to one protected group when compared to other groups, this may amount to indirect discrimination unless it can be objectively justified. This can be particularly common if the request is from a female employee and relates to childcare arrangements. It's therefore important to think about whether this is the case in your workplace and consider carefully why the request cannot be accommodated. Finally, if the employee is disabled and asking to work from home for that reason, consideration will need to be given to whether allowing home working as requested would amount to a reasonable adjustment.

If you are considering rejecting a request to work from home, seek advice from your WorkNest Adviser. If you are not an WorkNest client and would like advice and support, please call 0345 226 8393 or email enquiries@worknest.com.

If you are going to grant a request to work from home, there are specific challenges and obligations to bear in mind.

Where do we stand legally with homeworkers?

Homeworkers are subject to the same health and safety requirements as workers based on company premises and their health and safety must be managed accordingly. It is therefore the responsibility of the employer to ensure that those who work from home do not put themselves or others at risk from their work activity. If a homeworker is considered to be a lone worker, then additional control measures will need to be implemented to ensure their safety and wellbeing.

How do we achieve this?

To meet your legal duties, an appropriate risk assessment will need to be completed and reviewed for each employee who is working from home. A template [Homeworking Checklist and DSE Risk Assessment](#) can be found on our Coronavirus Advice Hub.

The risk assessment will need to take into consideration the following:

- Does the homeworker have a suitable place where they can work at home effectively?
- Has appropriate equipment been provided to homeworkers?
- Have homeworkers been given suitable information, instruction and training on how to set up their workstations and how to use IT systems?
- Has equipment that is provided for use in the employees' homes been properly installed and tested?
- How will electrical equipment supplied for use in employees' homes be maintained? (Hard-wired electrical sockets and ring mains supplies are the employee's own responsibility).
- Have you provided, where practicable, scope for varying work patterns, and allowed the employee to have input as to how work is carried out, to ensure homeworkers take periodic breaks during the working day?

Homeworkers also need to be made aware of the need to monitor their own working conditions and that they must report any problems, accidents or incidents to their employer.

What training needs to be provided?

All homeworkers will need to be fully trained in the tasks that they are employed to do and the equipment they will be using. This should also include software and IT systems used by your company.

Homeworkers will also need to be trained in emergency procedures in case of an accident in the home.

Additionally, supervisors/managers of homeworkers will need to be trained in how to deal with employees working off site, e.g. prearranged regular contact, how to recognise signs of stress in homeworkers, etc.

What else needs to be considered?

Communication

Keep in touch with those working from home (and with lone workers). Ensure regular contact to make sure they are healthy and safe. It is also important to ensure that homeworkers are kept informed of any changes occurring within the company, i.e. company news/information/rules and procedures. Clear methods of communication will need to be established and maintained. This will help to reduce employee feelings of isolation and stress.

Regular catch-ups with line managers and team meetings could be scheduled into homeworkers' diaries in order to ensure business continuity. This can be done with the use of video conferencing.

Support

Homeworking can cause work-related stress and affect people's mental health. Being away from managers and colleagues could make it difficult to get proper support. There will always be greater risks for lone workers with no direct supervision or anyone to help them if things go wrong. Consideration needs to be made to the support (internal or external) provided to employees who are experiencing negative challenges or feelings of isolation as a result of homeworking.

There should be a system in place to help homeworkers with IT problems. A review of how this support can be provided needs to be made. Outsourcing IT support or additional training for IT employees may be required.

Monitor what is working well and what can be done to improve the homeworking experience

It is important to gather feedback on any new ways of working from home that you can incorporate into your company's business as usual. It is important to involve homeworkers in this progress as they can often provide experiences that had not been previously considered and can offer improvements in arrangements. This can also increase employee engagement.

HR and employment

If your organisation is considering making homeworking a permanent change for employees, then you should review your Contracts of Employment as they may need to be amended. There may be a need to implement additional company policies, for example a remote worker agreement or changes in company rules to comply with GDPR.

Homeworking – Frequently Asked Questions

| Questions | Advice |
|---|--|
| What is homeworking? | Homeworking can be defined as an employee who uses their home and is supported by technology, for the remote performance of some, or all, of their normal work. It does not necessarily involve working only at home; it can be combined with part-time presence at the workplace. It can also be defined as the use of home as a work base for jobs which require regular travelling, e.g. salesperson. |
| Do all my employees now need to work from home? | No, although the government currently advises those who can work at home should work at home whenever possible. There may be cases that this is not practicable or reasonable for all employees. |
| What equipment do I need to provide? | The equipment that is required for the work to be done safely. This could be a computer/laptop, mouse, keyboard, chair or even a desk. A homeworking/DSE assessment should be undertaken to understand the need. |
| What if they haven't got any space to work from home? | Discuss options with employees. Could a desk/workstation be placed in a space room or rooms only used outside of working hours? |
| Are employees who work at home considered to be lone workers? | If a person is working at home, then they are considered to be remote working (i.e. they do not have direct supervision from their employers but have means of communication). If there is another person in their home while they are working, then they are not considered to be a lone worker (i.e. as there is somebody else in the home that can assist in a case of an emergency). |

How will I monitor employee productivity?

Employers should be able to monitor employee productivity in the same way they would if employees were in the workplace. A review of individual workloads will need to be undertaken from time to time. Employers should allow for a period of adjustment as it will take time for employees to get used to working effectively and efficiently from home.

What do I need to do if an employee is struggling with working from home?

It is essential that there is regular communication with employees. This includes information from senior management, catch-ups with line managers and team meetings. If an employee is struggling with working from home with feelings of stress and isolation, then support should be provided. This can be in the form of an external confidential service where employees can talk freely with an independent expert.
