



Business Immigration & Flexible and Remote Working

Wednesday, 23 June 2021
Employment Law Webinar

Flexible Working

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Girlings Solicitors



Outline

- Context
- Process
- Downside risks
- Suggestions
- Working from abroad
- What's next?



Context (1)

- Guidance applicable until 19 July
- Work from home if possible
- Facilitate homeworking
- Avoid busy times and routes on PT
- Covid-secure workplaces
- Special cases – mental/physical wellbeing/home environment

Context (2)

- 15 months experiment
- Unprecedented scale and variety
- 50% of workforce (April 2020)
- Surveys
 - Attitudes
 - Expectations
 - Contrasts
- Flash in pan or embedded change?

Process (1)

- Informal requests
- Implied duty of trust and confidence



Process (2)

- Employees
- 26 weeks continuous service
- One per 12 months
- Changes to:
 - Hours
 - Times
 - Place



Procedural Formalities

- Change(s) requested
- Start date
- Effect on employer
- How that effect can be dealt with



Employer's Duties

- Reasonable manner
- Decision in 3 months (to include any appeal)
- 8 grounds for refusal



Acas Code

- Reasonable manner
 - Meeting
 - Companion
 - Written decision
 - State reasons
 - Allow an appeal
 - Consistency
 - Balance pros and cons



Grounds for Refusal

- Cost
- Inability to meet customer demand
- Inability to re-organise work among other staff
- Recruitment
- Quality
- Performance
- Insufficient work when employee wants to do it
- Planned structural changes

Saying No

- Subjective test
- Grounds for challenge
 - Time
 - Process
 - No statutory ground
 - Incorrect facts



Remedy

- Declaration
- Reconsideration
- Compensation
 - Just & equitable
 - 8 weeks' pay
 - Cap on weekly pay applies
 - Currently £544 per week
 - £4,352

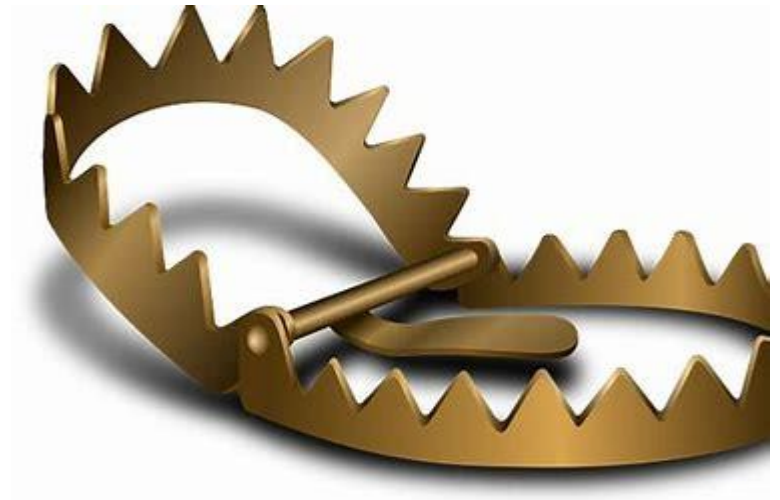


Hidden Dangers

- Legal
 - Discrimination claims
 - Reasonable adjustments in disability cases
 - Indirect sex discrimination
 - Provision, criterion or practice
 - Group disadvantage
 - Individual disadvantage
 - Justification

Hidden Dangers

- Non-legal
- Talent management
- Recruitment and retention
- Morale



Suggestions (1)

- Wider context
- Strategic thinking
 - Service delivery
 - Culture
 - Technology
 - Premises
- Consistency of approach (if not outcome)
- Policy document
- Training for managers



Suggestions (2)

- Open mind
- Trial periods
- Document changes



Working from Abroad (1)

- Immigration
 - Permission to work in host country
- Tax position
 - Residency
 - Double tax treaty with host country
 - Registration and reporting
 - Permanent establishment



Working from Abroad (2)

- **Social security**
 - Obligations arise in place where employee physically carrying out duties
 - Subject to exceptions
 - EU
 - Other countries – reciprocal arrangements
- **Employment law**
 - Domestic law
 - Data protection
 - Supervision/cyber security

Horizon

- Legal right to work from home?
 - Consultation
 - Default option
- Right to “disconnect”
 - Working from home or “sleeping at work”?
 - Boundaries/switching off outside work hours
 - Burn out
 - Lobbying by trade unions – Prospect/TUC
 - Ireland – code of practice
 - France, Italy, Spain

Closing

- Crystal ball
- 90%
- HR teams
- Ramifications
 - Sector specific
 - Innovation/technology
 - Identity/cohesion
 - Pay
 - Commuting
 - Where people live



Legal and practical ramifications of managing staff working remotely in the post-COVID world

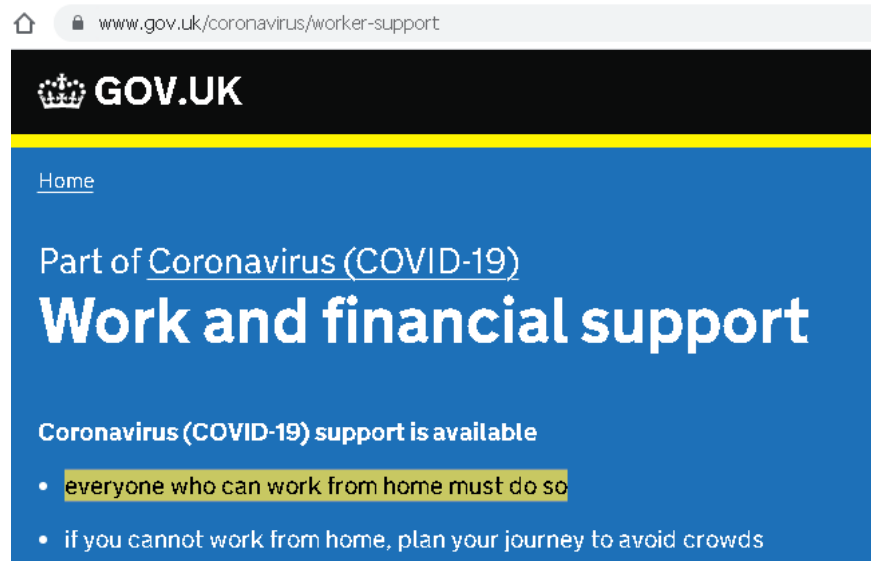
Paul McAleavey - Partner
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Topics we'll cover

- Health and safety obligations to remote workers
- Mental health issues with remote working
- Equipment and expenses – who pays?
- Data protection and confidentiality
- Should you amend your policies/contracts?

Current position on working from home



The screenshot shows a web browser window with the address bar displaying www.gov.uk/coronavirus/worker-support. The GOV.UK logo is visible at the top. The main content area has a blue background and contains the following text:

[Home](#)

Part of [Coronavirus \(COVID-19\)](#)

Work and financial support

Coronavirus (COVID-19) support is available

- everyone who can work from home must do so
- if you cannot work from home, plan your journey to avoid crowds

The future

The image is a screenshot of a BBC News article. At the top, the BBC logo is on the left, and navigation links for 'Sign in', 'Home', 'News', 'Sport', 'Weather', and 'iPlayer' are on the right. Below this is a red banner with the word 'NEWS' in white. Underneath the banner is a horizontal menu with links for 'Home', 'Coronavirus', 'Brexit', 'UK', 'World', 'Business', 'Politics', 'Tech', 'Science', 'Health', and 'Family & Education'. The 'Business' link is highlighted. Below the menu is another row of links: 'Business', 'Your Money', 'Market Data', 'Companies', 'Economy', 'Global Car Industry', and 'Business of Sport'. The main headline of the article is 'Home working here to stay, study of businesses suggests'. Below the headline, it says '© 5 October 2020 | Comments'. There is a red back arrow icon. The main image shows a person with short brown hair, wearing a black and white striped shirt, sitting on a bed or sofa, looking at a laptop. A window behind them shows a view of trees and a house. A vase with pink flowers is on a table next to the laptop. The text 'GETTY IMAGES' is visible in the bottom right corner of the image.

More home working is likely to be a permanent fixture for a majority of businesses, according to a study.

A survey of just under 1,000 firms by the Institute of Directors (IoD) shows that 74% plan on maintaining the increase in home working.

Health and safety duties for employees working remotely (1)

- Take steps that are reasonably necessary to ensure the health, safety and welfare of employees; and
- Provide and **maintain** a safe system of work;
- Whether working in office or at home.



Health and safety duties for employees working remotely (2)

- Risk assessments
- Must employers visit employees' homes?
- Enable employees to manage their own risks.
- Specific risks:
 - Lack of supervision
 - Insufficient breaks/long hours
 - Feelings of separation from the workplace
 - Physical problems from excessive screen use

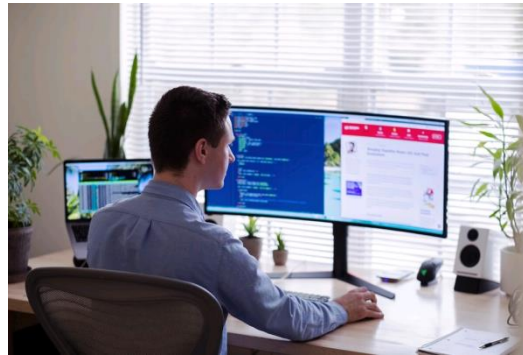
Practical tips (2)

- Talk to employees about:

- Safety of work
- Supervision regimes
- Contact channels
- Clear expectations on hours and availability
- How they can report concerns
- Lack of internet access (e.g. rural areas)
- Shared accommodation
- Caring responsibilities



Practical tips (3)



- Display Screen Equipment (“DSE”) considerations:
 - HSE view: no increased risk from DSE when working remotely
 - Ask employees to risk-assess their own work space
 - Use HSE checklist: tinyurl.com/HSEdisplay

Mental health issues with home working

Spot the warning signs:

- Less interested in tasks they previously enjoyed
- Appearing anxious, tired or withdrawn
- Changes in quality of work
- Lack of focus
- Increase in sickness absence or unavailability



Supporting employees' mental health (1)

- Know how to approach them – be:
 - prompt
 - private
 - flexible
 - supportive
 - positive
- Ensure they have the same visibility of promotion/training events as if they were not working remotely

Supporting employees' mental health (2)

- If an employee approaches you:
 - Listen carefully
 - Ask open questions
 - Try to identify cause
 - Offer support and reassurance
- Remember:
 - reasonable adjustments;
 - the 'sharpening' of your health and safety duties when on notice of a vulnerability.
- Take advice and support for your own mental health.

Working from home equipment

- No general obligation on employers to pay
- But consider IT and security needs.
- Equipment should be adequate for all.
- Provide equipment for at-risk employees – but select it.
- Check insurance policies



Working from home expenses

- No general obligation on employers to pay – especially if employee already paying for it.
- Consider insurance.
- Can signpost HMRC reliefs to employees.



Data protection, information security and confidentiality when working remotely (1)

- Particular risk
- Normal employee duties apply
- Remind employees of their duties
- Homeworking policy

Data protection, information security and confidentiality when working remotely (2)



- No print outs?
- Safe and private location
- ‘Locking’ laptop when taking breaks/
inactivity timeout
- Privacy screens for DSE

Data protection, information security and confidentiality when working remotely (3)

- Increased use of email – vigilance re: phishing messages
- Keeping software up to date
- Secure storage of working equipment when not in use.
- Short, regular reminders

Should you amend your contract/policies?

- Policies:
 - criminal offence to allow a knowingly self-isolating worker to attend work – Sickness Absence Policy
 - IT and Data Protection policy to reflect remote working risks
 - homeworking policy more generally
- Contracts:
 - formal homeworking arrangements/tax issues
 - practicalities – requirement to attend office when needed
 - keep remote working under review?

Business Immigration

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Summary of talk

- The new rules
- How have they changed
- The impact on employers



The new rules

- Brexit transition period ended on 31st December 2020
- Freedom of movement for EEA nationals ended at 11.00pm on that date
- New immigration rules were introduced on 1st December 2020

The effect on EEA workers

- EU, EEA and Swiss nationals resident in the UK before 1 Jan 2021 do not require permission to work and can apply for immigration status under the EU Settlement Scheme.
- EU Settlement Scheme applications close at the end of June.
- May be given settled or pre-settled status

Settled and pre-settled status

- Settled status granted to those with 5 years continuous residence (for at least 6 months of the year)
- Pre-settled status granted to those who have been resident in UK on or before 31st December 2020
- Application for settled status by a pre-settled worker can be made upon 5 years' residence

Settled and pre-settled status

- Both settled and pre-settled status allow:
 - Right to work
 - Use NHS for free
 - Study
 - Access benefits and pensions
 - Travel in and out of UK
- Settled status lost after 5 years outside UK, pre-settled status lost after 2 years

After 31st December 2020

- EEA/EU workers who do not have settled or pre-settled status no longer have the right of freedom of movement
- Will need to apply for a visa in same way as other nationalities

The new rules

- The new rules came into effect for non-EU citizens on 1st December 2020 and for EU citizens on the end of the transition period
- Not a dramatic change – the new rules are similar to the old in many respects
- Still need to become a sponsor to employ an immigrant worker, still a points based system

The new rules – visa types

- Sponsored business immigration:
 - Intra-Company Transfer and Inter-Company Graduate Trainees replace the Tier 2 visas with the same sub-categories
 - T5 Temporary Worker Visa replaces Tier 5 temporary worker visas
 - Global Talent Visa replaces Tier 1 (Exceptional Talent)
 - Skilled workers visa replaces Tier 2 (General)

The new rules - sponsorship

- Migrants must (in most cases) be sponsored by an employer before applying to enter or remain and will need an electronic certificate of sponsorship;
- Sponsor not needed by settled or pre-settled workers (and settled workers also include those from British Overseas Territories and some categories of Commonwealth migrants)

The new rules - sponsorship

- Employers require a sponsor licence in order to issue certificates and employ workers under the Skilled Worker route.
- This is similar to the sponsorship requirement under the old Tier 2 Skilled Worker immigration route
- But a sponsor licence will now be required to sponsor EU workers who do not have settled or pre-settled status

Sponsorship - eligibility

- Employer must apply to Home Office and:
 - Provide supporting documents to show it is genuine and has a trading presence in the UK;
 - Show it has sufficient HR or admin support in place to meet sponsor duties;
 - Show it has a genuine vacancy for the appropriate worker category
 - Show no previous immigration offences have been committed

Sponsorship

- Requirements and procedure for applying for a sponsor's licence are very similar to old system;
- Sponsor duties essentially the same;
- Sponsor licence valid for 4 years
- Allow sponsors to issue a set number of sponsor certificates via the Sponsor Management System

Sponsorship

- Application fees apply £536 - £1476
- Applications generally take around 8 weeks, but a 10 day service is available for £500
- Further fees payable on assigning certificate to worker

Skilled worker visa

- Main immigration visa for workers
- Replaces Tier 2 (General) visas;
- Remains a points based system;
- Role must be skilled at A-level or above, so a general reduction in skill level over old system which was generally for roles at degree level or above
- Migrant must generally be paid a minimum of £25,600 per annum (no change), but minimum salary is dependent on job role
- Granted for up to 5 years and renewable

Points system

- Like the old tier 2 system points are awarded for categories.
- Unlike the old system, points in the Skilled Worker category are transferable (to a degree) between categories
- So if a worker doesn't score sufficient points for salary, the deficit can be made up with points from other categories, such as shortage occupations and qualification

Points system

- Points awarded for:
 - Offer of job by sponsor (20)
 - Job at appropriate skill level (20)
 - English at required level (10)
- Tradeable points for:
 - Salary (0-20 points) (but absolute minimum of £20,480)
 - Shortage occupation (20)
 - PhD qualification (10) STEM PhD (20)
 - New entrants (20)
 - Health and teaching roles (20)
- Candidates must achieve 70 points

Other requirements

- Vacancy must be genuine
- No longer a requirement for resident labour market tests
- No longer an annual cap on visa numbers

Other requirements

- Requirement for maintenance funds remains
 - sponsors can certify maintenance or applicants must have maintenance funds of £1270 plus additional funds for dependents
- Some changes to types of sponsor certificate:
 - now referred to as undefined for workers already in the UK and switching to Skilled Worker
 - or defined for workers applying from outside the UK

Fees

- No dramatic changes
- Sponsorship certificates free for most EU countries
- Sponsorship certificates £199 for other citizens
- Immigration skills charge - £364- £1000 per worker per year depending on size of company (subject to cap)
- Immigration health charge - £624 per year
- Skilled worked visa fee £610 - £1,408 depending on length of visa and where applied for

The effect on employers

- Potentially more employers will need to become sponsors to fill roles that would have been filled by EU workers
- Low-skilled worker shortage – EU workers have left due to pandemic
- Sponsorship requirements appear largely unchanged
- Skilled worker route appears to be (slightly) less complex
- Removal of RLMT will speed process up

Short term Business Visits

- Since 31st January 2020 EU/EEA business visitors are subject to the same rules as other nationalities
- Most countries, including EU/EEA, can enter for business purposes for up to 6 months to carry out “permissible activities” without obtaining a visa in advance
- Some countries will need to obtain a standard visitor visa before entry

Short term Business Visits

- Permissible activities include attending business meetings, trade shows, negotiating deals and taking instructions from UK customers
- Taking the odd call or checking emails may be allowed if incidental to visit but substantial, productive work is prohibited
- But cannot take employment in the UK – which includes carrying out their role for their overseas employer
- Some intra-corporate provisions may apply to UK branches and allow additional permissible activities such as attendance at board meetings or audits

Any questions?



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