

Consultation on National Guidance for Employers and Employees on Remote Working

Submission by the Citizens Information Board

Introduction

The Citizens Information Board (CIB) welcomes the opportunity to make a submission to the Department of Business, Enterprise and Innovation on the matter of guidance for employers and employees on remote working. CIB funds and supports Citizens Information Services (CISs) and the Citizens Information Phone Service (CIPS) which provide information, advice and advocacy on people's entitlements and rights, including employment rights. In 2019, there were over 70,000 employment rights queries to CISs. The Board also supports the nationwide Money Advice and Budgeting Service (MABS).

While acknowledging that the concept of remote working includes both working from home and working in local hubs and that there are commonalities between the two, this submission focuses primarily on guidance relating to working from home.

In developing overall guidance for home working, there is an obvious need to achieve an appropriate balance between the need to fully protect people working from home and to ensure that work productivity is in accordance with employer requirements. Key factors here are the nature of the employment and the size of the business. While, during the Covid-19 crisis, many workers have shown that they are up to the challenge of home working, the *ad hoc* protocols put in place during the pandemic will not be sufficient as home working (either full-time or part-time) becomes the norm for many employees. It is also crucially important that poor workplace environments, where these exist, are not replicated in home working environments in the longer term.

At the outset, CIB wishes to note that while employment rights in Ireland are widely protected under both EU and Irish legislation there continue to be significant issues with enforcement of these rights. The legislative provisions referenced in the Consultation Document clearly need to be applied to home working but employers should ensure that legislation is being adhered to regardless of whether their employees are based remotely or not. In addition to the listing of relevant legislative and regulatory provisions, CIB believes that a more overarching policy and guidance framework is required where both employees and employers can see and understand the areas that need to be covered in order to create an equitable, secure and safe home working environment.

The main employment rights query areas and related infringements received by CISs relate to leave and holidays, employment contracts, redundancy and unfair dismissal, pay and non-payment of wages, self-employment, redress and enforcement, starting and changing jobs and working hours. Queries on employment rights and conditions generally come from people who are on low pay, are non-unionised, are working part-time or are working for smaller employers. All of these areas are likely to present additional challenges and difficulties in the context of home working. Of particular importance is the difficulty that many workers experience in enforcing their rights under employment rights legislation. CISs report breaches of legislation and ongoing enforcement issues for clients, including the enforcement of Workplace Relations Commission (WRC) decisions.¹

According to recent research,² the top three challenges of remote working identified were: not being able to switch off from work, harder to communicate and collaborate with colleagues and co-workers; and poor physical workspace. Other research has shown that the challenge to maintain a fixed working schedule is exacerbated when staff are working from home and that 44% of staff working from home at this time feel pressure to answer work calls and emails and engage in work related communication outside of paid working hours.³

Factors to be taken into account in developing Guidance for Remote Working

CIB identifies a number of factors that are relevant in developing guidance for home working:

Employer Policy around home working

Employers should be required to develop a home working policy that not only fulfils the organisations role, remit, business needs and requirements but also balances the needs of employer and employee and provides flexible, voluntary and developmental options for employees to engage in working from home, in line with their role and responsibilities.

Consultation with employees

Employers should engage in consultation with employees individually and collectively to ascertain their views on home working, what they need to make it workable, what challenges they expect and what needs to be done to address these challenges. This is necessary in order to anticipate and deal with potential higher levels of anxiety for home workers in some instances and to allay their concerns.

Choice and Equality

While home working should be an option for both workers and employers, there may be scenarios, as with the current pandemic, where this may not be the case. Where work can be done remotely, the option to work from home should be available to all employees on an equitable basis. The grounds for deciding on working from home arrangements must be transparent, objective and valid. It is essential that no one group is discriminated against under the nine grounds under equality

¹ These issues are discussed in *Employment Rights that Work for All*, a forthcoming CIB Social Policy Report

² [COVID-19 Remote Working Employee Pulse Survey](#), NUI Galway and Western Development Commission

³ [IrishJobs.ie Remote Working Survey](#)

legislation. All employees should be treated equally with the clear exclusion of workers whose roles cannot be done from home.

Employees should have the option to return to office working due to changes in their circumstances. The employer also needs to have the authority to remove the option for home working where there are issues with performance of employees working from home. Home workers should have equivalent access to training and career development as comparable on-site workers.

Communication

It is important that normal liaison and reporting requirements are adhered to by staff working from home and that they continue to engage regularly with their line manager and team colleagues and this needs to be facilitated by employers. The effectiveness and appropriateness of IT platforms for this purpose needs to be considered. For example, Zoom/Microsoft Teams may be suitable for short structured information transmission and brief engagement on issues but may not be very effective in relation to idea generation, brainstorming, problem solving or group engagement.

Virtual communication can also lead to a sense of feeling remote from management and decision-making and outside the core activity loop of the business/organisation. Attendance at the office for part of the working week/month may support engagement with employees working remotely.

Health and safety

The safety of the home workplace (design, seating, desk, IT equipment) is of paramount importance and needs to be provided for in policy and guidance. The employer's responsibility in this regard needs to be clarified and stated explicitly by the Health and Safety Authority and relevant bodies, as significant cost issues associated with meeting health and safety requirements in home work environments could significantly impact on decisions to support home working.

Health and Safety Statements need to be amended to take account of risks associated with working from home.

Privacy

Given the Data Protection Commissioner's robust stance on surveillance of employees and the ability of data subjects to lodge claims for non-material breaches of data protection legislation, employers will need to exercise caution about the necessity and extent of monitoring that is required in respect of home working and how this is to be implemented. The extent of any monitoring must always be balanced against the employees' rights to privacy. Consultation by employers with home workers will be essential in this regard.

Data protection

Ensuring security of personal and work data is a key issue for both employees and employers. GDPR and the Data Protection Act 2018 provide enhanced privacy protection rights to individuals in relation to the processing of their personal data. There needs to be a clear policy in place relating to, for example, usage of laptops and PCs and storage and disposal of paper files. The clear preference should be for staff not to have to use personal equipment.

Working hours

Employers are obliged to record working time information for each employee on a daily basis to

include starting and finishing times, rest breaks, daily breaks and weekly breaks. The information can be recorded electronically or in manual form. This obligation is likely to be relatively onerous in relation to home working. Many employers may not have a system in place, nor the resources to implement one which will capture all of the data required. This matter requires careful consideration.

Insurance cover and security

The question of insurance cover in respect of the employer's property (furniture and IT equipment) in the home and the implications for home insurance policies need to be taken into account. In addition, there is a need to examine, for instance, what home security systems are required to protect work property and documentation.

The right to disconnect

There can be an erosion of clear boundaries between work and personal/family time arising from workers not being able to disconnect. There are potential implications for mental health arising from stress and burnout. There is, therefore, a clear need for an agreed protocol between employers and employees to ensure that employers exercise their duty of care to employees and that employees know the hours they are expected to work and can disconnect outside of those times. This should be set out as part of any change in working arrangements in writing to the employee.

Under the Organisation of Working Time Act 1997 employees are entitled to an uninterrupted 11-hour break between finishing work and starting again the following day. Employees will, therefore, need to be equipped to manage workloads and management has a responsibility here in terms of the amount of work allocated.

Companies should be required to have a living employee assistance programme in place to support all employees with the changing landscape in ways of working, with a strong element on both employee and management support.

Flexible working

There is no entitlement in Irish law to flexible working as there is in the UK and some EU member states and employees have to negotiate with employers for such arrangements. Flexible working arrangements can be important for some home workers, especially those with caring responsibilities. This is a matter that will require particular attention in the guidance for home working. The consultation earlier in the year on developing a government policy on flexible working will be central to informing the development of policies on remote and home working.

Protecting against social isolation

The risk of home workers feeling isolated and under pressure is a significant one which, in the absence of support, can lead to mental health problems. Provision, therefore, needs to be made for facilitating social interaction among all workers through, for example, online chats, 'virtual coffee' meetings and on-site meetings as well as access to employee assistance programmes. Regular attendance at the office weekly/monthly would support mitigating a sense of isolation.

Payments of work-related expenses

Working from home can lead to an increase in utility bills for people and this needs to be addressed in a fair and appropriate manner. There are two options at present—the employer pays the

employee €3.20 per day tax free or the employee claims a percentage of electricity and heating costs in their annual tax return. We note that the current guidance to public sector employers is not to pay these daily rates in the case of public servants.

The appropriateness of these rates and the provisions for reclaiming tax need to be reviewed in light of the experience during COVID-19 and the wider issue of costs, and the apportioning of the costs.

Supervision, support and management

Effective support from managers and colleagues is important for people working from home. It is almost certain that some level of occasional workplace presence would greatly enhance the development and maintenance of a sense of teamwork. The management approach should ideally focus on tasks done, quality of work and goals achieved so as to enhance vision sharing and team building. Clear guidance is required in managing performance of home workers.

Training

Some training on the use, appropriateness and limits of virtual communication would be desirable and there is a need for a blended learning approach – some on-line and some on site, depending on the nature of the work and taking into account the fact that some types of training are suitable for online delivery and some are not.

Relevant legislation

The following pieces of legislation are identified by CIB as particularly important in the home working context.

Terms of Employment

The Organisation of Working Time Act 1997 sets out minimum entitlements for most employees for working hours, annual leave, night work, breaks and rest periods. The average working week cannot exceed 48 hours.

Under the Terms of Employment (Information) Acts 1994-2014 employers must provide employees with a written statement of terms and conditions of employment within two months of commencement of employment. The Employment (Miscellaneous Provisions) Act 2018 amended the Act to provide for a written statement of basic terms to employees within five days of commencing work. This legislation was introduced mainly to address precarious employment, zero hour contracts and uncertain working conditions for employees in sectors requiring considerable flexibility in the employment contract, such as retail, hospitality and tourism. Employees now have a statutory entitlement to a banded hours contract. Employees should be made aware of the nature of an employer's policy on home working on commencing employment.

Under the Protection of Employees (Temporary Agency Work) Act 2012, temporary agency workers have the right to equal treatment in basic working and employment conditions such as pay, working time, rest periods, night work, annual leave and public holidays.

The Protection of Employees (Part-Time Work) Act 2001 prohibits less favourable treatment of a part-time employee than a comparable fulltime employee, unless it is justified on objective grounds such as pension entitlements.

Under the Safety, Health and Welfare at Work Act 2005 (as amended), an employer has a duty of care towards employees which needs to be provided for in working from home contracts. This includes providing and maintaining a safe workplace. An employer should, therefore, carry out a risk assessment of an employee's home working space as soon as applicable. There needs to be increased clarity for employers and employees about the applicability of health and safety legislation for working from home.

The Safety, Health and Welfare at Work Regulations 2007 outlines a number of requirements in relation to Display Screen Equipment.

Other legislation relating to equality, maternity leave, parental leave, paternity leave, adoptive leave, force majeure and carer's leave will also need to be covered in guidance on home working.

Creating a safe home working environment

The European Agency for Safety and Health at Work has noted⁴ that the extent to which the home environment can be adapted will vary according to the situation of the worker and the time and resources available for adaptations and includes a number of non-binding guidelines, as follows:

- Carry out a risk assessment involving home workers;
- Provide home workers with guidance on setting up a workstation at home that applies good ergonomics, such as good posture and frequent movement, as far as possible;
- Clarify what equipment is to be provided by employer to enable safe working at home, e.g., computer, printer, chair, desk, footrest, lamp;
- Encourage workers to take regular breaks (around every 30 minutes) to stand up, move and stretch;
- Give home workers support in the use of IT equipment and software and in tele and video conferencing;
- Assist home workers in setting healthy boundaries between work and free time by communicating clearly when they are expected to be working and available.

Guidance

The following are identified by CIB as areas⁵ where clear guidance is required.

The right to disconnect

A Global Union 2019 publication⁶ suggests the following text as guidance in relation to the right to disconnect:

“The employer therefore recognizes that employees have a right to disconnect from work and are under no obligation to answer phone calls, emails, or messages outside normal working hours. They

⁴ [COVID-19: BACK TO THE WORKPLACE](#), EU Guidance, European Agency for Health and Safety at Work, 2020.

⁵ This does not purport to be an exhaustive list.

⁶ [The Right to Disconnect -Best Practices](#), UNI Global Union Professionals and Managers, 2019

shall not be reprimanded or otherwise subjected to disciplinary action for failing to do so, or rewarded for staying connected."⁷

There are obviously certain functions where being contactable is essential – for example, out of hours emergency contacts.

Working time

Employers should put in place appropriate guidance and related mechanisms to fulfil their responsibilities under working time legislation relating to home working time. This should include clauses in employees' contracts requiring them to record their hours so as to assist the employer in complying with their obligations under the legislation. Given the practical difficulties in complying with the legislation in a home working context, new and innovative methods would need to be available to, and considered by, employers to ensure that they comply with the legislation.

Setting regular working hours

- Working from home guidance should clearly state the total number of hours that employees are expected to work and whether or not these can be worked flexibly and the times of working should be stated in their contract of employment.
- Where there is provision for flexible working, employers should inform all flexi-time employees about how they should track and account for their time worked. Guidelines should be provided on how employees working flexi-time are to record their hours and how these records are to be submitted to their managers for approval.
- There is a need for guidance on the extent to which employees should be able to set their working hours (e.g., start and finish times and split shifts) taking into account both the needs of the employer and the needs of the employee, e.g. in relation to child care responsibilities
- There should be clear guidance for how and when 'overtime' is to be worked – who requests it and who approves it and what level of additional remuneration is provided.
- There should be guidance on when and how employees will be available to other team members for consultation.

Health and safety

Employers must fully acknowledge their responsibilities under health and safety and working time legislation and how this applies in a home working situation.

- Health and Safety Statements need to be amended to cater for home working situations.
- Provision should be made for a health and safety assessment following approval of an agreement for home working.
- Employers must ensure that staff have access to the necessary equipment (phone, computer, stands, chair, etc.) for home working to be carried out safely and professionally.

⁷ *Ibid.* p.7

- Any guidance should include a clear statement on how risk is managed for an employee working from home while at the same time ensuring their privacy.
- Employers should provide, and regularly promote, wellbeing and support programmes for home workers and allow “on the job” time for these to be utilised.

Meeting the costs of home working

As part of developing guidance and policy on remote working, wider consideration needs to be given to the costs that should be borne by employers and the apportioning of costs and an analysis of same undertaken.

- Employers need to ensure that they bear the costs associated with providing the appropriate equipment and technology for the job.
- Employers should commit to providing each employee working from home with an equipment pack appropriate to the tasks being undertaken.
- There is a need for standardised systems which are easily understood and easily administered
- Employers need to create a positive supportive environment for home working.
- Employers need to guard against introducing excessive monitoring or surveillance for those working from home.
- Social engagement should be encouraged through online mechanisms and regular office meetings.

Clarity as to who is eligible to work from home

Since not all job functions in many agencies/businesses can be conducted remotely, there is a need for employers to clearly set out which roles can be carried out remotely and which have to be office or site-based.

IT support

Providing IT support is important for a dispersed workforce. Therefore, clear guidance should be available on the procedure that employees should take in order to escalate technology issues.

- Employers need to provide IT solutions to ensure security resilience, including, where feasible and appropriate, the provision of secure broadband for work purposes.
- Internal communication systems should facilitate people working from home.
- Employees should be advised as to how to avoid vulnerable public Wi-Fi and how to store work data on work computers.

Ensuring team productivity in a work from home setting

- Guidance on working from home should clearly communicate expectations, responsibilities, and conduct. It should be accompanied by practical suggestions to help employees optimise their work from home environments.
- There should be some mechanisms in place to facilitate employee accountability, e.g., regular scheduled check-ins *via* video conferencing.

Data protection

- Guidance is needed for home workers on balancing data security and cybersecurity when engaging in home working.
- Additional security for home workers can be ensured by providing them with office laptops with access to encryption.
- Home workers should be provided with clear training on their obligations to protect data both inside the home and while travelling.
- Guidance should also be put in place to deal with instances of accidental loss, destruction or damage of devices containing personal data.

Maintaining work confidentiality

Guidance should clearly define confidential information, identify the risks in this regard associated with home working and set out employees' duties to protect that information. There should be a particular emphasis on how best to maintain work confidentiality while working from home, with particular reference to emails and social media.

Accountability by home workers

All monitoring of employees must be necessary, legitimate and proportionate. If employees are permitted to use their own personal devices for work purposes, employers should have a policy in place allowing this use. Guidance should state that:

- The employer operates on the basis that the employee will complete their work in a timely, trustworthy and effective manner
- The employer is entitled to monitor employees' activities in the home workplace within limits and set out the mechanisms for achieving this.
- Any monitoring that occurs will be with the employee's knowledge and consent

Insurance cover

Since working from home carries inherent risks, it is crucially important that there is clear guidance in place in relation to insurance and that an appropriate insurance policy is in place. For example, public liability cover under a domestic home policy will not cover accidents or injuries when the matter relates to a business customer in the home. Companies need to ensure their insurance covers staff working remotely or working from home.

Conclusion

The material in this submission covers the most significant areas which are likely to feature in a home working scenario. Of course, there are many specificities which apply to individual organisations which will need to be accounted for in any remote working policy. In addition, we expect that such a policy would need to be agile and responsive to the development of new technologies which may facilitate different methods of fulfilling the respective obligations of employers and employees. Employment rights in general for all workers need to keep pace with atypical and different ways of working (including short-term and flexible work contracts) which are likely to be strongly replicated in the context of home working. While guidance for employers and employees on remote working is centrally important and necessary, it will not deal with the need to ensure that employment protection legislation and related enforcement mechanisms are fully fit for purpose in the hitherto largely unexplored area of high numbers of people working from home. We welcome the commitments in the Programme for Government on a strategy for remote working and look forward to further consultation and built-in reviews of the operation and evolution of home working over the coming years.