

## Understanding the Right to Request Remote and Flexible Working

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### Introduction

On 7 March 2024 the right to request flexible or remote working for employees under the Work Life Balance and Miscellaneous Provisions Act 2023 ("**the Act**") came into force. Furthermore, the long-awaited WRC Code of Practice for Employers and Employees on the Right to Request Remote and Flexible Working ("**the Code**") was published by the WRC on the same day.

### The WRC Code of Practice

The Code provides guidance to employers and employees when considering or requesting remote or flexible working. It is essential that employers follow a proper process in dealing with remote and flexible working requests. Employees can make a remote working or flexible working request from their first day of employment but must have completed 6 months continuous employment before any arrangement commences. Any request must be made at least 8 weeks before the date the employee wishes to start the proposed arrangement.

### Remote Working Request

To make a request for remote working an employee must set out in writing the following details:

- Details of the remote working arrangement i.e. how many days and which days requested
- Proposed start date, and end date, if relevant
- The reasons for the request
- Information of the suitability of the proposed remote work location

The Code lists a number of potential reasons an employee might consider a remote working request including: reducing daily commute and carbon footprint, optimising quality of life outside of normal working hours; personal or domestic circumstances, neurodiversity or special medical needs or circumstances which could favour a quiet working environment or facilities not always available in the office.

Employers have 4 weeks to respond to the request to either:

- Approve the remote working request, and provide the employee with an agreement to be signed by the employer and employee, or
- Refuse the remote working request and set out in writing reasons for the refusal, or
- Provide notice in writing informing the employee that additional time is needed to assess the viability of the remote working request setting out the length of the extension

### Considering a Remote Working Request

Employers should consider a remote working request in an objective, fair and reasonable manner. Employers may consider both the suitability of the role as well as the individual employee's suitability to work remotely when assessing the request. The employer must also consider the business needs, employee's needs and requirements set out in the Code in relation to considering a request. The Code includes a non-exhaustive list of considerations for the employer to consider when reviewing whether a role is suitable for remote working and whether the employee is suitable.

It is evident from the matters provided that a thorough consideration of the request is required from the employer to ensure they are in compliance with the Act and the Code.

## **Flexible Working Request**

The Code highlights that flexible working incorporates a wide range of different ways of working, which can include arrangements such as part-time working, job-sharing, term-time work, flexi-time, compressed working hours and remote working.

Employees with a child under 12 years old (which includes employees acting in loco parentis to a child), or under 16 years old if the child has a disability or illness can make a flexible working request to provide care to the child.

Employees who provide personal care or support to a specified person namely the employee's child, spouse or civil partner, cohabitant, parent or grandparent, sibling, or someone other than one in the categories already specified who lives in the same household as the employee can make a flexible working request. The specified person must need significant care or support for a serious medical reason.

In making a request for flexible working an employee must set out in writing;

- The form of flexible working being requested
- Proposed start date and end date

Employers can request additional information that they may reasonably require about the employee's child or person they care for to support the request. However, employers should be mindful of their obligations under the GDPR regarding sensitive personal data.

Employers must respond within 4 weeks of the request to:

- Approve the request, including an agreement to be signed by the employer and employee which sets out the details of the agreed arrangement, the start date and duration, of the arrangement, or
- Provide notice in writing informing the employee that the request has been refused and the reasons for the refusal, or
- Provide notice in writing informing the employee that more time is needed to assess the request and set out the length of the extension

Employers must consider both the needs of the business and the needs of the employee and should refer to the guidance set out in Part 2 of the Code in relation to considering a request for remote working.

## **Termination of a Remote Working or Flexible Working Arrangement**

Employers can terminate an approved remote or flexible working arrangement if there is a substantial adverse effect on the operation of the business. There are specific reasons set out in the Code in more detail. The processes for making changes and/or returning to the previous working arrangements are also set out in the Code.

## **Abuse of a Remote Working or Flexible Working Arrangement**

In addition to the above there are reasons for termination if the employer believes that the employee is abusing the arrangement.

- **For remote working only:** If an employer has reasonable grounds for believing that an employee is not meeting the requirements of their role while working remotely, an employer can give written notice of termination of the remote working arrangement setting out the reasons for termination and the date for return to the previous working arrangement.
- **For flexible working only:** If an employer has reasonable grounds for believing that the flexible working arrangement is not being used for the purpose of caring for a child or providing personal care or support for a specified person, an employer can give written notice of termination of the remote working arrangement setting out the reasons why and the date for return to the previous working arrangement.

An employer who proposes to give notice of termination must notify the employee in writing of the proposal to terminate the arrangement including the grounds for terminating the arrangement. The employer must give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal and consider any representations made by an employee before deciding whether to give notice of termination. An employee is required to return to their original working arrangement 7 days after receiving notice of termination for abuse of an arrangement.

## Claims and Compensation

A specific breach of the Act may be referred to the WRC, within 6 months of the date of the breach. An Adjudication Officer or the Labour Court on appeal may then direct the employer to comply with specific sections of the Act and/or award compensation to the complaining employee, in the case of flexible working requests, not exceeding 20 weeks' remuneration and, in the case of remote working requests, not exceeding 4 weeks' remuneration. It should be emphasised however that the Code sets out that neither an Adjudication Officer of the WRC nor the Labour Court can assess the merits of any decision made by an employer on the remote or flexible working request, only on the process which led to the employer's decision.

## Record Keeping

Employers must keep records of flexible working and remote working arrangements taken by employees for up to 3 years. If they fail to retain records, they could be liable on summary conviction to a fine up to €2,500.

## Conclusion

Employers should familiarise themselves with the provisions of the Act along with the Code and should also consider updating their employee handbooks and policies to reflect the new statutory rights.

## How can we help

If you have any queries or concerns, or would like to discuss the above in further detail, please feel free to contact [Kate Walsh](#), solicitor, in the [Employment & Benefits](#) Department of BHSM LLP on 01 440 8300 / [kwash@bhsm.ie](mailto:kwash@bhsm.ie).

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