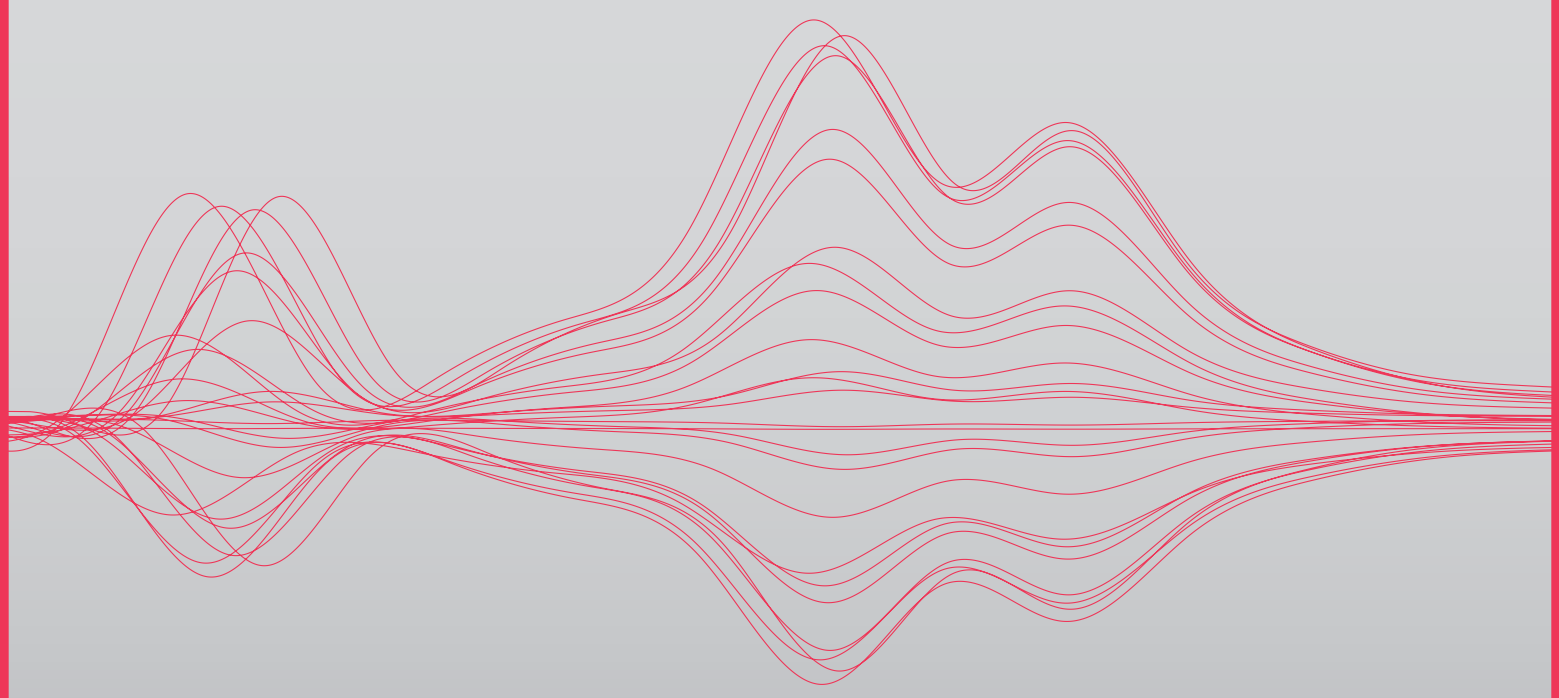


Global Guide to Remote Working



Contents

Introduction	4
Australia	7
Austria.....	10
Belgium	12
Brazil	15
Canada.....	19
China.....	24
Colombia	26
The Czech Republic.....	30
Denmark	33
Finland.....	36
France.....	39
Germany	43
Hong Kong	46
Hungary.....	48
Ireland	50
Italy.....	54
Japan	58
Netherlands.....	60
New Zealand	63
Norway	66
Poland.....	69
Portugal.....	72
Romania	75

Russia.....	78
Singapore.....	80
South Africa.....	83
Spain.....	86
Sweden.....	90
Ukraine.....	93
UAE.....	97
United Kingdom.....	100
United States.....	104
About the employment group.....	107



Introduction

While the mass global migration to home working started as a necessary temporary lockdown measure, as the pandemic continues to prevent a return to “normal” and businesses see the benefits, home working is fast becoming a permanent reality for millions of employees around the world.

Even as a short-term response to COVID-19, home working en masse raised logistical and structural challenges. Businesses had to move quickly to set up the infrastructure and equipment to enable remote working, deal with employees stranded abroad due to closed borders, and manage the panoply of risks related to a remote workforce (e.g., cybersecurity, wage and hour, expense reimbursement). Remote working as a longer-term or even permanent option raises additional challenges that may have been overlooked in the early months of the pandemic, from compliance with local employment law rules to potential impacts on organizational culture and employee expectations.

In our Global Guide to Remote Working, we address the most common issues related to remote working across 33 jurisdictions around the world, including:

- the employer’s ability to require home working
- an employee’s right to insist on home working
- required processes to implement home working
- arrangements for home working (health and safety obligations, expense reimbursement, tax allowances, etc.)
- key issues to address in employment contracts and policies and
- considerations for employers when communicating with and monitoring the performance of employees.

Before examining the legal landscape in specific jurisdictions, it is helpful to look at remote working through a global lens. As often is the case in the international employment context, transitioning to long-term or permanent remote working raises various challenges, but is manageable with advance planning and a strategy to account for differences in local laws. A company’s approach will also vary based on various factors, including industry, business model, geographical footprint, risk profile, technology resources and talent strategy.

Below we outline key considerations for companies transitioning to a permanent remote work model.

Build a remote work strategy and plan

Companies are taking various approaches to remote work. Some companies may elect to let employees split time between the office and their primary residence. Others are going fully remote, with employees allowed to work from home permanently. Still others are interested in mandating remote work for certain employees. Below are some tips to consider to make your remote working strategy successful.

Determine eligibility and set expectations:

Establish clear objective eligibility criteria for remote work in order to ensure consistency and minimize the risk of claims of discriminatory treatment. Criteria may include the nature of the employee’s position and whether job duties can be performed remotely, the employee’s seniority or tenure, the availability of supporting technology, whether data privacy and cybersecurity issues can be addressed, the conditions of the employee’s home, performance issues, etc. Employers should also plan a process for receiving and considering work-from-home applications.

Another key issue is setting expectations, not only with respect to hours and location of work, but also ways of working (e.g., work deliverables, availability during business hours, response time, working time tracking requirements, treatment of other commitments such as childcare responsibilities). Employers are also urged to consider steps to preserve their flexibility to terminate remote arrangements to the extent permitted under local law.

Ensure a common understanding of “remote”:

In the early months of the pandemic, employees may have found themselves working in different jurisdictions due to emergency measures (e.g., closed borders). As time passes, however, some employees may not want to return to their original jurisdiction of work while others may embrace “work from anywhere” as an opportunity to work in another country, join family abroad, return to an overseas home, or just take their laptop to their favourite beach hut.

An employer should determine at the outset where it is willing to let employees work. Does the employee have to work from a primary residence in the same region/state/country as their original jurisdiction of work? Can an employee relocate to a different region/state/country? Defining the parameters of remote work will enable the employer to appropriately scope and respond to risks.

Employees working in a different jurisdiction – particularly one in which the company has no corporate presence – can pose additional challenges – see “**Employees working abroad: key risks for employers**”. Accordingly, employers should review carefully any employee request to work from a different country or, in countries with provincial laws such as Canada,

China and the US, a different province, state or city. In such cases, employers may want to consult with employment, tax and immigration counsel before agreeing to the arrangement. Employers should also bear in mind local COVID-19 rules and restrictions which can result in employees getting stranded abroad.

Employees working abroad: Key risks for employers

General employment risks: Where an employee performs services abroad – even for a short period – local employment laws such as working time rules, overtime and leave entitlements, or termination rights may be deemed to apply. Whether or not local laws apply is a fact specific analysis that can depend on factors such as the duration of time spent in the country, the employing entity, where payroll is paid, and what work permits are held. Local authority enforcement is unlikely for a one-off short-term case, where an individual is stranded, for instance. But the risk is greater where the employee has chosen to relocate overseas. Where a dispute arises – such as over termination of the employee while abroad – the employee is likely to claim “the best of both worlds,”: the better of the laws of their home and destination countries.

Intellectual property assignment issues, data privacy and export controls: If an individual creates IP, employers should consider whether local IP assignment laws might apply that have different requirements than the employee’s ultimate jurisdiction (e.g. compensation requirements for creation of IP). Additional data privacy issues may also arise as data is likely to be transferred abroad. If the employee needs access to controlled technology, the employer is encouraged to review the application of export control laws and ensure compliance.

Payroll tax risk: Another risk is the failure to withhold income tax and social charges. Again, there is no bright line rule as to when withholding obligations are triggered. Double-taxation treaties often provide that an employee temporarily located in another country is not subject to taxes if (1) that individual is paid by the original location; (2) resides in the other location for no longer than 183 days – the rule used by most countries to determine if someone should be considered a resident for tax purposes (although this can vary); and (3) the compensation

paid to the individual is not borne by a permanent establishment of the original location abroad. That said, requirements vary, and there may still be risk if an employee works abroad for less than six months. For instance, there may be no tax treaty between the destination and host countries, the tax treaty may have different requirements, or the company may simply not fulfill all of the treaty requirements. Social security treaties are also less common and often do not provide protection from triggering local social charges. Payroll tax risk often poses higher financial exposure than other employment risks. This is especially true as claims vis-à-vis the government usually cannot be released.

Permanent establishment tax and “doing business” risk: A company with an employee located in a jurisdiction where it does not have operations may trigger a taxable presence for income tax purposes, risking corporate tax obligations abroad. This risk tends to be higher where the individual is engaged in sales activities and generating revenue for the company, but non-sales employees can also create risk. Similarly, rules usually require a company that is engaged in “business” in a jurisdiction to set up a corporate presence. For instance, Singapore deems a company with an employee in Singapore as engaged in business under local rules.

Immigration risk: If an employee is working in a jurisdiction where she or he does not have the right to work, both the employee and/or the company may face penalties, fines or expulsion from the country due to immigration violations. While there may be flexibility for individuals who are unable to leave the country in time due to an emergency, immigration issues may arise if individuals do not return to the jurisdiction of their regular work as countries reopen.

Know where your employees are located and put guardrails in place:

It will be critical for the business to monitor headcount in locations where employees are permitted to work. Various employment obligations are triggered based on the number of employees, from discrimination laws and leave protections to collective representation, termination protections and information reporting.

Revise policies as needed:

As the prevalence of remote working increases, it is recommended that employers consider how their current workplace policies apply to remote working, including supervision, performance management, time recording, privacy, confidentiality, IT and document management, insurance, etc.

In addition, employers should be aware of their obligations under applicable local legislation, including employment standards, health and safety, and equal employment opportunity and human rights. For example, some countries may require the employer to engage a specialist health and safety officer to assess the home office's compliance with applicable health and safety laws. In other jurisdictions the employee can conduct their own health and safety assessment by completing an employer questionnaire.

Consider reimbursement requirements:

Most countries require reimbursement of reasonable costs associated with home working; however, the rules can differ from country to country (or even by state or province). Some jurisdictions (e.g. France and Germany) typically require reimbursement of costs related to home office set-up and maintenance such as tools and Internet access, although it may be feasible to agree on a monthly allowance to cover these costs. In other countries (e.g. Switzerland), employers may even need to contribute towards an employee's housing costs if an employee is required to work from home in the absence of a suitable workplace. Applicable collective bargaining agreements may also require reimbursement of certain expenses.

Be mindful of notice, consultation and consent obligations:

In many countries changing an employee's place of work can require express employee consent. Thus, while employees may be working from home due to government rules during the

COVID-19 pandemic, making such temporary arrangements permanent may trigger new individual employee notice, consultation and consent obligations.

Employers are encouraged to review local legal requirements on a country-by-country basis and to check employment agreement terms and any applicable local collective bargaining agreements or other consultation obligations. In addition, in countries where employee consent is required, employers should consider developing a strategy to address any employees who may refuse to consent. Failure to consent typically will not constitute grounds for termination and may result in employee claims.

Global remote working as a long-term strategy

While mass remote working started as a response to the pandemic, the genie is now out of the bottle with respect to the possibilities of working outside of the office. As more employers consider flexible work options as a way to attract talent, build resiliency and/or manage costs long-term (e.g., smaller real estate footprints, fewer personnel and vendor needs), it will be critical to consider requirements on a country-by-country basis. With careful planning, companies can implement a remote work model to meet business and employee needs and compliance obligations.

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Australia

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

No absolute right (however the employer must provide a safe work place and safe system of work).

Certain employees who have worked more than 12 months may have the right to request flexible workplace arrangements (which can include working at home).

After the state of emergency/COVID-19 restrictions have ended?

No absolute right (however the employer must provide a safe work place and safe system of work).

Certain employees who have worked more than 12 months may have the right to request flexible workplace arrangements (which can include working at home).

If an employee cannot insist on working from home, are there any proposals to introduce this right?

There are not any current legislative proposals to introduce such a right.

Employee's right to insist on working from home

Who does the right apply to?

Certain employees who have worked more than 12 months may have the right to request flexible workplace arrangements (which can include working at home).

How does the individual exercise their right?

By writing to their employer, setting out the details of the change sought and the reasons for the change.

What are the employer's obligations on receiving a request?

Where certain criteria are met, an employer is required to provide a written response to the request within 21 days and only refuse the request on reasonable business grounds.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Generally not unless the employee agrees, however this will depend on an employee's terms and conditions of employment, including under any contract of employment and applicable award or collective agreement.

However, under the JobKeeper provisions of the Fair Work Act, a qualifying employer can give an eligible employee a temporary JobKeeper enabling direction to perform duties at a place that is different from the employee's normal place of work, including the employee's home, provided the direction is not unreasonable in all of the circumstances. Employers generally have to make sure that:

- The location is suitable for the employee's duties and it is safe for the employee to perform their duties at the new location (including considering the nature and spread of coronavirus)
- The employee is not required to travel an unreasonable distance in all the circumstances (including considering the nature and spread of coronavirus)
- The employee performing their duties at the new location is reasonably within the scope of the employer's business operations

What process (individual and/or collective) must be followed to implement home working?

Where changes occur by agreement or otherwise in accordance with an employee's terms and conditions of employment, the employer may be required to consult with affected employees.

In respect of temporary JobKeeper enabling directions, an employer must give written notice (of at least 3 days) of the employer's intention to give the direction and consult with the employee prior to giving the direction. A JobKeeper enabling direction must be in writing and in accordance with any prescribed form.

How long can the arrangements be in place for?

The availability of temporary JobKeeper enabling directions which were set to sunset on 28 September 2020 were extended for six months to 28 March 2021 (as part of an extension of the JobKeeper scheme beyond 28 September 2020 on a reduced eligibility basis).

Furthermore, there is also the ability for some legacy employers who no longer qualify for (or choose not to participate in) the extended JobKeeper scheme to give temporary JobKeeper enabling directions on or after 28 September 2020.

Legacy employers need to give at least 7 days' written notice to an employee (or such lesser period which is genuinely agreed to by the employee) and consult with them before issuing a JobKeeper direction to change duties or work location

Where changes occur by agreement or otherwise in accordance employee's terms and conditions of employment, these changes may be permanent.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

There are not any current legislative proposals to introduce any further rights.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

If the contract of employment allows the employer to require permanent home working, it may be possible to implement this arrangement easily (subject to any applicable award or collective agreement). However, few employment contracts will include this option and even where there are contractual provisions allowing flexibility as to place of work, any change should still be implemented reasonably.

As such, an employer wanting to move to permanent home working arrangements is unlikely to be able to require this and should expect to go through a contractual change process to alter the place of work from the employer's premises to the employee's home.

What process (individual and/or collective) must be followed to implement home working?

Consultation obligations will likely need to be followed for employees covered by an award or collective agreement.

A formal variation to an employee's terms and conditions of employment under their contract of employment or an applicable collective agreement may be required.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

There are not any current legislative proposals to introduce such a right.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

Employers generally have a duty to protect employee health and safety and to provide a safe place and system of work – these obligations continue to apply in respect of individuals working from home. As such, an employer should ensure that the working environment of an employee working at home is assessed for health and safety risks. Note that it is possible for an employee to undertake their own risk assessment on behalf of and under the supervision of the employer. Employers should also provide equipment for people to work from home safely.

What is the position with the provision and cost of equipment and services for home working?

An employer may be required in certain circumstances to provide equipment or reimburse costs to enable an employee to work from home. Furthermore, an employer cannot unreasonably require an employee to spend their own money in connection with the performance of work.

Are there any tax allowances which are relevant where individuals are home working?

Employees who have incurred expenses working from home may be able to deduct such expenses from their taxable income provided the expenses are not reimbursed by their employer. The Australian Taxation Office has provided a short cut method to allow a fixed rate deduction of 80 cents for each hour an employee works from home from 1 March to 30 June 2020 subject to certain conditions being met.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home

- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend work premises when requested
- A right for the employer to visit the employee at home at agreed times for agreed purposes
- Agreement in respect of insurance obligations
- Provisions for termination of the home working arrangement.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training.

The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary.

The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers.

Monitoring and checking facilities should generally not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective. Employers should ensure any kind of monitoring does not involve unlawful surveillance.

Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance.

The employer should ensure it can insist an employee comes into the workplace as and when required.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is generally a matter for contractual agreement between the employer and employee. An employee may be given a lawful and reasonable direction to not work from particular places. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Guidance for employers on home working is available from Safe Work Australia and the Fair Work Ombudsman.

<https://www.safeworkaustralia.gov.au/COVID-19-information-workplaces/industry-information/general-industry-information/working-home>

<https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/alternative-working-arrangements-during-coronavirus/working-from-home>

Austria

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

An Employee has no right to work from home and cannot insist on doing so.

In principle, “telework” must be agreed with the employer and the consent of the respective employees is required. This can be agreed at the beginning of the employment relationship at the same time as the conclusion of the employment contract or at a later time.

If there is a works council in the company, the employer must inform it of the introduction of telework. If requested, the works council must also be consulted. During the coronavirus crisis, employees may only attend their workplace if the work cannot be done from home. If work can be done from home, however, telework must be clearly agreed between the employer and employee. So, during the coronavirus crisis, there is no unilateral authority on the part of the employer to order telework, nor is there any legal entitlement on the part of the employees. The position will be different if the relevant employment contract already contains an obligation for the employee to perform the work from home.

After the state of emergency/COVID-19 restrictions have ended?

Even after the state of emergency has ended, telework – as stated above – must be agreed between the employer and the employee. There is no unilateral right to telework, whether during or after the coronavirus crisis.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

In Austria there are currently no plans to introduce a unilateral right to telework. New rules in relation to home working were announced in January 2021, but these confirm that working from home remains a matter of agreement. It therefore is up to the employer and the employee to agree on this option – an explicit agreement that also covers possible expenses to be borne by the employer should be concluded.

Employee’s right to insist on working from home

Who does the right apply to?

In Austria there is no unilateral legal right to telework. It must be contractually agreed. Please see responses above.

How does the individual exercise their right?

Please see responses above.

What are the employer’s obligations on receiving a request?

Please see responses above.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

As explained above, there is no unilateral power to order telework on the part of the employer. The only exception is if the employment contract already contains an obligation on the employee to perform the work from home. If there is such an agreement, telework can be ordered unilaterally by the employer.

What process (individual and/or collective) must be followed to implement home working?

See above.

How long can the arrangements be in place for?

See above.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

In Austria there is currently no plan to introduce a unilateral right for an employer to require temporary telework.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

An employer has no power to unilaterally order permanent telework. As mentioned above, the only exception will be if the employment contract already stipulates an obligation for the employee to work from home. Such a contractual agreement is based on reciprocity. If there is such an agreement, the employer can unilaterally require telework.

What process (individual and/or collective) must be followed to implement home working?

See above.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

In Austria there is currently no plan to introduce a unilateral right for an employer to require permanent telework.

Arrangements for home working**What are the key health and safety obligations that apply to the employer and employee?**

The employer is obliged to ensure privacy and data protection.

Workplace-related health and safety regulations do not apply to work in an individual's own private home.

Employers and preventive services have no right of access to private homes. Access is only possible if the employee expressly agrees (or is at their request for consultation or evaluation purposes).

However, the following regulations for screen work expressly apply to work done through telework:

- Employers are obliged to design tele-monitor workplaces ergonomically
- Display screen equipment (monitors, keyboards, other control units or additional equipment) which corresponds to the state of the art and ergonomic requirements must be provided with user-friendly software
- If work tables, work surfaces and seating are provided, these must meet the necessary ergonomic requirements

These obligations apply irrespective of the duration of teleworking.

What is the position with the provision and cost of equipment and services for home working?

This depends on what is agreed. However, if the employer does not provide the option for the employee to work from an office, the employer usually bears basic costs like internet, desks, chair, etc.

Are there any tax allowances which are relevant where individuals are home working?

From a tax law perspective, the question arises whether and what (pro rata) amount of costs, such as rental costs, can be deducted as expenses. However, this depends on the individual case and depends on the details. New rules announced in January 2021 provide employees working from home with tax benefits of up to EUR 600 per annum.

What are the key points employers should include in contracts/policies for home workers?

If telework is contractually agreed, the form of working time records and reporting obligations, the type of work to be performed, the division of working time, organisational integration into the company and the respective responsible supervisor, as well as what costs are borne by the employer, should be agreed. In addition, employees who work from home are subject to the same legal and collective agreement provisions as employees who work on site on company premises.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

It is important to ensure that employees who work from home are involved in the company to the same extent as employees who work locally. Possible communication channels are:

- E-mail
- Phone
- Video chat
- Chat
- Shared documents

Furthermore, working time must be recorded by the employee and communicated to the employer. The employer is responsible for monitoring the employee's performance while teleworking.

What are the key risks with home working in your jurisdiction that employers should be aware of?

Home working is low risk. The main risk is that the employee demands reimbursement for costs. Another risk is that the employee records more working time than they have actually worked – therefore time recording should be monitored by the employer.

Furthermore there is a risk that data protection is not observed and 3rd parties gain knowledge and access to certain company data or confidential information.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

This depends on what is agreed between the parties – in general it will be possible to specify any limitations. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

None.

Belgium

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The current Belgian Government COVID-19 guidance is that remote working is mandatory for all employees, unless it is impossible due to the nature of the business or for business continuity reasons.

After the state of emergency/COVID-19 restrictions have ended?

If the employer continues to keep employees working from home after the end of the lockdown measures imposed by the Government, in some circumstances continued home working might be considered by the employees as an acquired right (to be determined on a case-by-case basis).

If an employee cannot insist on working from home, are there any proposals to introduce this right?

So far, no such proposals have been made.

Employee's right to insist on working from home

Who does the right apply to?

Currently the right applies to all employees, unless remote working is not possible due to the nature of the business or for business continuity reasons. For employees for whom working from home is ostensibly not possible, they could nonetheless insist on working from home if they can demonstrate that the employer cannot guarantee a healthy and safe workplace, according to the latest guidelines with regards to social distancing.

How does the individual exercise their right?

No specific formalities defined by law.

What are the employer's obligations on receiving a request?

No specific formalities defined by law.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

For the time being working from home is mandatory for all employees, unless remote working is not possible due to the nature of the business or for business continuity reasons. As a result, employers can require their employees to work from home.

In other circumstances, remote working will in principle be voluntary. As a consequence, the employee needs to give his/her consent.

What process (individual and/or collective) must be followed to implement home working?

No specific process has been specified by the Belgian government.

How long can the arrangements be in place for?

See our reply above. Where remote working is imposed, this will normally only remain possible for as long as the Government restrictions apply.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

So far, no such proposals have been made.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

No.

What process (individual and/or collective) must be followed to implement home working?

Not applicable.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

So far, no such proposals have been made.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

The employer must always comply with its general duty of care provided for by the Belgian code on well-being at work. For employers who did not have any arrangements in place for structural or occasional telework by 1 January 2021, the Belgian legislator has put in place a specific legal framework (Collective Bargaining Agreement 149) for instances of telework which were either required or recommended by the Belgian government as part of measures to counter COVID-19.

As part of this CBA, employers have a legal obligation to inform a teleworker of (i) the company's policy on wellbeing at work in relation to telework, and (ii) the name and contact details of various individuals within the company (e.g. immediate supervisor, prevention advisor, etc.).

Finally, the employer must take appropriate measures to maintain contact/connection between teleworkers and their colleagues and the company to prevent isolation. In doing so, the employer should pay particular attention to vulnerable employees (e.g. due to their family situation).

Further, if home working takes the form of structural telework (telework carried out on a regular basis, as opposed to mandatory telework imposed by the Belgian government as a result of the COVID-19 pandemic or occasional telework only performed in specific circumstances – see “other relevant information” below) the employer:

- Can be requested to carry out a risk analysis of the employee's place of work to prevent any risk related to the health & safety at work
- Has a legal information obligation according to which it has to inform the teleworkers of the company's policy on health and safety at work which affect the teleworker (and in particular the requirements in terms of display screens)

What is the position with the provision and cost of equipment and services for home working?

The employer has a general obligation to set appropriate tools and equipment at the employee's disposal, enabling him/her to carry out his/her role properly.

Applied to the situation of remote working, this means that the employer should cover costs which have to be incurred to enable employees to perform their work remotely. This mostly includes the provision of home office equipment (or reimbursement of professional costs incurred if the employee uses personal equipment) and the reimbursement of internet costs.

CBA 149 requires an employer to establish specific rules and agreement on (i) the provision by the employer of equipment needed for telework and technical support (e.g., a laptop), (ii) if the employee uses his/her own equipment, the reimbursement or payment by the employer of the costs of installing relevant computer programs and of their use, operation, maintenance and depreciation, and (iii) any additional connection costs.

The fact that an agreement should be concluded on costs and their reimbursement does not automatically mean that an employer is obligated to give a teleworker an additional indemnity. In fact, CBA 149 explicitly stipulates that the agreement should take into account the overall costs or compensation that the employer has paid to the employee in the framework of the COVID-19 crisis.

Are there any tax allowances which are relevant where individuals are home working?

Yes, but these vary depending on the type of remote working:

- Mandatory telework under CBA 149: there are no specific obligations, but a fast-track tax ruling could be filed by the employer to obtain permission to grant a tax and social security-free cost reimbursement of up to (currently) 129,48 EUR per month (to be increased to 144,31 EUR as from 1 April 2021)
- Home working and structural telework: a homeworking/teleworking allowance which is commensurate to the professional costs linked to working from home (electricity, internet connection costs, heating, etc.), and which does not go beyond an amount of 10 % of the employee's gross remuneration earned whilst working from home. It is also possible to use separate cost allowances per specific professional costs, the amounts of which are confirmed in the rules of the Belgian social security and tax authorities (e.g. an “office allowance” of 144,31 EUR per month as from 1 April 2021), an allowance to compensate for PC/internet costs, etc.)
- Occasional telework – there are no specific obligations in this regard, but a fast-track tax ruling could be filed by the employer to obtain permission to grant a tax and social security-free cost reimbursement of up to 144,31 EUR as from 1 April 2021.

What are the key points employers should include in contracts/policies for home workers?

A distinction must be made between telework which is imposed due to the direction of the government and home working after the requirement for mandatory telework ends.

As above, employers who did not have arrangements in place for structural or occasional telework by 1 January 2021 are required to apply the provisions of CBA 149. As a result, these employers should draft a telework policy including various aspects, such as (i) specific rules and agreement on the provision of equipment and the reimbursement of costs, (ii) applicable working time, (iii) collective rights, (iv) wellbeing at work, etc.

If however home working will continue for a short while after the end of the lockdown measures imposed by the Government, to minimize the risk of creating an acquired right to continued homeworking (see above), employers are recommended to put a specific temporary policy in place, setting out the terms and conditions of continued teleworking which will apply until staff return to the office. This policy should emphasise that the situation is temporary as it is due to COVID-19 only.

In case of structural telework or home working, the information to be included in the employee's individual employment agreement depends on whether the work is telework or homework. The information required is specifically listed by law (e.g. the joint committee, working hours, a description of a function, how costs will be reimbursed, terms of return to office, etc.)

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Any processing of employee personal data as a result of such communication or monitoring should be compliant with the employer's privacy notice and with the GDPR and the local data protection requirements.

Any monitoring of activities should also be compliant with the legal restrictions on monitoring of the use of IT-tools of employees by employers.

For telework that takes place after the requirement for mandatory telework imposed by the Belgian government ends, the level of direct control on the employee's work performance will determine whether the remote working situation can be defined as home working or as teleworking. If direct control on performance is possible via the equipment used by the employee to work remotely, then the situation will likely be considered as telework – see information below. Otherwise, the situation will likely be considered as home working.

What are the key risks with home working in your jurisdiction that employers should be aware of?

When the home working becomes structural, specific individual (and sometimes also collective) contractual arrangements must be put in place, including specific provisions imposed by the law. Non-compliance with these obligations is subject to various sanctions or liabilities:

- Home work: the risk of the employee terminating the contract without notice
- Telework: the risk of the employee coming back to work at the company's premises at any time without notice
- Arrears of cost allowances can be requested by the employee
- Requalification of cost allowances into plain remuneration (which will be subject to tax and social security, and to rights derived from plain salary entitlements such as overtime, indexation, vacation pay etc.) by the authorities. In this case, arrears of taxes and social security contributions could be due

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Employees working remotely can freely choose the place from which they work. The law provides that the place of remote working is "the employee's home or any other place chosen by the latter". During the period of mandatory telework the Belgian Government however requires working from home. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Note that in case of structural telework a distinction must be made between homework and telework, and which category an arrangements falls into will depend on the factual circumstances of the situation and the will of the parties. Generally speaking, the situation will be considered as telework if the employee (1) is not a mobile worker (e.g. a sales representative), (2) must use a computer to perform his/her work and (3) if the employer can control the employee when he/she works (for e.g., via telephone calls or via skype business).

In case of structural telework, there is also a preliminary information and consultation obligation vis-à-vis the works council (if any).

Brazil

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The current guidance of the Brazil government regarding COVID-19 is that individuals continue working from home, whenever possible.

With the reopening of commerce and other activities, although at reduced hours, employees have been asked to return to their workplace, and there is still no legislation that allows an employee to insist on working from home.

Despite this, according to the Labor Code an employee is not required to work in areas that present imminent risk or danger, so an option for an employee who feels at risk in his workplace is to demand termination of the employment agreement and claim the appropriate indemnity.

For certain categories of employee, there may be specific considerations – for example:

- For employees who have an underlying health condition which qualifies as a disability, there is duty to make reasonable adjustments and, during the COVID-19 pandemic, this is likely to require facilitating home working where possible
- For employees whose children are at home and who have no childcare, insisting on attendance at work could risk allegations of a breach of trust and confidence or, in certain cases, of indirect sex discrimination

The employer should always consider if the employee has a legitimate reason for refusing to go back to the office (i.e. pregnant).

Note that although there is no legal provision allowing for an employee to refuse to return to their workplace, an injunction was obtained by the Union of the State of São Paulo so that employees who are part of the COVID-19 risk group and represented by this Union do not need to return to face-to-face activities in their workplace.

After the state of emergency/COVID-19 restrictions have ended?

There is no right to insist on home working, as it is up to the employer to decide the working hours and the type of work, in a face-to-face work regime or at home, of their employees.

Although many employment agreements do not provide work from home conditions, if this option has been agreed between the employee and the employer, it can still be adopted as a company's policy.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

There are no proposals to introduce a right for an employee to insist on home working.

Despite the recent publication of the new labor law that regulates employment agreements for as long as the pandemic caused by COVID-19 lasts, there are no proposals regarding an employee's right to insist on continuing to work from home.

Employers shall consider the reason why an employee is refusing to go back to the office, and if it is a legitimate reason. A case by case analysis is necessary.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on home working. However, it is up to the employee to demand the termination of the employment agreement on any date and claim the appropriate compensation if he is in danger of considerable harm in the workplace.

Employees considered to fall within high risk groups may refuse to go back to the office. A case by case analysis should be made.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

Not applicable.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes. During the state of public calamity caused by COVID-19, the employer may require their employees to work from home on a temporary basis, as well as determine the return to a face-to-face work regime. The change in the work regime must be notified to the employee at least forty-eight hours in advance, in writing or by electronic means.

After the period of calamity caused by COVID-19 and its associated restrictions end, the employer will be able to require their employees to work from home, as long as the employee agrees with this change in the work regime. The legislation does not specify the change on a temporary basis, it only establishes that in the case of returning to a face-to-face work regime, the employee must be notified at least 15 days in advance.

What process (individual and/or collective) must be followed to implement home working?

During the COVID-19 pandemic, the implementation of home working must be notified to the employee at least forty-eight hours in advance, in writing or by electronic means. In such cases prior registration of the amendment to the individual employment contract is waived.

The provisions regarding responsibility for the acquisition, maintenance or supply of technological equipment and necessary and adequate infrastructure for home working, as well as the reimbursement of expenses borne by the employee, must be provided in a written agreement, previously signed or signed within thirty days, counted from the date of change of the work regime.

How long can the arrangements be in place for?

The implementation of home working caused by the COVID-19 pandemic may last as long as the state of calamity caused by COVID-19 and its associated restrictions continues.

After the COVID-19 pandemic, there is no set limit on the length of time for which an employer can require an employee to work from home, but in the event of the return to face-to-face working, the employee must have a minimum transition period of fifteen days.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

A permanent change from face-to-face work to home working may occur as long as the employee and the employer are in agreement and must be registered as an amendment to the employment agreement.

What process (individual and/or collective) must be followed to implement home working?

The implementation of a home working regime may occur as long as the employee and the employer are in agreement and must be registered in a contractual amendment.

The provisions regarding responsibility for the acquisition, maintenance or supply of technological equipment and the necessary and adequate infrastructure for the home working, as well as the reimbursement of expenses borne by the employee, must be provided in a written agreement.

Employers should also create a policy informing staff that the code of conduct and confidentiality duties must be observed.

Beyond that, the employer should instruct their employees, expressly and clearly, as to the precautions to be taken in order to avoid illness and accidents at work, and the employee must sign a term of responsibility committing to follow the instructions provided by the employer.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

According to the Labor Code, employers are responsible for complying with and enforcing occupational health and safety standards, as well as instructing employees on the precautions to be taken to avoid accidents at work or occupational diseases – those obligations continue to apply to individuals who work from home.

Therefore, the employer must instruct their employees that work from home, expressly and clearly, as to the precautions to be taken in order to avoid illness and accidents at work, and the employee must sign a term of responsibility committing to follow the instructions provided by the employer.

On 10 September the Brazilian Public Labor Prosecutor Office published a COVID-19 Workgroup Advisory Note which establishes remote working policies to be observed in the new workplace environment. The guidelines have been developed to ensure safe and lawful labor conditions apply to new work arrangements resulting from the pandemic.

The Note reinforces the importance of employers establishing and describing, in contractual amendments, labor conditions which apply to any remote work regime. In summary, the recommendations from the Public Prosecutor Office to employers are:

- Respect digital ethical principles, preserving space for employees to maintain privacy and autonomy to carry on activities from home.
- Make labor contract changes for those employees for whom remote work has not previously been defined. Employers must bear in mind issues related to mental health, employee's capacity to handle technology and enhance cooperation during the term of remote work.
- Take into account conditions related to ergonomics, task organization, network access, interpersonal relationships in the workplace and feedback. The employer must cover the employee's expenses arising from these matters.
- Where telemarketing services are offered, provide adequate conditions and technologies for employees, assuring they have a fair amount of rest and capacity to fully develop their functions.
- Offer adequate technical support.
- Offer clear and objective advice to employees regarding the prevention of diseases in general, physical or mental, related or not to work.
- Respect working hours as personal and professional spaces tend to conflict during periods of working at home.
- Provide for digital etiquette models, respecting the "right to disconnect" and preventing virtual harassment, of any kind.
- Respect the worker's right to privacy, potentially creating a digital pattern that prevents any violation of personal rights.
- Obtain the worker's consent before exploiting its image and/or voice in digital platforms.
- Observe terms established during the emergency measures relating to the pandemic, communicating, as soon as necessary, any impacts on working conditions.
- Ensure adequate communication channels that enable the notification of any event that violates a worker's personal rights.
- Encourage self-care policies to prevent COVID-19, as well as ensuring adequate isolation of the patient and communication to health authorities.
- Observe legislation that protects older workers when setting out working conditions, respecting both limitations and rights of older workers.
- Observe disability legislation when granting work opportunities and defining work tasks.
- Control working hours, including the time the worker has spent in rehabilitation programs.
- Cooperate with policies that support outplace of workers who have been dismissed due to the automation of working processes or technological barriers.

What is the position with the provision and cost of equipment and services for home working?

The provisions regarding responsibility for the acquisition, maintenance or supply of technological equipment and the necessary and adequate infrastructure for working at home is a matter for agreement between the employer and the employee and must be provided in a written agreement.

In the event that the employee does not have the technological equipment and adequate infrastructure to work from home, the employer may provide the equipment on a loan basis and pay for infrastructure services, which will not be characterized as funds akin to salary.

Are there any tax allowances which are relevant where individuals are home working?

The payment of additional expenses arising from working at home such as business telephone calls or extra costs of internet and electricity must be agreed between the employee and the employer and provided in a written agreement.

There is no provision in the labor legislation regarding the payment of additional costs for employees that work from home however all companies reimburse costs that may impact if the employee is permanently working from home.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment agreement of a home worker employee:

- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home

- Agreement about the payment of additional costs (such as phone and internet)
- Obligations on the employee in respect of confidential information
- Instruction on ergonomic measures and the precautions to be taken in order to avoid illness and accidents at work
- An obligation to attend work premises when requested
- A requirement that the Company's Code of Conduct shall be observed
- Provisions for termination of the home working arrangement

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

The key points for employers to consider in communicating with and monitoring performance are:

- Monitoring and checking facilities should not be used without the homemaker's acknowledge. The homemaker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective
- Due to the difficulty in controlling the work hours of an employee that works at home, teleworking was included in the exceptions from the working hours regime provided in the Labor Code. For this reason, it is recommended that the employer instruct the employee about the importance of taking breaks and maintaining a good work-life balance

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Liability of the employer due to accidents suffered by the employee while providing services, even outside the company's premises
- Difficulty controlling the home worker's workday

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they work is a matter for contractual agreement between the employer and employee. However we recommend including a requirement that the employee should work from home and inserting the address to make clear that overseas is not permitted to avoid future discussions on conflict of jurisdiction. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

- Teleworking is provided for in Chapter II-A, through sections 75-A to 75-E of the Labor Code. (http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm)
- Due to the COVID-19 pandemic, the Brazilian government published the Provisional Measure No. 927, regulating teleworking during the state of public calamity. (http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/Mpv/mpv927.htm)

Canada

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

No. Unless it is a term of the employment agreement that the employee may work from home, an employee cannot insist on working from home where the state of emergency/COVID-19 restrictions in the applicable Canadian jurisdiction do not prohibit the employee from physically returning to the workplace, and where the employer has requested that the employee attend at the workplace.

This is subject to any reasonable accommodations relating to a human rights ground which may require permitting an employee to continue working from home during the COVID-19 pandemic. For example:

- **Disability:** Employees who are immunocompromised or who have an underlying condition; or
- **Family Status:** Employees with childcare responsibilities due to school or day-care closures.

An employer must accommodate such an employee to the point of undue hardship.

In addition, in all Canadian jurisdictions, an employee may refuse unsafe work where the employee has reasonable grounds to believe the work will endanger their health and safety or the health and safety of others, notably because the employee is exhibiting symptoms of COVID-19 or because the employer is failing to take adequate measures to protect employee health and safety pursuant to its obligations under occupational health and safety legislation. The provincial agency responsible for enforcing occupational health and safety laws may be called in to investigate the work refusal and resolve the dispute between the employer and the employee. In this case, the employee cannot be disciplined or terminated for the initial work refusal or for calling in the provincial agency. While an employee's refusal to work is being investigated, the employee cannot be disciplined or terminated for refusing to work. However, an employee can be temporarily assigned to other duties or to work from home without a reduction in pay until the matter is resolved. The outcome of the work refusal investigation could be to rule the workplace "safe" or require the employer to implement alternate measures to make the workplace safe. Allowing the worker to work from home is an unlikely permanent remedy.

The current government COVID-19 guidance in most Canadian jurisdictions is that employees who can work from home should continue to do so in order to reduce the possibility of transmission of COVID-19 and in order to facilitate physical distancing.

After the state of emergency/COVID-19 restrictions have ended?

No. Unless it is a term of the employment agreement that the employee may work from home, an employee cannot insist on working from home after the state of emergency/COVID-19 restrictions in the applicable Canadian jurisdiction have ended. This is subject to any reasonable accommodations relating to a human rights ground which may require permitting an employee to continue working from home after the COVID-19 pandemic.

Please see the answer above with respect to the current government COVID-19 guidance in Canadian jurisdictions and the risk that an employer may claim work refusal.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

Not that we are aware of at present.

Employee's right to insist on working from home

Who does the right apply to?

Employees do not have a right to insist on working from home, subject to:

- A term of their employment agreement
- A reasonable accommodation relating to a human rights ground, such as disability or family status
- Reasonable cause to believe that returning to the workplace would expose the employee to a workplace health and safety risk or an undue hazard

How does the individual exercise their right?

In accordance with their employment agreement or by providing notice that the employee requires accommodation or believes that the workplace is unsafe.

What are the employer's obligations on receiving a request?

Act in accordance with the employment agreement, provide accommodation if suitable proof of a need for accommodation is provided or follow the rules regarding a work refusal.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes. While the state of emergency/COVID-19 restrictions continue, an employer may require an employee to work from home on a temporary basis in order to comply with the state of emergency/COVID-19 restrictions and any government COVID-19 guidance in the applicable Canadian jurisdiction.

The current government COVID-19 guidance in most Canadian jurisdictions is that employees who can work from home should continue to do so in order to reduce the possibility of transmission of COVID-19 and in order to facilitate physical distancing.

After the state of emergency/COVID-19 restrictions have ended, an employer may still require an employee to temporarily work from home in order to:

- Comply with the government COVID-19 guidance in the applicable Canadian jurisdiction
- Ensure the health and safety of employees in the workplace by reducing the possibility of transmission of COVID-19 and in order to facilitate physical distancing

Outside of the COVID-19 pandemic, an employer may require an employee to temporarily work from home if the request is reasonable in the circumstances based on the nature of the employee's role, the duration of the temporary arrangement and the reason for the temporary requirement to work from home.

What process (individual and/or collective) must be followed to implement home working?

Individual employees: There is no formal process to implement temporary home working in Canadian jurisdictions. However, the employer should provide employees with as much notice as possible of the temporary requirement to work from home including the reason for the temporary requirement (for example due to government COVID-19 guidance in the applicable Canadian jurisdiction), the estimated duration and other practical considerations with respect to preparing to work from home.

Most Canadian jurisdictions require an employer to establish a health and safety committee or representative in the workplace. It is recommended that the employer discuss the temporary requirement to work from home with the health and safety committee or representative.

Union employees: If employees are represented by a union pursuant to a collective agreement, the process for implementing temporary home working will depend on the provisions of the collective agreement. Most collective agreements contain a "Management Rights" provision which may permit the employer to determine the location of the employee's work, including requiring the employee to temporarily work from home. Other collective agreements may require the consultation and/or agreement of the union before the employee's location of work is altered.

Even where the consultation and/or approval of the union is not required, it is recommended that the employer discuss the temporary requirement to work from home with the health and safety committee or representative as well as the union so that there is an opportunity for their comments and suggestions.

How long can the arrangements be in place for?

The temporary requirement to work from home can remain in place as long as is reasonably required based on:

- The state of emergency/COVID-19 restrictions in the applicable Canadian jurisdiction
- Current government COVID-19 guidance in the applicable Canadian jurisdiction
- Current public health information
- The specific facts of the workplace

The employer should make clear to employees that the measure is temporary and that they may be asked to return to the workplace whenever it is safe to do so based on the above. If a temporary home working arrangement persists for too long such that it is no longer temporary or necessary, and an employer later requires an employee to return to the workplace, this may be construed as a fundamental change to the terms of employment resulting in constructive dismissal.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

Yes. An employer can require an employee to work from home on a permanent basis if it is a term of the employment agreement or the employee subsequently agrees.

What process (individual and/or collective) must be followed to implement home working?

Individual employees: There is no formal process to implement permanent home working in Canadian jurisdictions.

If permanent home working is not a term of the employment agreement, the employer should obtain the employee's approval before implementing permanent home working.

Implementing permanent home working without the employee's agreement may constitute a fundamental change to the terms of employment resulting in constructive dismissal.

Employers should give employees as much notice as possible of the date on which they will be required to work permanently from home, as well as practical considerations with respect to performing work from home, communicating with relevant team members and any costs associated with working from home.

Union employees: If employees are represented by a union pursuant to a collective agreement, the process for implementing home working will depend on the provisions of the collective agreement. Most collective agreements contain a "Management Rights" provision which may permit the employer to determine the location of the employee's work, including permanently requiring the employee to work from home. Other collective agreements may require the consultation and/or agreement of the union before the employee's location of work is altered.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

Employers in Canadian jurisdictions have a duty to ensure a safe work environment for their employees, including a duty to take every precaution reasonable in the circumstances for the protection of the employee. This includes the duty to provide information, instruction and supervision to an employee to protect their health and safety.

Remote workers must not be subjected to reduced health and safety standards at home. Many health and safety roles, rights, and responsibilities are just as applicable for at-home workers as they are for more traditional workplaces, including:

- Reporting workplace injuries
- Requirements for education and training
- Worker's duty to follow safe work procedures

For employees working from home, it is recommended that the employer provide employees with regular updates with respect to the employer's COVID-19 health and safety measures in response to:

- Any state of emergency/COVID-19 restrictions
- Current public health information
- Current government COVID-19 guidance
- The facts of the workplace

Employers should also provide inform employees of any confirmed cases of COVID-19 in the workplace, the employer's COVID-19 health and safety measures and the employer's return to work plan.

What is the position with the provision and cost of equipment and services for home working?

Subject to a term in the employee's employment agreement or a workplace policy (discussed below), employees are generally not entitled to be provided with or reimbursed for equipment or services associated with home working. (This would include computers, desks, desk chairs, or expenses associated with home internet and electricity.) However, if the employee originally worked in the office and was supplied with equipment, requiring the employee to provide all of their own equipment could amount to a constructive dismissal.

In some Canadian jurisdictions there is a higher minimum wage for home-workers meant to defray some of the cost of working remotely.

Some Canadian jurisdictions prohibit employers from charging employees for "business costs". Usually, the cost of providing a tool used in performing employment duties (e.g. a cell phone) is not a business cost and does not need to be paid for by the employer, but the cost associated with operating the tool (e.g. the cell phone bill) is a business cost.

If an employee's expenses (for example, internet and electricity expenses) have not materially increased since they began working from home, there is no reasonable basis for an employee to be entitled to reimbursement for these expenses. However, where an employee has had to obtain or improve their internet connection or has experienced higher electricity expenses as a result of working from home that they did not previously experience prior to working from home, an employee may have a reasonable basis to claim reimbursement for these expenses. Other aspects of home working may offset some of these costs, for example, reduced gas or public transit expenses as a result of home working. This will need to be determined on a case by case basis.

Employers may permit employees to temporarily bring their office equipment home to facilitate home working or may wish to offer employees an allowance to cover certain costs associated with the provision of equipment and services.

Are there any tax allowances which are relevant where individuals are home working?

If employees work from home on a temporary basis for a prolonged period or work permanently from home, those employees may be able to claim deductions for expenses associated with working from home if the employer completes a T-2200 Declaration of Conditions of Employment form, issued by the Canada Revenue Agency (CRA), proving that:

- The employer is not reimbursing the employee for expenses associated with working from home
- The employee was required to work from home
- The employee worked from home more than 50% of the employee's working time

Employers are not obligated to complete a T-2200, but many employers do so in an effort to assist employees with the added expense of working from home or maintaining a home office.

What are the key points employers should include in contracts/policies for home workers?

Employee agreements or workplace policies with respect to home workers should clarify the employer's expectations of employees working from home, including:

- Discussion of safe workplace practices and how to report any work-related incidents or injuries
- Discussion of ergonomic considerations
- Recording hours of work each day, the method of recording, performance and productivity
- Whether any performance monitoring measures or programs have been implemented (for example, tracking emails, Instant Messaging apps, productivity on software programs, etc.)
- The employee's availability and hours of work while working from home (for example, the employee's set lunch and breaks, availability for calls and meetings, etc.)
- Team communication, progress reports and check-ins
- Expected use of company devices
- Requirements for maintaining confidentiality and security of intellectual property
- How overtime, if applicable, will be approved, tracked and paid to home workers

- Whether the employer or employee will be responsible for purchasing and maintaining equipment associated with working from home or expenses such as internet or increased electricity costs
- Any limit on reimbursement and whether approval is required before any equipment or service is purchased by the employee
- Requirements to maintain appropriate insurance coverage (for example, homeowners insurance that covers the employee's personal liability exposure for maintaining a home office)

The policy should also state that the policy with respect to home workers can be modified or revoked at any time at the sole discretion of the employer.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Monitoring performance: Employers are permitted to monitor the performance of home working employees if the employer notifies the employee and the employee consents. This is commonly done through a workplace policy.

The policy should:

- Inform the employees if performance monitoring software programs have been installed on any company devices being used by the employee or is being used through the employer's VPN or on certain applications or software programs
- State that the employer may access, monitor, use or disclose any information or data accessed, collected or recorded on the employer's devices or through the employer's VPN or on certain applications or software programs
- List the relevant applications/software programs that the employer is reserving the right to access and monitor

The employee should be informed of the employer's expectations with respect to productivity and goals. If the employer intends to monitor performance for the purposes of discipline or termination for just cause, the policy should inform the employee of this.

What are the key risks with home working in your jurisdiction that employers should be aware of?

Some Canadian jurisdictions have a special minimum wage rate for home workers which can include those performing online research, telephone soliciting, manufacturing, word processing, etc. For example, in Ontario, the general minimum wage rate increased to CAD14.25 per hour from 1 October 2020, whereas the home worker minimum wage rate increased to

CAD15.70 per hour. Depending on the duration of a temporary requirement to work from home, an employer may be required to pay at least this higher minimum wage rate to employees working from home.

Many record keeping requirements of an employer still apply with respect to employees working from home. Employers should be aware that, despite the increased difficulty with recording and tracking hours in home working arrangements, employees working remotely are still entitled to overtime where it is earned.

There is higher risk of employees intentionally or unintentionally breaching privacy and confidentiality obligations to the employer and/or clients while they work from home.

**Is a home worker obliged to work from their actual home?
Could the employer prohibit them from working from
other locations e.g. overseas?**

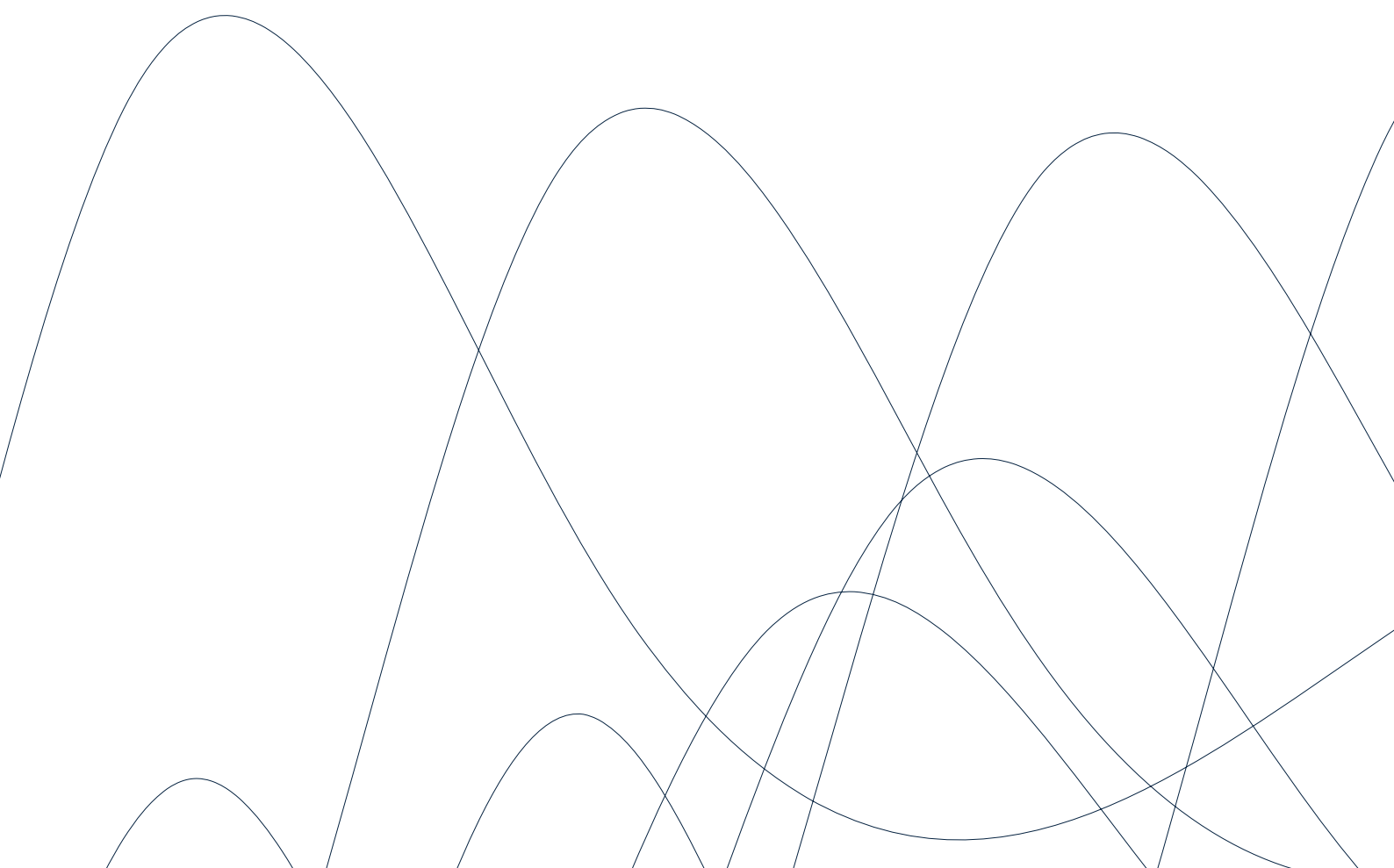
No. A home worker is not obliged to work from their actual home, subject to any contractual agreements on the issue. If the employer does not want employees working from a location other than their home, the employer may establish this expectation through a workplace policy or employment agreement requiring that the employee be accessible at

their home address during working hours. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Some Canadian government authorities have published guidance with respect to drafting or adapting policies to cover remote work arrangements, including:

- Alberta: <https://open.alberta.ca/dataset/f1e33f8b-e58c-4813-9b36-848d0d3f90c9/resource/e093812f-e98e-4b04-8594-94d989a753bc/download/lbr-working-from-home-during-pandemic-2020-04.pdf>
- British Columbia: <https://www.worksafebc.com/en/about-us/news-events/announcements/2020/March/health-safety-responsibilities-when-working-from-home>
- Federal: <https://www.ccohs.ca/oshanswers/hsprograms/telework.html>



China

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

There is no mandatory requirement which means that an employee may work from home without the company's approval or the employer may force the employee to return to work at the office (unless working from home is because the employee is subject to the government's quarantine measures).

We are of the view that if there is an emergency state or COVID-19 restrictions continue like the situation China faced in February 2020, it is to be recommended that a company arranges for its employees to work from home if possible.

After the state of emergency/COVID-19 restrictions have ended?

The company is entitled to require its employees to return to work at office.

For example, currently, most cities are deemed as low risk area, and an employee could not insist on working from home without a justifiable reason.

However, local rules may change from time to time. For example, in Beijing, around 200 new cases were discovered in June and several regions have been identified as medium/high risk area. Thus, Beijing upgraded its epidemic prevention level from level three to level two and encouraged companies to arrange for employees to work from home.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No.

Employee's right to insist on working from home

Who does the right apply to?

Employees who are subject to the government's quarantine measures can work at home. For example, employees who are close contacts of patients of COVID-19.

How does the individual exercise their right?

Such employees should inform their employer that they are required by the government to have a 14 days' quarantine and apply to work from home.

What are the employer's obligations on receiving a request?

The employer is obliged to approve the working-from-home request of an employee who is subject to government quarantine measures.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes.

What process (individual and/or collective) must be followed to implement home working?

The employer has full discretion on how to implement home working.

How long can the arrangements be in place for?

There are no specific requirements/limits.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

Probably yes in practice, but this will bring challenges for the company in managing employees and their work performance. And this arrangement may bring risks of work-related injury.

What process (individual and/or collective) must be followed to implement home working?

No mandatory guidelines but it is recommended to implement policies and/or sign agreements with employees to formalize any permanent working from home arrangement.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

No detailed rules on home working. According to the national law, the employer is obliged to establish and implement internal labor safety and sanitation rules, to strictly abide by the safety standards and requirements, and to provide a safe working environment for its employees.

What is the position with the provision and cost of equipment and services for home working?

No specific rules on home working. Generally speaking, the company will provide or bear the cost of equipment and services for home working.

Are there any tax allowances which are relevant where individuals are home working?

No.

What are the key points employers should include in contracts/policies for home workers?

Key points for reference include:

- Working time arrangements (e.g. from 9am to 6pm)
- Confidentiality obligations, including access to confidential information, storage of data, material transfer, etc.
- What equipment the employee shall work on
- A requirement that the employee shall return to work at the company's premises if requested

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Key points for reference for reference include:

- Specify clear tasks/standards for evaluation of employee's performance
- Develop an electronic system/app to supervise the employee's work
- Require employees to work actively and diligently from home

What are the key risks with home working in your jurisdiction that employers should be aware of?

Work-related injury: It is difficult to distinguish between work hours and leisure hours, and if an employee is injured while working from home, it is hard to determine whether it is a work-related injury or to seek cover via work-related injury insurance.

Data protection: Working from home may increase the risks of data leakage. It is important that employers ensure there is proper communication and reminders to employees around compliance with data protection rules and their confidentiality obligations. Employers should also ensure that its IT software and security systems are up to date and proper technical measures are adopted to minimize relevant risks.

Overtime payment: the company may be obliged to pay overtime payments even if employees work from home. As it is hard for the company to monitor working hours, it may become difficult to argue about overtime payments if there is any dispute.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

No, the workers are not obliged to work from their actual home.

In relation to prohibiting employees from working elsewhere, there are no detailed rules under PRC laws. The employer is entitled to prohibit the employees from working from other locations but it is hard to check whether employees are working from other places in practice. For business risks related to an employee working in a different country, see the [Introduction](#)

Considering that COVID-19 is a global pandemic and may cause unnecessary risks when travelling overseas, employers may require employees not to go to high-risk areas or overseas during the period of working from home.

Other relevant information about home working.

Not applicable.

Colombia

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The general guidance is that, provided that the activity can be performed remotely, employees should continue to work from home. Where employers cannot carry out their business from somewhere other than the workplace, they should suspend their operations unless their activities are exempt from the restrictions and they comply with all biosafety standards.

Therefore, if the industry is allowed to continue in the workplace and tasks cannot be done remotely, the employer as a general rule, may require employees to come to work at their work place. Where an employee does not comply with this requirement, the breach may lead to disciplinary sanctions or to termination with just cause by the employer.

Nevertheless, employees over 60 years of age and/or employees with health conditions that might be a higher risk from COVID-19, must work from home. Some of the health conditions that oblige employees to stay at home are:

- Diabetes
- Hypertension
- Lung, heart or kidney disease
- Low immune system (as cancer, HIV and organ transplants)

In such cases, it is the responsibility of the employer to carry out a job relocation where their operations require work to be done from the workplace. The relocation must be in accordance with the conditions and practical requirements of the work processes of the business.

In conclusion, it will be mandatory for employees to work from their workplace if their industry is exempted from the curfew and remote work is not possible. Only if the employee has been certified as at high-risk may the employee work from home.

After the state of emergency/COVID-19 restrictions have ended?

No. At this point, there is no right for an employee to insist on home working. It will depend on the employer and the company's policies to determine an employee's workplace. This is provided that during the state of emergency, the parties have not agreed otherwise.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

The Colombian Government has been promoting teleworking and homeworking regimes. Additionally, the Ministry of Labour has confirmed that on 20 July 2020 they will file a draft bill in Congress that governs home working.

Employee's right to insist on working from home

Who does the right apply to?

As mentioned above, employees older than 60 years and/or employees with serious health conditions that might be a higher risk from COVID-19, must work from home. For this purpose, employees must have a medical certificate that specifies their health condition and which recommends that they should not attend the workplace.

Those employees who have been transferred to teleworking have the right to request to go back to traditional working arrangements at any time. Employees who have been engaged under teleworking since the start of their employment do not have this right.

How does the individual exercise their right?

Employees with health conditions that are considered at high risk of COVID-19 must file a medical certificate with their employer that specifies the health condition that makes them at high risk in case of infection.

What are the employer's obligations on receiving a request?

Where the employee has a medical condition placing them at higher risk of COVID-19, the employer must order the employee to work from home.

Where such an employee cannot perform their job remotely, the employer will be responsible for the employee's relocation which must be in accordance with the conditions and practical requirements of the work processes of the business.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes. The employer can require an employee to work from home on a temporary basis. This instruction would be consistent with the Colombian Government's policy to encourage companies to operate under such arrangements.

Note that as a general rule, if the employee works from home on an occasional, temporary and exceptional basis, this will be considered as a "home office" arrangement. If the employee works continuously and permanently from home this will be considered as teleworking in respect of which there are some additional obligations. (See section "*Permanent requirement to work at home*").

What process (individual and/or collective) must be followed to implement home working?

Where an employer would like to implement teleworking as a permanent working arrangement, the employer must comply with specific conditions. Some of the obligations are: including teleworking rules in the company's Internal Work Regulations, verifying the place where the employee will carry out their work activities, reporting the place of work to the Risk Manager System, and reporting the teleworker to the Ministry of Labour.

In addition, employers must provide employees with the working tools needed for carrying out their labour activities remotely. This includes not only laptop and cellphone, but also a means of connectivity, and payment for public services needed to work remotely.

During the emergency the Colombian Government has established that the transportation allowance should be replaced with a connectivity allowance for those employees who earn less than two monthly minimum legal wages and whose role can be performed remotely from home.

How long can the arrangements be in place for?

At this point there is no legal limit on the length of time for which an employer can require an employee to work at home. However, once the draft of home office bill is issued, employers should check the conditions for home office it contains or if the arrangement will be classified as telework.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

During the emergency the employer can insist on an employee working from home. However, for this to continue on a permanent basis once the emergency has concluded, the employee and employer must agree on changing to a home office or telework arrangement. This will depend on the rules that brought into force at the end of the state of emergency.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

No. As a general rule, the parties must agree on working from home on a permanent basis. However, during the state of emergency, the employer may require employees to work from home.

Furthermore, there are specific laws that relate to teleworking which have been in effect since 2008. Telework and home office are differentiated as described below:

Home office:

Home office work is not yet explicitly regulated in Colombian labour legislation. According to the Ministry of Labour, home working must be occasional, temporal and exceptional.

Considering the above, home office working is usually regulated through the employer's internal policies. Home office is generally considered as a benefit for employees. To this extent, it is advisable that the terms and conditions are set forth in a written document that can be agreed by the parties or issued by the employer.

Teleworkers:

Teleworkers must have the same working conditions and rights as on-site employees. Therefore, for the same positions and profiles there should be the same salary and statutory benefits.

The employer must supply all necessary tools to the employee to carry out their work obligations, such as an ergonomic chair, laptop and telephone line. In addition, employees' work stations must be verified by the employer, with the advice of the Labour Risk Manager (an entity of the social security system that grants all labour risk benefits in case of a labour accident or disease). Teleworkers should also be included in the health and safety assessments and allowed to participate in activities.

In addition, employer's Internal Working Rules must include a chapter with telework rules. Teleworking must be agreed by the parties.

What process (individual and/or collective) must be followed to implement home working?

Where the employer and employee agree to telework, the employer must:

- Include teleworking in employer's Internal Working Rules
- Pay the same salary for the same performance levels and same roles
- Assign tasks for teleworkers guaranteeing their right to rest
- Check the individual's place and conditions of work with the advice of the Labour Risks Manager
- Report the teleworker's place of work to the Labour Risks Manager
- Report details of all teleworkers to the Ministry of Labour

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

As mentioned above, there is draft bill that will regulate home office working.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

All employers and contracting companies must establish a Health and Safety at Work Management System (SG-SST per its acronym in Spanish). This System must:

- Contain specific conditions which relate to the core activities of the company or employer's business, and which evaluate and are specific in relation to the business's own risks
- Be published with clear and easy access to employees or any other interested party
- Be reviewed at least once in a year and be updated if needed
- Assign financial, technical and personnel resources to implement and control the possible risks arising from employee activities
- Provide for training for employees on health and safety conditions at work

- Establish measures to evaluate the processes and execution of the Health and Safety System at Work, as well as measures to evaluate prevention and control of the risks
- Comply with requirements on prevention and emergency response

In accordance with the above, employers must have a Health and Safety Committee (for employers with 10 or more employees) or an officer in charge (for those companies with less than 10 employees) in order to discuss, plan and provide a safe place and system of work that will apply to any contract type.

Thus, employers must ensure that employees who are home working or teleworking are also included in the Health and Safety Management System in order to provide them with proper labour conditions. To this end, employers together with health and safety committee and the Labour Risks Manager, must comply with the following obligations, among others:

- Including teleworking conditions in the Internal Work Regulations of the company
- The Labour Risks Manager must provide guidance for the prevention of risks during labour activities
- Monitoring the wellbeing of people who are working from home. Computer, phone, chair, desk, psychosocial risks, and in general, the place of work must provide ergonomic working conditions
- Provide the working tools needed
- Register and pay contributions to the social security system

What is the position with the provision and cost of equipment and services for home working?

The employer must ensure it complies with its health and safety obligations so the employee may work at home safely. Also, the employer must provide all working tools needed to undertake the labour activities.

There is no legal range for the provisions or costs of the equipment and services for home working/teleworking. However, work equipment must comply with the quality standards required to be able to properly undertake work duties, as well as the biosafety conditions.

Are there any tax allowances which are relevant where individuals are home working?

No.

What are the key points employers should include in contracts/policies for home workers?

If home office working is to be permanent, it may be construed that employee is working as a teleworker. If this were the case, Internal Work Rules and employment agreements must include:

- Rules about technology and all other resources required for the labour activities. All the work equipment must be provided by the employer while the employee must take care of the equipment and return them in good condition at any time
- Software security and health and safety measures that the teleworker must be aware of and comply with
- Assessment by the Labour Risks Manager of the employee's place of work
- Although teleworking employees do not have set working hours, they do have the right to rest and disconnect from their work technology. Therefore, policies and employment contract must describe the schedule under which the teleworker will render their services

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Digital tools are essential for communication and monitoring the performance of homeworking and teleworking employees.

In addition, employers should incorporate policies that guide the monitoring of employees. These policies should include: performance guidelines, usage of working tools, IT proceedings, data protection, among others.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working and teleworking employees are:

- Compliance with health and safety duties owed to employees
- Disclosure of confidential business information
- Risk of data protection breaches
- Security IT systems risks

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Teleworking requires specific conditions and approval in relation to the place of work and so it is not permitted for an employee to work in a different place from the one agreed.

However, it is also important to consider the purpose of the labour agreement and also the needs of the employer. Therefore, changes may be agreed between parties and taken into account for the supervision and health and safety controls.

Note that under Colombian health and safety and social security regulations, there are certain obligations that can only be undertaken in Colombia. To this extent, if for example employee has a working accident, the Labour Risk Manager may only provide medical assistance within Colombia. Therefore, it is not advisable to allow employee to work overseas on a permanent basis. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Guidance for employers on teleworking are available from the Colombian Ministry of Labour.

<https://www.mintrabajo.gov.co/documents/20147/0/Circular+0021.pdf/8049a852-e8b0-b5e7-05d3-8da3943c0879?t=1584464523596>

<https://id.presidencia.gov.co/Documents/200424-Resolucion-666-MinSalud.pdf>

https://www.mintic.gov.co/boletines/20120504/abce_teletrabajo.pdf

<https://www.mintrabajo.gov.co/relaciones-laborales/derechos-fundamentales-del-trabajo/teletrabajo>

https://www.minsalud.gov.co/Normatividad_Nuevo/Circular%20No.%2030%20de%202020.pdf

The Czech Republic

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The Czech Government decided in Government Resolution No. 1102 of 26 October on the obligation to order home office in cases where the nature of the work allows it. Although working from home was ordered by the Government of the Czech Republic, the legal opinion prevails that the employer cannot unilaterally order a home office for all employees. It is appropriate for both parties to agree on working from home.

Based on the Government Regulation mentioned above, an employee could ask for home office and the employer could refuse such proposal only in case there is operational need preventing the application of home office.

After the state of emergency/COVID-19 restrictions have ended?

The current wording of the Labor Code does not impose an obligation on employers to comply with an employee's request for a home office.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No. However some changes may occur in relation to the implementation of EU Work-life Balance Directive in the near future.

Employee's right to insist on working from home

Who does the right apply to?

Not applicable.

Not applicable How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

Not applicable.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis? (Comment on while the state of emergency/COVID-19 restrictions continue and after they have ended)

As stated above, although the home office regulation is set by the government, employee consent is also required for compliance with the law.

However, the general consent for the possibility of performing home office work can be laid in an employment contract, in an amendment to the employment contract or in a separate home office agreement. In such a case, the employer can unilaterally require home office at its discretion, unless some limitations has been agreed in this regard.

If yes, what process (individual and/or collective) must be followed to implement home working?

Not applicable.

How long can the arrangements be in place for?

According to the agreement of the employee and the employer. The general consent of an employee for indefinite period of time is often used in practice.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

No.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

Same as in a case of temporary requirement to work at home, the mutual agreement is necessary.

If yes, what process (individual and/or collective) must be followed to implement home working?

Individual agreement with the employee is always necessary.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

The same extent of health and safety obligations apply for the employees working at home as for the employees working at the workplace. The home office employee must be properly trained in all risks associated with the performance of his work, including fire safety and other mandatory requirements. As a good practice, it is recommended to include a specific part regarding the home office health and safety into the usual training for employees.

Furthermore, there are some specific home office issues related to health and safety. For example the home office workplace must be equipped with a first-aid kit, there are limitations for the employer to properly inspect the safety of the home office workplace and there could be issues related to the work accidents. The employee is always obliged to report an accident at work, even at home office, however in case of home office injuries, it might be more problematic to (dis)prove the causality to performed work.

What is the position with the provision and cost of equipment and services for home working?

The employee performs the work at the employer's expense. According to the Labor Code, the employer should provide employees with compensation for goods consumed in due to the work duties, such as electricity, the Internet and similar. The exact calculation of those costs could be problematic in real practice.

Are there any tax allowances which are relevant where individuals are home working?

The compensation of home office related costs has different taxation regime than usual remuneration of an employee.

What are the key points employers should include in contracts/policies for home workers

The agreed place of work should be specifically considered when the home office is agreed. The employer should also set up transparent performance control systems. Furthermore, the costs associated with working from home (electricity, internet, furniture) and how the employer will contribute to them should be adjusted. Also, the equipment that the employee needs to work (such as a laptop) and its handover is another topic to cover.

In addition to the agreement or amendment to the employment contract, we recommend that the employer create an internal regulation, which will regulate more detailed rules regarding efficient and safe organization of working from home, assignment of work tasks, employee reaction time, time when employees will be available on the phone, etc. Any specific arrangement should always reflect the specific rules of operation of the company.

To sum up, please see the following (non-exhaustive) list of points to cover in relation to the home office:

- the scope of the home office regime (number of days per week or month, who will be deciding about home office application, etc.);
- possibility to recall employee from home office;
- home office reporting and controlling rules;
- determining the place of work;
- availability and reaction time;
- participation in regular meetings and conferences;
- conditions and reporting of working hours (e.g. breaks, restrictions on weekend and night work, overtime, etc.);
- compensation of costs (e.g. for internet connection, electricity, for the use – depreciation – of own equipment, etc.), while a flat-rate compensation can also be arranged;
- information and data protection;
- treatment of the employer's property, if such is entrusted to the employee.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

In order to avoid any mistreatment of home office employees, the employer should ensure that they will have to a similar extent the communication possibilities as office-based employees. The usual communication channels such as email, phone, instant messaging should be established.

Employers have the right to control employees when working at home offices in a same extent as office-based employees. However, please note that there are some privacy limitations in relation to monitoring of employees. It is allowed to monitor an employee only in case of urgent operational need and it is necessary to set up a transparent system and notify employees in advance.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working are as follows:

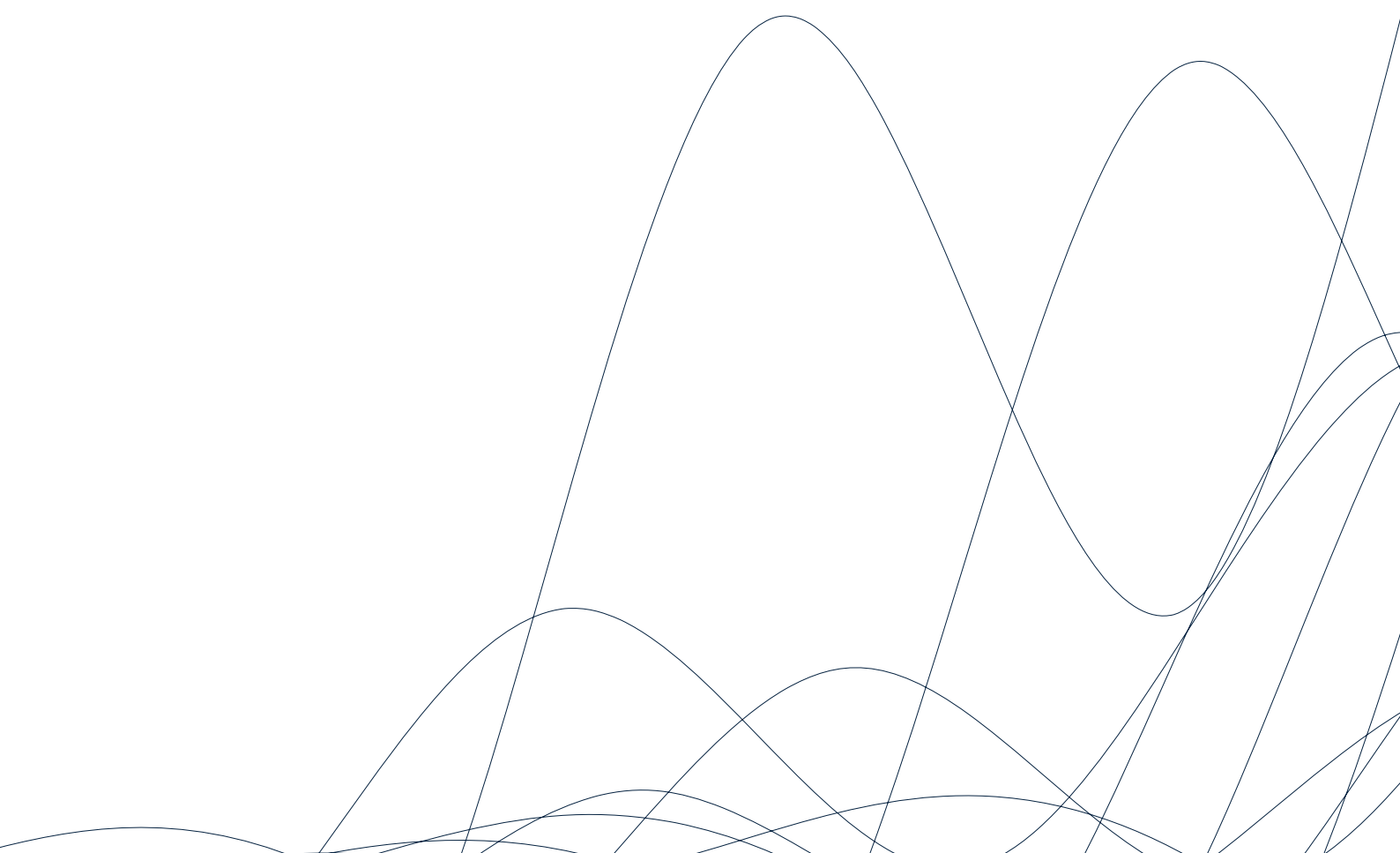
- Employers are obliged to equip employees for home office (failure could lead to occurrence of an impediment to work on the part of the employer and the employee's entitlement for wage compensation).
- The performance of work should take place at the expense of the employer, even in the case of work from home. The employer should contribute to employees, for example, energy, furniture wear and more.
- Even if the employee performs work from home, the employer is responsible for work safety. Employees should therefore be trained in the rules they should follow when working from home and first-aid kit should be accessible at home office workplace. Problems related to the home office work injuries may occur.
- Data protection in connection with the performance of work from home should be considered. Data security can be compromised by using employee's own equipment, which is less protected (computers, telephones) and by taking documents out of the office.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

It is appropriate to arrange or limit possible workplaces in an agreement or amendment between the employer and the employee as stated above. Prohibition of foreign home office is well recommended in order to avoid several legal and tax implications. The basic concept that there must be always mutual agreement on the work performance outside of the workplace which must be preserved and the employer should be always aware about the specific place, where the employee is actually working.

Please provide any other relevant information about home working in your jurisdiction.

It is possible to agree with home office employees that they will be scheduling their working time by themselves. In such a case they are not entitled to the same extent of wage compensations for potential employee's impediments to work. In case that the home office employee is obliged to follow usual schedule of working hours, the same extent of provided wage compensation is preserved.



Denmark

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

While COVID-19 restrictions continue, employees can continue to work from home if they are able to do so.

For employees who are not able to work from home, they will as a starting point have to follow instructions from the employer – and the employer needs to comply with the guidelines from the Government/Health Authorities.

For certain risk-categories of employees, there may be specific considerations that the employer needs to comply with.

After the state of emergency/COVID-19 restrictions have ended?

An employee has no right to insist on working from home. However, the employer and employee can freely agree that the employee continues to work from home. For certain risk-categories of employees, there may be specific considerations that the employer needs to comply with.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

The employee and employer can enter into an individual agreement that gives the employee the right to work from home on certain days or a certain amount of hours.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on working from home.

How does the individual exercise their right?

There is no right to insist on working from home.

What are the employer's obligations on receiving a request?

There is no right to insist on working from home.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

According to the employer's managerial right an employer can require that employees work from home on a temporary basis if this is reasonable and required to secure a healthy and safety working environment.

This is both applicable while the state of emergency/COVID-19 restrictions continue and after they have ended. The employer's right to require that employees must work from home will depend on the particular circumstances and the duration of the arrangement.

What process (individual and/or collective) must be followed to implement home working?

There is no specific process required to implement temporary home working although it would be good practice to agree on arrangements and to have health and safety measures implemented in this context.

How long can the arrangements be in place for?

There is no set limit on the length of time for which an employer can require an employee to work at home. However, the duration should be proportionate with the guidelines from the Health Authorities and the employment contract.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

Working from home on a permanent basis will probably be considered as a significant change of the employment contract. All material changes to terms and conditions of employment must be notified to the employee with an employee's contractual notice before the changes can be implemented. Notice of

material changes to terms and conditions basically constitutes a notice of termination accompanied by an offer of re-employment on new terms.

If the employee refuses to accept a material change in the employment relationship, the employee may consider the employment relationship as terminated by the company. If the background to the implementation of a material change of terms is considered non-objective/unjustified, the employee may be entitled to severance pay for unfair dismissal.

What process (individual and/or collective) must be followed to implement home working?

See above.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

The Working Environment Act also applies when the employee works from home. The employer is responsible for ensuring that the work is performed in full compliance with health and safety requirements.

The employer must ensure that the home work space has all the necessary furniture, equipment and materials so the work can be carried out safely.

What is the position with the provision and cost of equipment and services for home working?

The provision and cost of equipment and services (such as phone and internet) for home working is a matter of agreement between the employer and employee. The employer must, however, ensure it complies with its health and safety obligations (see above) and the employment contract.

Are there any tax allowances which are relevant where individuals are home working?

As a starting point no.

What are the key points employers should include in contracts/policies for home workers?

In addition to the mandatory terms the employer should, depending on the amount of time to be spent home working, address these terms:

- The duration and terms of the home work
- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about working environment recommendations and access to work equipment at home
- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend meetings elsewhere when requested
- Agreement in respect of insurance obligations
- Provisions for termination of the home working arrangement

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, skype/team meetings, performance appraisals and staff training.

The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary.

The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers.

Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective.

Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance.

The employer should ensure that it is emphasized that the employee is obliged to come in to the workplace as and when required and the employer may wish to reserve the right to visit the employee at home at agreed times for work-related purposes (however, we recommend that it is carefully used and only if necessary).

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

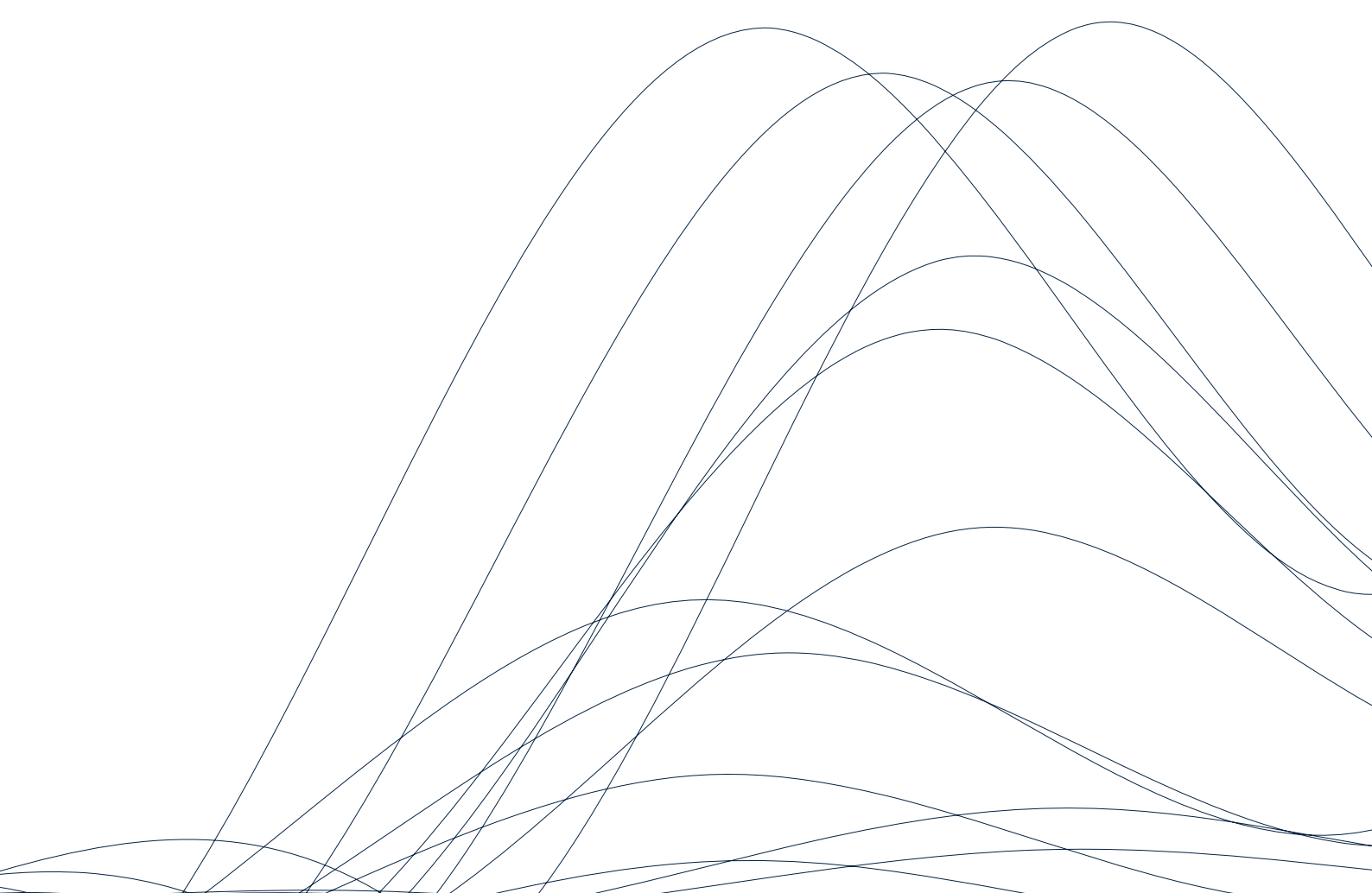
- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for contractual agreement between the employer and employee. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Not applicable.



Finland

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

No. However, the Finnish Government's COVID-19 guidance has been that individuals should work from home where they are able to do so, but that all workers who cannot work from home should travel to work if their workplace is open. The Government announced on 13 August that the recommendation on remote work, which expired on 1 August 2020 due to the improved situation with COVID-19, would be brought back per region. Currently, the recommendation applies to workplaces at the hospital districts of Helsinki and Uusimaa, Varsinais-Suomi and Länsi-Pohja. The regional health authorities will redefine these areas, if necessary.

For certain categories of employee, there may be specific considerations – for example:

- For employees who have an underlying health condition which qualifies as a disability, there is duty to make reasonable adjustments and, during the COVID-19 pandemic, this is likely to require facilitating home working where possible
- For pregnant woman, the health and safety reasons may require remote working

After the state of emergency/COVID-19 restrictions have ended?

There is no right to insist on home working.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

There are no such proposals.

Employee's right to insist on working from home

Who does the right apply to?

Not applicable.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

Not applicable.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

An employer can require an employee to work from home on a temporary basis provided that the instruction to do so remains a "reasonable" instruction at all times and that there are justified reasons, such as health and safety related reasons, for requiring employees to work from home.

During the COVID-19 pandemic, the Government has directed people to work at home wherever possible and an official recommendation on remote work is currently applicable in affected areas. Thus, requiring home working is a reasonable management instruction.

Outside the COVID-19 pandemic, whether or not an instruction to work from home is reasonable will depend on the particular circumstances including the nature of the role, the duration of the arrangement and the reasons why home working is being used. If there are no health and safety reasons to support remote working, it is advisable to refrain from requiring employees to work from home.

What process (individual and/or collective) must be followed to implement home working?

There is no specific process required to implement temporary home working although it would be good practice to agree arrangements with the employee including the duration, the position as regards work equipment, keeping in touch arrangements, and any health and safety and business protection measures to be implemented.

How long can the arrangements be in place for?

There is no set limit on the length of time for which an employer can require an employee to work at home but it is important to take account of the health and safety risks relating to home working. However, the longer the arrangement continues against the employee's wishes, the greater the risk of the requirement not being a reasonable instruction.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

If the contract of employment allows the employer to require permanent home working, it may be possible to implement this arrangement easily. However, few employment contracts will include this option and even where there are contractual provisions allowing flexibility as to place of work, any change must still be implemented reasonably.

As such, an employer wanting to move to permanent home working arrangements is unlikely to be able to require this and should expect to go through a contractual change process to alter the place of work from the employer's premises to the employee's home.

What process (individual and/or collective) must be followed to implement home working?

Where the change in workplace will involve a variation to the employment contract and there is no contractual right allowing this, the employer should:

- Seek to obtain employee agreement to permanent home working. Obtaining consent may not be possible in all cases as some employees may not want to work at home or may not be able to accommodate doing so in their home as a long-term measure
- If agreement is not possible but the employer wants to proceed, it may terminate the existing employment contract and offer re-employment under a contract which specifies home working as the place/method of work. This termination requires normal financial, production related or reorganizational reasons as stipulated in the Employment Contracts Act. Where the employer uses this approach of dismissal, collective consultation with the personnel/employee representatives is required depending on the headcount in Finland

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

Employers have a duty to protect employee health and safety and to provide a safe place and system of work – these obligations continue to apply in respect of individuals working from home. As such, an employer should ensure that the

working environment of an employee working at home is assessed for health and safety risks. Employers should also provide equipment for people to work from home safely.

Employers should also:

- Monitor the wellbeing of people who are working from home
- Help them stay connected to the rest of the workforce
- Keep in touch regarding their working arrangements including their welfare, mental and physical health and personal security

What is the position with the provision and cost of equipment and services for home working?

The provision and cost of equipment and services (such as phone and internet) for home working is a matter for agreement between the employer and employee. The employer must, however, ensure it complies with its health and safety obligations which may, in some instances, mean that it has to provide or pay for equipment to enable the employee to work at home safely. Furthermore, if the employer reimburses the employee for costs relating to remote working, it will be regarded as taxable salary. Services provided and arranged by the employer, such as phone, may be regarded as a fringe benefit that has a fixed and defined taxable value.

Are there any tax allowances which are relevant where individuals are home working?

An employee may be able to claim tax relief for remote working, including working space at home, equipment and internet connection. These provisions apply both where an employee works at home voluntarily and also if required to do so.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home
- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend work premises when requested
- Agreement in respect of insurance obligations
- Provisions for termination of the home working arrangement

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training.

The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary.

The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers.

Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective.

Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance.

The employer should ensure it can insist an employee comes into the workplace as and when required.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems
- Accident insurance covers only work related accidents at home and not any accidents even if it occurs during working hours. Employers may want to consider extending the accident insurance coverage

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for contractual agreement between the employer and employee. However, the employer may require the employee to work in an environment where business secrets and data security are protected. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Finnish Institution for Occupational Health:

<https://www.ttl.fi/en/guidelines-for-remote-work/>



France

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

Since the publication of the “national deconfinement protocol” on June 24, 2020, teleworking is no longer required as standard, but it remains a good solution in the current circumstances, particularly when alternated with work in the workplace. Where an employer believes that the workplace health and safety standards required for staff to be able to return to the workplace have been met, it can refuse to allow employees to continue working from home (unless the employment contract and/or in-house collective agreement or a telework charter provides otherwise).

Employers should pay particular attention to workers at severe risk from COVID-19. Telework may provide a solution in cases of this type and should be used where requested by a particular individual after any required discussions between the employee's doctor and occupational doctor. As far as possible, preference should also be given to workers who, though not themselves at risk of serious illness, live with someone who is at risk. Where teleworking is not possible so that someone at high risk attends the workplace, additional protective measures should be taken.

After the state of emergency/COVID-19 restrictions have ended?

There is no right to insist on home working unless this is advised by an occupational doctor or if the employment contract and/or in-house collective agreement or telework charter provide this right.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No.

Employee's right to insist on working from home

Who does the right apply to?

As explained above, there is no right to home working unless provided for in the employment contract, by collective agreement or by the employer's telework charter. Where such a right does exist, it will be subject to the terms of the contract/collective agreement/ telework charter which provides the right.

How does the individual exercise their right?

As above – according to the terms of the contract/collective agreement/telework charter which provides the right.

What are the employer's obligations on receiving a request?

As above – their obligations will depend upon the terms of the contract/collective agreement/ telework charter which provides the right.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

There is no right to impose teleworking on a regular basis although it may be implemented with the agreement of both parties, subject to the terms of any in-house collective agreement or telework charter.

Where there are exceptional circumstances, such as an epidemic or in cases of force majeure, requiring telework may amount to a change in workplace which is necessary for the continuation of the employer's business and for the protection of employees. Consequently telework may be imposed in such circumstances.

Since June 2020, teleworking is no longer the required standard and employees should be able to return to their employer's premises if this is their usual place of work. However, the French Government has indicated that telework remains a good solution in the current circumstances, particularly when alternated with work in the workplace. The Government has, however, not laid down specific rules in this regard.

Where an employer believes that the workplace health and safety standards required for staff to be able to return to the workplace have not been met, it may require employees to temporarily work from home, but would have to explain the reasons for this request.

If telework is to continue for an extended time, the legal requirements which apply to telework must be complied with.

What process (individual and/or collective) must be followed to implement home working?

In the exceptional circumstances of the COVID-19 pandemic, no particular process to implement temporary teleworking has been required by law.

Nevertheless, the General Labour Administration has specified that where a relevant collective agreement or a telework charter is in force within the Company, the requirements of the agreement or charter should be applied to all employees required to telework.

The experience of implementing telework as an exceptional measure in response to the coronavirus pandemic may encourage companies to set specific measures in a workplace agreement or a teleworking charter which will apply if there is a further need to use telework either in exceptional circumstances or as a temporary measure. The idea would be for an employer to have two or even three telework schemes, one scheme which applies during “normal” periods, one scheme which applies in exceptional circumstances, and a third scheme which applies where teleworking is required as a temporary measure.

How long can the arrangements be in place for?

Not applicable.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

No.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

There is no right to impose teleworking although it may be implemented with the agreement of both parties.

What process (individual and/or collective) must be followed to implement home working?

The process to be followed will be as set out in any in-house collective agreement or telework charter or such as is mutually agreed with the employee.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

As part of its general safety obligations, the employer must ensure that the employee’s home (or other place where they will work remotely) is suitable for telework. Particular attention should be given to electrical equipment. To this end, the employer may ask the employee:

- To have an expert assess their home – the employee’s agreement to this is required; or

- To provide a technical and electrical compliance certificate which should be obtained at the company’s expense; or
- To certify that any technical and electrical equipment in their home conforms to necessary safety standards. Note that for this “self-certification” option to be valid, the employee must be informed of the risks associated with equipment that does not comply with safety standards and the employee must be told of the need to comply with safety regulations.

What is the position with the provision and cost of equipment and services for home working?

Any equipment required for teleworking (e.g., laptop, cell phone, printer, scanner, internet connection) should be provided by the employer, who should also install and maintain it. If, exceptionally, the employee uses their own equipment, the employer should pay for adaptation and maintenance of this equipment.

Any costs incurred by an employee in relation to telework, such as electricity, mobile phone and internet connection must be borne by the Company.

Where expenses are partly personal and partly work expenses, the employee should be reimbursed for the proportion which corresponds to professional use. The employee should be notified of this percentage when the teleworking arrangements are put in place.

Are there any tax allowances which are relevant where individuals are home working?

As well as reimbursing costs incurred in relation to telework, the employer must pay the teleworker a monthly telework allowance which relates to the use of private space for a business activity.

This amount is set based on the proportion of the home occupied (in terms of time and space) by business equipment. French case law specifies that partial use of an employee’s home for work purposes is an intrusion into the employee’s private life and therefore the employee must be compensated for this. There is no set scale to enable an employer to determine an appropriate amount. In practice, 80 Euros gross per month is generally considered sufficient.

This telework allowance is exempt from social charges if it covers genuine and proven professional expenses. According to the social security administration, a lump sum of up to EUR. 10 per day of home working is appropriate to cover professional expenses and will be free from social charges.

What are the key points employers should include in contracts/policies for home workers?

Where there is a collective agreement or a teleworking charter which has been drawn up by the employer in consultation with the employee representative body (CSE), any telework arrangement should be set up based on the provisions of the agreement or charter. Where there is no collective agreement or charter, the arrangement should be implemented by way of agreement between the employee and the employer.

Any collective agreement or charter which purports to regulate teleworking must address:

- The conditions which apply to a switch to telework
- Which employees are eligible for telework (any criteria set must be objective and avoid unequal treatment between employees)
- The conditions which apply to teleworking arrangements including the place of telework, the number of days teleworked, the work equipment provided, responsibility for costs related to telework, etc
- The terms on which an employee accepts a teleworking arrangement
- Arrangements for monitoring working time or regulating the workload of someone who is teleworking
- The hours during which the employer will usually be able to contact the employee while teleworking
- Arrangements for disabled employees to have access to teleworking
- Arrangements for returning from teleworking to a standard working arrangement

Where no collective agreement or charter is in place, these points must be agreed with each individual employee. Although not specifically mandated, we recommend the use of a written agreement which provides for broadly the same terms as are included as standard in a collective agreement or charter on telework.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

The hours during which the employee will usually be contactable should be set out in the applicable collective agreement, charter or individual agreement. In principle, it may be possible to sanction a teleworker who cannot be reached during these hours.

Any procedures for monitoring workload should be set out in the applicable collective agreement, charter or individual agreement. As there are no legally imposed terms in relation to monitoring, it is up to the employer to decide on appropriate monitoring

methods. The employer is also able to decide the basis on which working time is assessed. For example, an employer may decide to implement –

- a system under which the individual employee self-declares the hours worked per day or days worked per week; or
- time recording software on the employee's work computer; or
- an obligation on the teleworker to report regularly, during working hours, by e-mail or by means of specific software.

Any control system must be proportionate to the objective pursued and the teleworker must be informed that it is being used. Before an employer implements any such system, it must inform and consult employee representatives (CSE), if any.

In all circumstances, and whatever the employee's particular situation, the employer must always ensure that rest periods are taken and maximum working hours are not exceeded. Finally, to ensure that an employee's workload under a *forfait jours* arrangement (where working time is broken down by days worked and not hours worked) is manageable under a teleworking arrangement, there is a legal obligation on an employer to conduct an annual interview with an employee in relation to their working conditions and the telework arrangements.

Any collective bargaining agreement which applies to the employer may impose specific obligations on telework.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The same safety obligations apply to home working as apply to on-site working and are the responsibility of the employer. In addition, when an accident occurs at home during working hours there is a presumption that it is a work-related accident. The relevant regulations apply in the same way as they apply to an accident on site.

Where an individual is working remotely, it can be difficult to comply with these safety obligations, particularly as the express agreement of the employee will be required to enable the employer to visit and check the employee's place of work. Note that the staff representatives responsible for health and safety and the competent administrative authorities may also ask the teleworker for permission to visit their place of work.

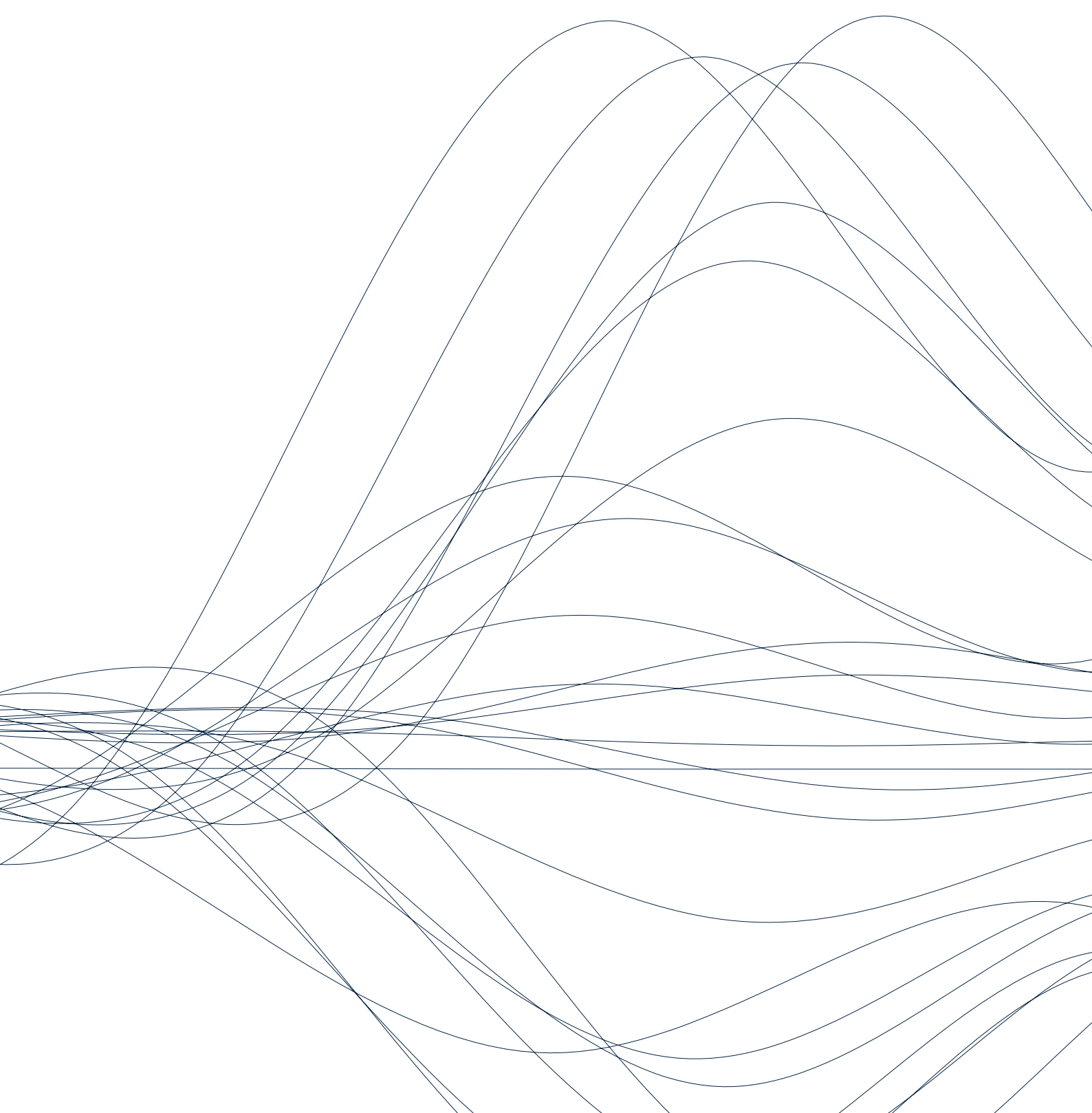
It is possible to provide specific training on health and safety in the context of telework and this is recommended where individuals are working remotely.

**Is a home worker obliged to work from their actual home?
Could the employer prohibit them from working from other
locations e.g. overseas?**

Whether or not an individual is required to work from their actual home depends on what is agreed with the employee. If the employer is able to require the employee to only work from home, this is contrary to one of the main purpose of teleworking, which is intended to offer a degree of flexibility to the employee. In addition, it will often be difficult in practice to ascertain that the employee is not working from home.

Unless there is a particular and legitimate reason to require an employee to work exclusively from home, sanctioning the employee for not doing so will not be reasonable.

Working overseas could create issues related to social security contributions as they relate to the employee's place of work. Wording in the agreement/charter/contract on this aspect is likely to be useful. For business risks related to an employee working in a different country, see the [Introduction](#).



Germany

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

Generally not. There is no legal entitlement to work from home in Germany. However, the SARS CoV-2 Occupational Health and Safety Ordinance, in place between 27 January and 15 March 2021 and a further resolution of 22 March 2021, urge employers to offer home working to employees who do office work, or comparable work, unless there are compelling operational reasons to the contrary. Other than this, the current COVID-19 crisis and a fear of a potential infection does not give employees the right to stay home and employees are therefore not allowed to relocate their work home without the employer's consent.

This might only be different if the employer does not sufficiently comply with his obligations under occupational health and safety law. If, for example, the employer does not comply with the recommended hygiene standards and cannot guarantee a minimum distance between employees, employees may have a right to refuse to work in the office. However, this will only apply in very limited cases and depend on the individual circumstances (e.g. if an employee belongs to a (high) risk group and no protective measures are in place at all and the employee's health is in fact endangered).

After the state of emergency/COVID-19 restrictions have ended?

No, as there is no legal entitlement to a home office workplace in Germany.

A binding claim to work at home can therefore only arise from the employment contract or a company agreement.

A right to continue to work from home also will not derive from company practice (betriebliche Übung) with regard to temporary home working during the COVID-19 lockdown. A company practice presupposes that the employee was able to conclude from the employer's conduct that the employer would continue to grant a repeatedly granted benefit in the future. In case of home working due to the COVID-19 crisis, it is obvious that the home office was only temporary, hence no such right can be claimed.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

The German Federal Labour Minister has talked about plans for a right to home working and said he plans to present a bill to that effect in the fall. Nevertheless, there is no draft yet and it is not certain if such a law will materialise. There has been a lot of criticism from the Employers' Association with regard to this proposal.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on home working. However, employers continue to be urged by the government to offer home working to employees who do office work, or comparable work, unless there are compelling operational reasons to the contrary.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

In general, not applicable. However, if an employee requests to work from home and the employer does not consent to this, the employer must provide compelling operational reasons for denying the request.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

An employer cannot unilaterally require an employee to work from home if this option is not included in the employment contract/collective agreement, as the employer may not make use of the private housing of employees. This also applies during the COVID-19 crisis.

However, there is an argument that during a crisis situation such as the COVID-19 pandemic it may be within the reasonable discretion of the employer to insist that the employees work from home due to the general obligation to care for the health and safety of all the employees (which would be protected more effectively when working from home). However, there has been no affirmative case law on this.

What process (individual and/or collective) must be followed to implement home working?

If a home office option is included in the employment contract/collective agreement, the employer can use his right to issue directions and instruct the employee to work from home. In this case the provisions of the home office agreement have to be adhered to (such as any notification period etc.)

If no home office option is included in the employment contract the employer will have to conclude an individual home office agreement with the employee.

If a works council exists, the employer and the works council can conclude a company agreement regarding the introduction of home office work.

How long can the arrangements be in place for?

If home working is agreed on this can be in place for unlimited time.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

There have been no official proposals to introduce this right.

Permanent requirement to work at home**Can an employer require an employee to work from home on a permanent basis?**

An employer cannot unilaterally require an employee to work from home if this option is not included in the employment contract/collective agreement, as the employer may not make use of the private housing of his employees. This also applies during the COVID-19 crisis.

What process (individual and/or collective) must be followed to implement home working?

Not applicable.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

There have been no official proposals to introduce this right.

Arrangements for home working**What are the key health and safety obligations that apply to the employer and employee?**

Generally, the employer must identify the hazards in the domestic workplace and determine necessary protective measures. If such an assessment shows that the home environment is not safe to work in, the employer must provide safe work equipment (e.g. a suitable chair).

This is particularly important with regard to the set-up of workstations with a computer screen.

The employer must comprehensively instruct any employee working at home on the basis of its risk assessment on all aspects of occupational health and safety. Clear instructions should enable the employee to protect himself/herself from hazards at work.

The employee on the other hand must report any hazards to give the employer the opportunity to take the necessary protective measures. An employee working in a home office is also obliged to follow and observe the instructions of the employer with regard to work place safety.

What is the position with the provision and cost of equipment and services for home working?

There are no set legal requirements (e.g. like a cap). However, technically the employer must provide everything needed to carry out the work at home (desk, appropriate chair, light, Laptop etc.). Usually the employer can decide what (suitable) equipment he will provide (which will also remain the employers property).

If the employer does not provide the employee with the equipment, the employee will be entitled to buy such equipment after having requested it in vain and can demand reimbursement of the expenses incurred. This does not mean the employee can choose any type of equipment without limit and ask for cost reimbursement. Only equipment that the employee may deem as necessary is eligible for cost reimbursement. In practice however, usually the employer and the employee agree on a lump sum to be paid per month that covers all expenses of the home office.

If equipment is provided for by the employer it is strongly recommended to enter into a home office agreement that governs the terms of this.

Are there any tax allowances which are relevant where individuals are home working?

If employees have a room that is used only (at least 90%) for home working and there is no workplace available at the employer's premises this can be set off against tax liability. Rent and ancillary costs, such as for gas, electricity and water, are deductible on a pro rata basis.

Costs for telephone, Internet and office supplies can be reimbursed by the employer to the employee – tax-free as a lump sum: either 20 percent of the respective monthly statement or a maximum of 20 euros per month.

Due to the COVID-19 pandemic employers can pay their employees a sum of up to 1500 EUR tax free (if paid until the end of 2020) for such additional costs.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home
- Obligations on the employee in respect of confidential information
- A right for the employer to visit the employee at home at agreed times for agreed purposes
- Agreement in respect of insurance obligations
- Provisions for termination of the home working arrangement
- Data protection regulations
- Liability regulations

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

- Well-being surveys (on anonymous basis) can be conducted to ensure employees can give feedback on their personal needs due to the specific situation of the home office
- Employees should be able to communicate with their superiors/colleagues on a regular basis
- Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training

- The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers
- The performance of an employee may not be monitored without the employee's consent
- The personal rights of the employee in their home have strong protection by the German constitution and the interest of the employer to monitor will always have to be weighed against these rights
- If certain monitoring devices are put in place the works council (if existent) needs to be involved

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties/working time limits
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems
- Ensuring the private sphere of the employee is not violated

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for contractual agreement between the employer and employee. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

There are very limited guidelines/suggestions from the government regarding this topic.

However, as mentioned before in Germany the privacy of the employee at home is strongly protected and employers need to take this into account.

Hong Kong

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The Hong Kong Government has appealed to employers in the private sector to allow their staff to work at home as far as possible. There is no absolute right to work at home. However, the Labour Department has encouraged employers generally to be flexible and compassionate when considering employee requests and it would be prudent to consider on a case by case basis.

After the state of emergency/COVID-19 restrictions have ended?

Please see above.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

There are no such proposals at this stage.

Employee's right to insist on working from home

Who does the right apply to?

Not applicable.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

As set out above, there is no statutory right to work from home, but it would be prudent to consider requests on a case by case basis for example for any high risk employees.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Strictly speaking, it would arguably require employee consent unless their contract provides for periods of home working. However, in practice, the vast majority of employers in Hong Kong implemented temporary home working and employees generally readily agreed to do so.

What process (individual and/or collective) must be followed to implement home working?

It is prudent to notify employees of the period of home working and explain the rationale for this. If any special arrangements will apply, this should also be confirmed in writing.

How long can the arrangements be in place for?

No strict timeframe applies.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

No such proposals at this stage.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

This would require employee consent unless the contract provides for this possibility. However, few employment contracts will include this option and even where there are contractual provisions allowing flexibility as to place of work, any change must still be implemented reasonably.

What process (individual and/or collective) must be followed to implement home working?

No specific process is required, but it would be prudent to ask the employee to sign a contract amendment letter confirming their consent to the arrangement and setting out any other details that might apply.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No such proposals at this stage.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

An employer has a general duty to ensure a healthy and safe work environment, and this arguably extends to home working. This could potentially also include liability for any injuries sustained by an employee in the course of their employment.

It is therefore prudent for employers to ensure that they work with employees to conduct an initial and regular risk assessment of their workplace (this can be done, for example, through completion of a self-assessment form by the employee). Employers should also check with staff from time to time to see how working from home is progressing. Employers can also consider providing training to employees about health and safety issues, and encourage employees to discuss with them if they have any concerns about their ability to work from home.

The employer should also check whether insurances extend to cover employees working from home.

What is the position with the provision and cost of equipment and services for home working?

There are no statutory requirements to reimburse any such costs. The provision and cost of equipment and services (such as phone and internet) for home working is a matter for agreement between the employer and employee.

Are there any tax allowances which are relevant where individuals are home working?

Not applicable.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home
- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend work premises when requested
- A right for the employer to visit the employee at home at agreed times for agreed purposes
- Agreement in respect of insurance obligations
- Requirement to notify the employer immediately in writing of any safety issues, including any accidents sustained at home
- Provisions for termination of the home working arrangement

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training.

The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary.

The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers.

Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective.

Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance.

The employer should ensure it can insist an employee comes into the workplace as and when required and may wish to reserve the right to visit the employee at home at agreed times for work-related purposes.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for contractual agreement between the employer and employee. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Not applicable.

Hungary

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

There was no such right introduced during the state of emergency in Hungary.

After the state of emergency/COVID-19 restrictions have ended?

An employee cannot insist on working from home. Employees are not entitled to this right, it remains up to the employer whether or not to authorize remote/home working.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No.

Employee's right to insist on working from home

Who does the right apply to?

Not applicable.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

Not applicable.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

During the COVID-19 state of emergency, employers were provided with the right to unilaterally order home office and teleworking. As the state of emergency ended on 18 June, this unilateral right only applied until 1 July in accordance with the relevant transitional legislation.

After 1 July, regular labour law regulations apply. The employer may oblige the employee to work from a different location as their regular workplace up to 44 working days or 352 hours per year. For a period exceeding this time limit, an agreement between the parties is required.

However, as – pursuant to the Hungarian Labour Code – the employer is responsible for the implementation of occupational safety and occupational health requirements, we see no practical risk in ordering home working with reference to the provision of a safe and healthy work environment.

What process (individual and/or collective) must be followed to implement home working?

The above provisions – with the stated limitations – provide scope for a unilateral decision for the employer. The employee may not object to such an order, but the employer's conduct cannot be abusive.

How long can the arrangements be in place for?

Without the requirement of an agreement, the arrangement may be in place for up to 44 working days or 352 hours per year.

However, where there is consent, such arrangement may be unlimited.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

There are no proposals to introduce a wider right. However, where there is consent, such arrangement may be reached for an unlimited period of time.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

For such a permanent arrangement the modification of the employment contract through agreement of the parties is required.

What process (individual and/or collective) must be followed to implement home working?

The mutual consent of the employee and the employer is required.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

As a general provision, the employer is required to provide a safe and healthy work environment.

However, in a remote working setting, the employee should take all necessary measures to ensure that his/her home is appropriate for the job to be performed. This requires a case-by-case analysis, highly dependent on the nature of the job itself. The employer is entitled to check whether the conditions are appropriate.

What is the position with the provision and cost of equipment and services for home working?

As a general labour law obligation, the employer is required to provide the employee with the equipment necessary to perform the employee's duties, and also any related costs shall be reimbursed.

However, it is advised to cover all such aspects in an agreement between the parties.

Are there any tax allowances which are relevant where individuals are home working?

No. However, if the person working from home is staying (and thus working) outside the territory of Hungary, then this place may be considered the permanent establishment of such person, a circumstance that may involve tax-related regulations.

What are the key points employers should include in contracts/policies for home workers?

- Provisions relating to cost reimbursement should be included in these arrangements (i.e. internet, electricity costs should not be covered by the employer)
- Health and safety provisions (tailored to the specific job) should also be included in these arrangements
- Liability issues
- How to control/monitor the employee
- Setting the place of work as explicitly as possible

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Due to the nature of home working, communication and monitoring will take place in an electronic form.

The employer has the right to monitor the performance of the employee. Data protection regulations and provision should be complied with at all times in this regard as well.

What are the key risks with home working in your jurisdiction that employers should be aware of?

Employers should pay particular attention to informing employees that remote working does not mean that their working time automatically becomes flexible. Employees working from home are still under the obligation to be available for work during their respective business hours. Obliging the employee to document the tasks performed on any given day, as a general obligation, is advised.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Yes, this should be covered in the documents regarding home/remote working. For business risks related to an employee working in a different country, see the [Introduction](#).

Ireland

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

On 15 September 2020, the Government, as part of its “Resilience and Recovery 2020-2021: Plan for Living with COVID-19”, published the Framework for Restrictive Measures (“the Framework”).

The Framework is described as a risk management strategy for the next 6 to 9 months, designed to allow people, businesses and services better understand, anticipate and prepare for the measures Government might introduce to stop escalation of the transmission of the disease.

The Framework consists of 5 levels, with level 1 being the least restrictive. We have set out in the table below the guidance with regard to attending the workplace throughout each of the 5 levels.

- Level 1 – Work from home if possible. You can attend work for specific business requirements and on a staggered attendance basis.
- Level 2 – Work from home if possible. If you can work from home, you are advised to only attend work for essential on-site meetings, inductions and training.
- Level 3 – Work from home unless absolutely necessary to attend in person.
- Level 4 – Only essential or other designated workers should go to work.
- Level 5 – Work from home unless it is for working in health, social care or other essential service and cannot be done from home.

In circumstances where Ireland is in level 2 or upwards, and the employee in question can work from home, it will not be possible to require the employee to work from the office (except for essential on-site meetings, inductions and training where Ireland is in level 2).

After the state of emergency/COVID-19 restrictions have ended?

There is no right for an employee to insist on home working. There is a statutory right to request changes to working hours or patterns of work, which is limited to employees returning from parental leave. Otherwise, flexible working arrangements are at the discretion of the employer.

For certain categories of employee, there may be specific considerations – for example:

- For employees who have an underlying health condition which qualifies as a disability, there is duty to make reasonable adjustments and, during the COVID-19 pandemic, this is likely to require facilitating home working where possible
- For pregnant women, refusing to allow home working may constitute unlawful gender discrimination. Employers also need to ensure that the tasks and working conditions for pregnant women do not adversely affect their health
- For employees whose children are at home and who have no childcare e.g. if schools remain closed or open only on a phased basis, insisting on attendance at work could risk allegations of a breach of trust and confidence or, in certain cases, of indirect family status discrimination

If an employee cannot insist on working from home, are there any proposals to introduce this right?

In December 2019, the Government launched a consultation seeking the public’s views on flexible working as part of Future Jobs Ireland. This consultation has stalled during COVID19 but when it reactivates home-working may be one of the proposals. A four day working week is under consideration.

Separately, in January 2021, the Government published its National Remote Working Strategy, “Making Remote Work”. As part of the Strategy, this year the Government intends to:

- Legislate to provide employees with the right to request remote working.
- Mandate public sector employers, colleges and other public bodies to move to 20% home and remote working in 2021.
- Invest in a network of remote working hubs across Ireland.
- Develop a code of practice for the right to disconnect.
- Provide employers and employees with ongoing up-to-date guidance on remote working.
- Review the tax treatment of remote working for the purposes of tax and expenditure in the next Budget.
- Accelerate the provision of high-speed broadband to all parts of Ireland.

Each action set out in the Strategy has an agreed delivery date of Quarter 1, 2, 3 or 4 of 2021.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on home working. There is a statutory right to request changes to working hours or patterns of work, which is limited to employees returning from parental leave. Otherwise, flexible working arrangements are at the discretion of the employer.

How does the individual exercise their right?

When an employee returns to work after taking parental leave, they are entitled to ask for more flexible working arrangements – specifically, a change in their work pattern or working hours for a set period. The relevant legislation requires that the employee's request must be in writing, signed by the employee and be given to the employer not later than 6 weeks before the proposed commencement of the set period concerned. The request must specify the nature of the changes requested and the date of commencement and duration of the set period requested.

What are the employer's obligations on receiving a request?

An employer in receipt of a such a request, from an employee returning to work after taking parental leave, must inform the employee in writing of the outcome of their request no later than 4 weeks after receipt of the request. The employer can refuse the request on business grounds or prepare an agreement to be signed by the employer and the employee setting out:

- The changes to the employee's working hours or patterns, or both, as the case may be
- The date of the commencement and duration of the set period, as may be agreed between them

The employer should retain the agreement and give a copy of it to the employee concerned.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

An employer can require an employee to work from home on a temporary basis provided that the instruction to do so remains a "reasonable" instruction at all times to avoid breaching the duty of trust and confidence.

At the outset of the COVID-19 pandemic the Government directed people to work at home wherever possible. In the current circumstances requiring home working will be a reasonable management instruction.

Outside the COVID-19 pandemic, whether or not an instruction to work from home is reasonable will depend on the particular circumstances including the nature of the role, the duration of the arrangement and the reasons why home working is being used.

What process (individual and/or collective) must be followed to implement home working?

There is no specific process required to implement temporary home working although it would be good practice to agree arrangements with the employee including the duration, the position as regards work equipment, keeping in touch arrangements, and any health and safety and business protection measures to be implemented.

How long can the arrangements be in place for?

There is no set limit on the length of time for which an employer can require an employee to work at home. However, the longer the arrangement continues against the employee's wishes, the greater the risk of the requirement not being a reasonable instruction and of the duty of trust and confidence being breached by the employer.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

If the contract of employment allows the employer to require permanent home working, it may be possible to implement this arrangement easily. However, few employment contracts will include this option and even where there are contractual provisions allowing flexibility as to place of work, any change must still be implemented reasonably.

As such, an employer wanting to move to permanent home working arrangements is unlikely to be able to require this and should expect to go through a contractual change process to alter the place of work from the employer's premises to the employee's home. Any change to the employee's place of work would constitute a variation of the contract and require the employee's consent.

What process (individual and/or collective) must be followed to implement home working?

Where the change in workplace will involve a variation to the employment contract and there is no contractual right allowing this, the employer should:

- Seek to obtain employee agreement to permanent home working. Obtaining consent may not be possible in all cases as some employees may not want to work at home or may not be able to accommodate doing so in their home as a long-term measure
- If agreement is not possible but the employer wants to proceed, its options are –
 - To unilaterally impose the change and rely on an employee moving to home working to establish their implied agreement to the change
 - To terminate the existing employment contract and offer re-employment under a contract which specifies home working as the place/method of work. Where the employer uses this approach of dismissal/re-engagement, collective consultation with trade union or employee representatives may be required depending on the numbers of employees affected

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working**What are the key health and safety obligations that apply to the employer and employee?**

Employers have a duty to protect employee health and safety and to provide a safe place and system of work – these obligations continue to apply in respect of individuals working from home. As such, an employer should ensure that the working environment of an employee working at home is assessed for health and safety risks. Note that it is possible for an employee to undertake their own risk assessment on behalf of and under the supervision of the employer. Employers should also provide equipment for people to work from home safely.

Health and Safety Authority workplace guidance in relation to home working on a temporary basis during COVID-19 suggests that employers should consult with employees to assure themselves:

- That the employee is aware of any specific risks regarding working from home

- That the work activity and the temporary workspace are suitable
- That they provide suitable equipment to enable the work to be done
- That there is a pre-arranged means of contact

What is the position with the provision and cost of equipment and services for home working?

The provision and cost of equipment and services (such as phone and internet) for home working is a matter for agreement between the employer and employee. The employer must, however, ensure it complies with its health and safety obligations (see above) which may, in some instances, mean that it has to provide or pay for equipment to enable the employee to work at home safely.

Are there any tax allowances which are relevant where individuals are home working?

Where an employee is required to work from home, they may be eligible for tax relief on expenses like electricity, heat and broadband. An employer can pay employees an allowance towards these expenses. Employees can get up to EUR3.20 per day without paying any tax, PRSI or USC on it. If an employer pays more than EUR3.20 per day to cover expenses, employees pay tax, PRSI and USC as normal on the amount above EUR3.20. Employers are not legally obliged to make this payment to employees. If an employer does not pay employees an allowance for their expenses, employees can make a claim for tax relief at the end of the year.

These provisions do not apply where an employee works at home voluntarily – only where they are required to do so.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home
- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend work premises when requested

- A right for the employer to visit the employee at home at agreed times for agreed purposes
- Agreement in respect of insurance obligations
- Provisions for termination of the home working arrangement

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

- Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training
- The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary
- The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers
- Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective
- Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance
- The employer should ensure it can insist an employee comes into the workplace as and when required and may wish to reserve the right to visit the employee at home at agreed times for work-related purposes

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for contractual agreement between the employer and employee. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Guidance for employers on home working is available from the Health & Safety Authority https://www.hsa.ie/eng/Topics/Hazards/Lone_Workers/ and from the Department of Business, Enterprise and Innovation <https://dbe.gov.ie/en/What-We-Do/Workplace-and-Skills/Remote-Working/Guidance-for-working-remotely-during-COVID-19.html>

https://www.hsa.ie/eng/topics/COVID-19/COVID-19_faqs_for_employers_and_employees_in_relation_to_home-working_on_a_temporary_basis/faqs_for_employers_and_employees_in_relation_to_home-working_on_a_temporary_basis_COVID-19_.html#7

Italy

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The current Italian Government COVID-19 guidance is that individuals should continue to work from home where they are able to do so, but that all employees who cannot work from home should travel to work if their workplace is open.

Until the end of the emergency, employees who have at least one child under the age of 14, have the right to perform their work via the “smart-working” method, even in the absence of an individual agreement. This right is subject to the condition that within the family no-one else is benefiting from any other income support measure for suspension or termination of their employment relationship and the other parent must not be unemployed. The nature of the duties of the employee must be consistent with working from home.

After the state of emergency/COVID-19 restrictions have ended?

There is no right to insist on home working or smart-working. However, nothing prevents employers from allowing employees to work from home even after the state of emergency.

In case of smart-working, when the COVID-19 emergency ends, a specific smart-working agreement between the employer and the employee will be required.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

There is not a specific legislative proposal to extend the right to insist on working from home at the moment. However, as mentioned above nothing prevents an employer from allowing its employees to work from home. After the end of the state of emergency, the employer must follow the procedure provided by the law in order to have their employees working in a smart-working arrangement i.e. agreement between the parties.

Employee’s right to insist on working from home

Who does the right apply to?

Employees who have at least one child under the age of 14, until the end of the state of emergency and subject to the condition that no other member of the family is benefitting from any other income support measure or is unemployed and the nature of the employee’s duties are consistent with home working/smart-working.

Employees whose child under the age of 14 is subject to quarantine for having been in contact at school with someone who has tested positive for COVID-19 are entitled to ask for working from home or, if not possible, to a 50% paid leave.

How does the individual exercise their right?

An employee who meets the requirements listed above can ask the employer to permit the exercise of his/her right. The COVID-19 special regulation does not require any formal requirements for this request.

What are the employer’s obligations on receiving a request?

If the employee who meets the requirements listed above, the employer must allow him/her to work from home. During the state of emergency a simple communication to the employee is sufficient. The employer is also required to send the relevant communication to the INAIL (National Institute of Injury at Work) through the digital procedure on the website of the Ministry of Labour <https://servizi.lavoro.gov.it/ModalitaSemplificataComunicazioneSmartWorking/>

The employer is required to communicate:

- Employees personal data
- Data regarding the employment relationship
- End-date of the smart-working arrangements

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

An employer can require an employee to work from home on a temporary basis even after the state of emergency ends.

What process (individual and/or collective) must be followed to implement home working?

Under Italian law there are two different ways to perform work from home:

Smart-working: which is a flexible way to carry out work out of the office and is temporary by its nature. This requires a specific agreement between the parties in which the parties agree certain days of the week/month on which the employee is required to work in the company's office. The normal place of work of the employee remains the company's office, however the employer allows employees to work outside of the company's premises, no matter where. The employee must be available during certain periods of the day and also is entitled to a period during which he/her can be disconnected. Note that smart-working is in general not possible if the company does not have offices in Italy.

Due to the COVID-19 emergency situation the Government temporarily cancelled the obligation to enter into a specific agreement on smart-working, providing for the possibility of a unilateral communication by the employer to the employee and the competent office.

Homeworking: which is a permanent work-from-home arrangement which means that the employee must work from home. However, the Employment Contract remains fully valid and in force. This teleworking/remote-working is a permanent arrangement which cannot be revoked unilaterally by the employee and the consent of the employer is always required. According to the remote working rules, the employer must respect certain requirements and ensure the employee works safely, providing him with all the tools and instruments (hardware and software) and ensuring the employee has a suitable work station (desk, chair). In addition, the employer must ensure the same health and safety standards as apply in its offices, ensuring that the employee's home is safe and meets all the health and safety requirements provided by the law (sufficient lights, electricity, hygiene etc.), and also providing specific measures in order to prevent and minimize risks of injuries.

The employer must also pay the employee an additional indemnity for the use of their home internet, computer and any other device used to carry out their duties.

How long can the arrangements be in place for?

There is no set limit on the length of time for which an employer can require an employee to work at home. Homeworking, as described above, might even be permanent.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

The employer can require the employee to work from home on a temporary basis. As mentioned above, homeworking is in general a permanent work-from-home arrangement.

What process (individual and/or collective) must be followed to implement home working?

A specific amendment to the employment contract must be put in place and the consent of the employee is required.

The employer must:

- Ensure the same health and safety conditions as apply in its offices – this will mean ensuring that the employee's home is safe and meets all the health and safety requirements provided by the law (sufficient lights, electricity, hygiene etc.) and also providing specific measures in order to prevent and minimize risks of injuries
- Pay the employee an additional indemnity for the use of their home internet, computer and any other device used to carry out their duties
- Install on employee's devices all the software and tools needed to perform work activities from home
- In general, put in place any other measures required to enable the employee to carry out his working duties from home efficiently

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

In cases of home working, to ensure proper compliance with workplace health and safety laws, the employer, the workers' representative and the competent authorities should have access to the place where the remote working is performed. Where remote working is performed at home, this access is subject to prior notification and the remote worker's consent. The employer should also give instructions to the remote worker and inform them about the company policies, particularly relating to screen exposure, which should then be correctly applied by the remote worker.

What is the position with the provision and cost of equipment and services for home working?

The costs may vary depending on the equipment which needs to be provided to the employee to enable them to work from home with the maximum protection of their health and safety.

In any case the employer must cover any cost related to health and safety measures, devices, software and hardware, the workstation and must also reimburse the costs of internet and electricity used to perform the employee's duties from home.

Are there any tax allowances which are relevant where individuals are home working?

No specific tax allowances. This may vary on a case by case basis.

What are the key points employers should include in contracts/policies for home workers?

For home working:

- Home working can be established for new hires or can be the result of a change from work in the employer's premises to work from home
- Home working requires the mutual consent of both the employer and the employee (it cannot be imposed unilaterally by the employer)
- There must be the possibility of changing home working into normal work after a certain period of time, subject to the parties' agreement
- Equipment for home working is chosen by the employer and has to be provided to the employee at the employer's cost; costs linked to the installation and use of the equipment have to be borne by the employer
- Homeworkers must be granted the same career path opportunities as any other employee
- Homeworkers must be granted the same quality and quantity work as any other employee
- Homeworkers must be granted with the same flow of information as any other employee
- The practical arrangements for the performance of home working should be agreed in writing between the parties
- Working hours should be agreed in accordance with legal provisions
- Reporting line should be included in the home working agreement
- Health and safety rules have to be observed
- The agreement establishing homeworking or changing normal work into home working must be executed in writing

For smart-working after the end of the state of emergency:

- An agreement between the parties is required

- The parties should agree the days/weeks in which the employee is required to work from the office
- The agreement must provide for a period during which the employee may be disconnected from work, meaning that for certain hours the employee has the right to be disconnected from work devices
- The agreement should specify the end date of the smart-working

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

The employer is responsible for adopting the proper measures to ensure the protection of data processed by the home worker for work purposes, specifically by providing proper software applications.

The employer, furthermore, must inform a home worker of all the legal provisions and the company rules concerning data protection, as well as of any restrictions on the use of their work equipment and the sanctions that will apply in the event of a breach for which the home worker is liable.

As to the discipline applicable to the working area, another key issue that employers should take into consideration is that employers must guarantee the home workers' right to maintain a private life separate from work life, with particular reference to the provisions of Personal Data Protection legislation.

In this respect employers must not interfere with the private life and communications of home workers who, on the other hand, must grant and maintain effective security of the employer's data and information, so as to ensure its protection against access by unauthorised individuals.

To this end, it is specifically required that the installation of any monitoring system should be proportionate to the pursued objective and any monitoring must be in accordance with rules on use of video terminal units (namely, the rules provided for under Legislative Decree n. 81/2008).

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

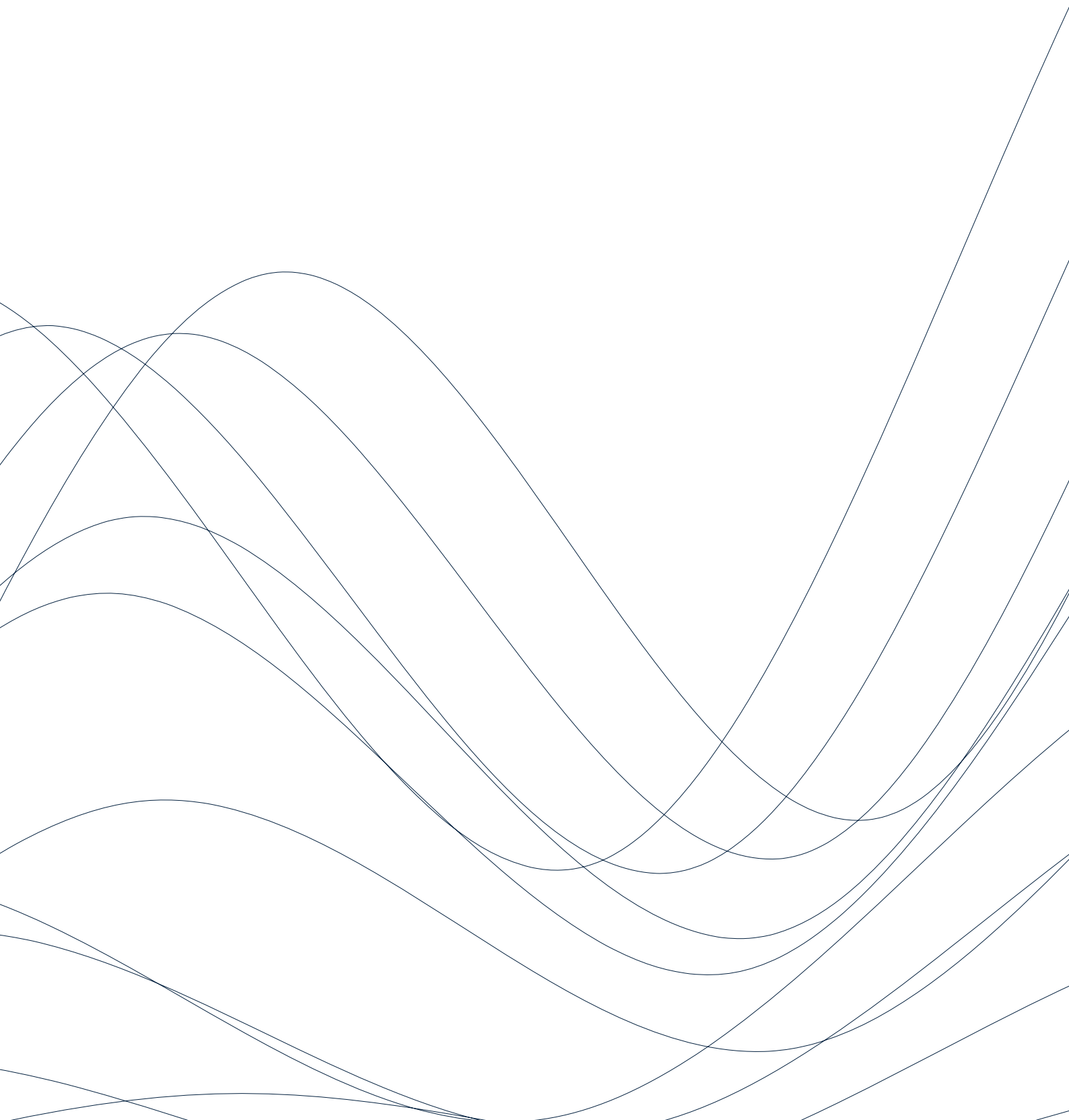
**Is a home worker obliged to work from their actual home?
Could the employer prohibit them from working from other
locations e.g. overseas?**

When smart-working the employee can work wherever he/she wants provided that the conditions of work are safe. For business risks related to an employee working in a different country, see the [Introduction](#).

When homeworking the employee must work from home or from the different place he/she chooses as the normal place of work and cannot work anywhere else.

Other relevant information about home working.

<https://www.cliclavoro.gov.it/Aziende/Pagine/Smart-working.aspx>



Japan

Can an employee insist on working from home?

While the state on emergency/COVID-19 restrictions continue

Basically, no. That being said, if there is a reasonable reason to believe that the workplace is unsafe and the employee can work from home, it is possible that the employee could assert this position.

After the state of emergency/COVID-19 restrictions have ended?

Same as above.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist to work from home.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

Not applicable.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes but the employer should provide working from home policies.

What process (individual and/or collective) must be followed to implement home working?

The employer typically provides working from home policies. However, in practice, we also see employers simply instructing employees to work from home.

How long can the arrangements be in place for?

There is no specified time period.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

No.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

Yes if the workplace in the employment agreement is changed.

What process (individual and/or collective) must be followed to implement home working?

The place of work needs to be included in the terms and conditions provided to the employee or the work rules so these would need to be amended.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

As with the office or other workplace, the employer has a general obligation to have the employee work in a safe work environment.

What is the position with the provision and cost of equipment and services for home working?

Employers will, in practice, pay for costs incurred by the employee and this should be set out in the working from home policy.

Are there any tax allowances which are relevant where individuals are home working?

Deductions may be available for business expenses incurred by the employee.

What are the key points employers should include in contracts/policies for home workers?

How costs will be treated, how confidentiality needs to be maintained, working hours and other typical matters.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

This does not differ significantly to normal workplace requirements.

What are the key risks with home working in your jurisdiction that employers should be aware of?

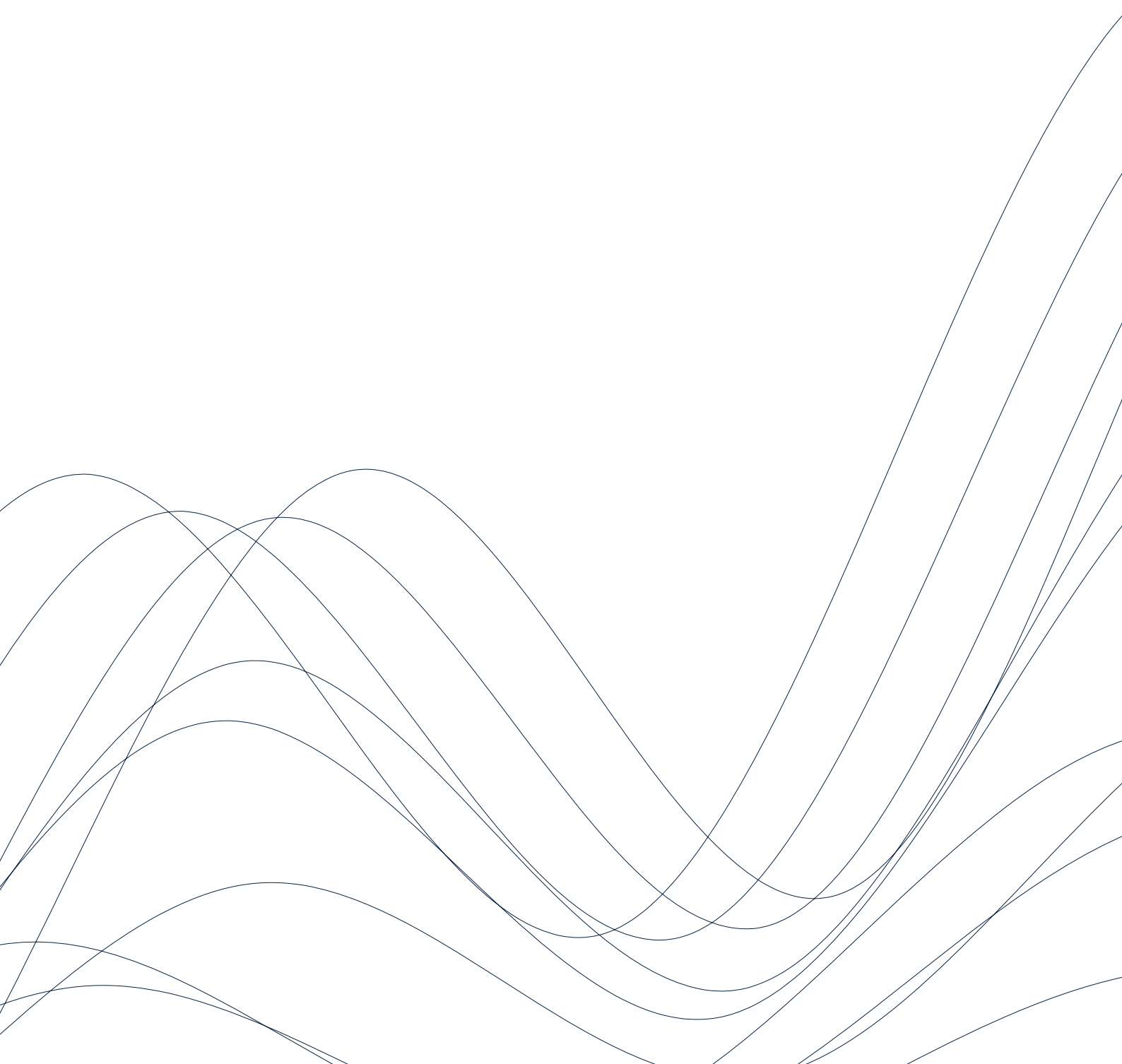
This does not change significantly to normal workplace requirements.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

No, unless in the policy. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Japan's state of emergency has been lifted and many employers are having employees report to the office at least part of the work week.



Netherlands

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

No right to work from home derives from the COVID-19 restrictions.

After the state of emergency/COVID-19 restrictions have ended?

No. If the employee wants to work from home, the employee and the employer will have to agree this.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

The employee can ask the employer if his/her conditions of employment can be changed to provide that the employee will work from home on certain days or a certain amount of days per week. In late 2020, there was an internet consultation on a proposal that individuals should have a right to work from home which can only be rejected where an employer has sound business reasons for doing so. This proposal has now been submitted to the House of Representatives as a legislative proposal – the “Work Where You Want Act”.

Employee's right to insist on working from home

Who does the right apply to?

Formally, such a request will need to be based on the Flexible Working Act. It follows from this act that employees who have been employed by the employer for at least 26 weeks can submit such a request (this does not apply to employers with less than 10 employees). However, employers are free to consider a request from an employee who does not follow the formal rules of the Flexible Working Act (also as set out below), but does submit a request to change his/her place of work.

How does the individual exercise their right?

Under the Flexible Working Act, the employee can ask the employer if his/her conditions of employment can be changed to permit the employee to work from home on certain days or for a certain amount of days per week. This request needs to be submitted 2 months prior to the date on which the employee wants the change in workplace to enter into force. (This does not apply to employers with less than 10 employees).

What are the employer's obligations on receiving a request?

The employer should consider the request of the employee and discuss with the employee if it rejects the request. The employer should inform the employee in writing of its decision and if the employer rejects the request of the employee, it should give reasons for its decision to do so. The employer has 1 month to take a decision. (This does not apply to employers with less than 10 employees).

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

During the state of emergency/COVID-19 restrictions: yes. The employer is required by law to provide a safe and healthy work environment for its employees. If the employer feels that it cannot guarantee a safe and healthy work environment if employees come to the office during the current COVID-19 crisis, it can require its employees to work from home. Even more so now that the Dutch government is still strongly recommending employees to work from home.

After the restrictions end: if the restrictions due to COVID-19 end, employers will likely no longer have a weighty interest in requiring employees to work from home. Most employees will have the office of their employer listed as their workplace in their employment agreement and will be able to argue that they should be allowed to come to the office to work.

What process (individual and/or collective) must be followed to implement home working?

There is no specific process that needs to be followed if the measures are temporary. We advise informing employees that they are not allowed to come to the office (for a certain period) by letter.

How long can the arrangements be in place for?

The temporary arrangements can be in place for as long as the government advises that everybody should work from home.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

As mentioned above, employers can insist that employees work from home while the restrictions due to COVID-19 last. If these restrictions end, employers will likely not have a weighty interest in requiring employees to work from home. In that case, we advise the employer to try and agree an arrangement with its employees.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

No, the employer cannot in principle require this. Employee consent is needed.

What process (individual and/or collective) must be followed to implement home working?

In case of an individual employee, the employer needs the consent of the employee to introduce a permanent requirement to work from home.

Where the employer wants to implement a collective requirement to work from home (or other permanent measures), the consent of the Works Council (or another employee representative body and/or trade unions) may be required.

Also, please keep in mind that if a CBA applies, the trade unions may have to be involved.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

The employer can try and agree upon this with the employee. We advise to have the employee sign an amendment to the employment agreement stating that the workplace will change from the office of the employer to the home of the employee.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

Employers are required by law to provide a healthy and safe work environment for their employees. The employer must ensure that the right work equipment is used by the employee when working from home, such as an ergonomic chair or desk. Inspection can take place by a visit from the employer or a health and safety expert, but in some cases it is also possible to opt for inspection by means of photo or video. The obligation to provide an ergonomically designed workplace does not apply if this cannot reasonably be expected of the employer. This is the case, for example, when employees work from home for only a short period of time (e.g. a few weeks).

What is the position with the provision and cost of equipment and services for home working?

Costs that are incurred in the context of providing a safe and healthy work environment are borne by the employer, such as the costs in relation to the ergonomic design of the workplace.

In addition to this, there is often also a need for certain technical means, such as a laptop or mobile phone with a subscription, an internet connection, a printer and/or a tablet. The employer can in principle make agreements with the employee on the extent to which these technical means will be provided by the employer.

In practice, we see more and more companies offering their employees a so-called working from home allowance, although there is no specific legal obligation to provide such allowance. Offering such allowance, requires taking several tax aspects into account, as there could be a possibility to offer these kind of allowances tax-free. The tax aspect of these questions fall outside of the scope of this Q&A, so we advise to always liaise with a tax advisor in this respect.

Are there any tax allowances which are relevant where individuals are home working?

The provision and reimbursement of health and safety provisions (such as an ergonomic desk) can in principle be provided tax-free.

In principle, technical requirements such as a mobile phone, laptop, internet connection etc. can be made available, provided or reimbursed tax-free if the so called "fiscal necessity criterion" is met. This is the case if (i) the equipment/technology is necessary for the proper fulfilment of the employment; (ii) the employer pays for the resource and does not pass on the costs to the employee; and (iii) the employee must return the provision or pay the residual value if he no longer needs it for the employment.

Please also note that, until 1 April 2021, employers are allowed to continue paying fixed commuting allowances tax free.

The tax aspect of these questions fall outside of the scope of this Q&A, so we advise to always liaise with a tax advisor in this respect.

What are the key points employers should include in contracts/policies for home workers?

As mentioned before, if the measures are temporary, there is no need to implement a policy or to change the employment agreements of the employees. A letter or email to the employees will suffice. We advise including the following topics:

- Equipment to make working from home possible: who will provide this equipment and who will carry the costs for this?
- Mental health and wellbeing: tips to make sure that employees feel well and on how to limit work pressure
- What will happen with the allowances that employees receive? (Such as expense and commuting allowances)

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

- Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training
- The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary
- The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers
- Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective
- Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

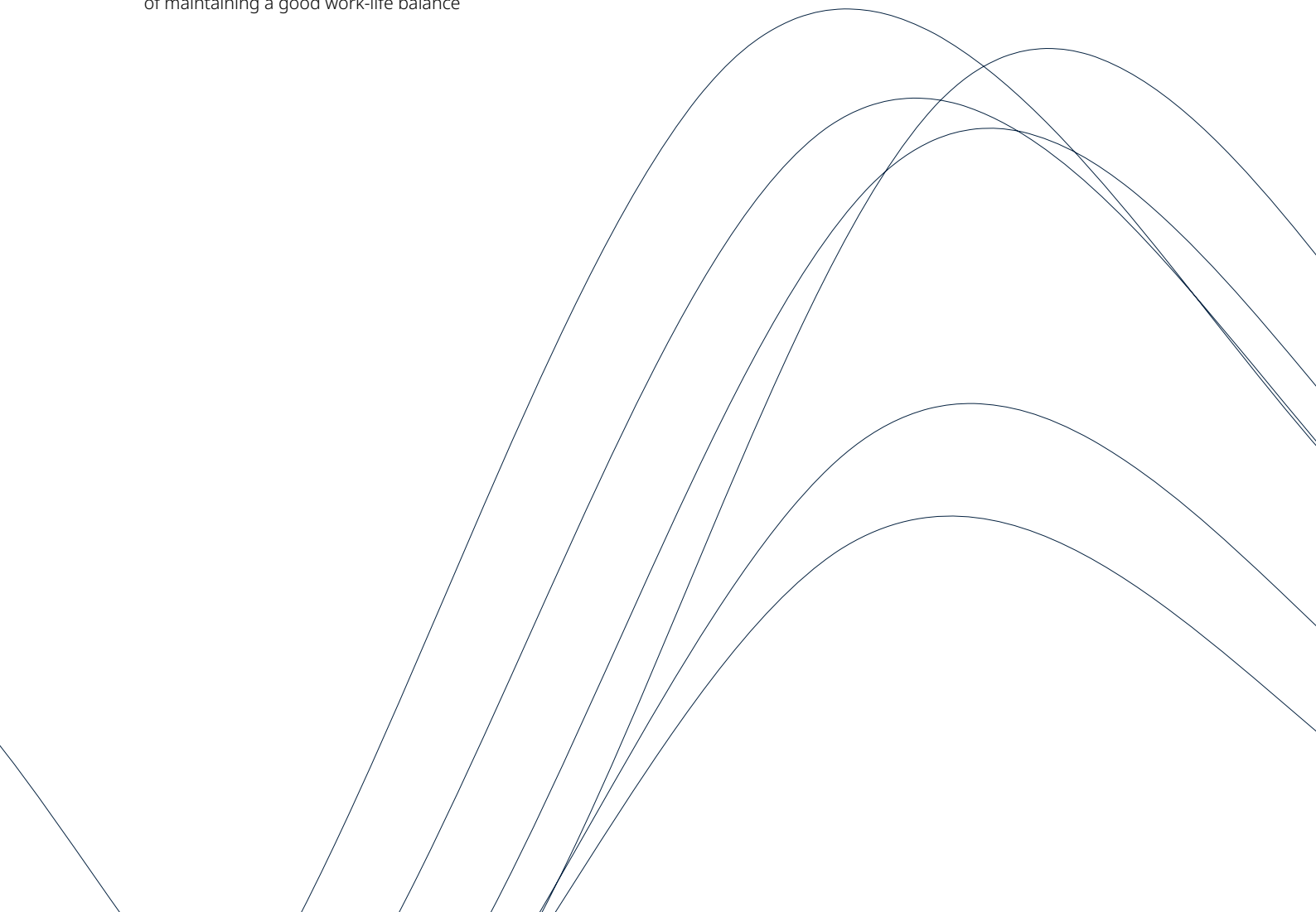
Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Employees are in principle not obliged to work from their actual home, as long as this does not interfere with the nature of their work or with their work in general. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

<https://business.gov.nl/corona/situations/employer-during-the-corona-crisis-what-you-can-and-must-do/>

<https://www.arboportaal.nl/onderwerpen/fit-en-vitaal-thuiswerken>



New Zealand

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

Following a resurgence in COVID community transmission, Auckland is currently at COVID Alert Level 2.5 and the rest of New Zealand is at Alert Level 2.

Under section 83 of the Health and Safety at Work Act 2015 a worker may cease or refuse to carry out work if they believe that carrying out the work would expose the worker (or any other person) to a serious risk to the worker's (or other person's) health or safety arising from an immediate or imminent exposure to a hazard. In this situation, where an employee is refusing to return to the workplace, an employer should explain the measures it has taken to ensure health and safety. In the event that the employee still refuses to work from home, the employer may wish to consider a disciplinary process. The exception would be employees who are deemed vulnerable – for example, over 70 or who have an underlying health condition – or who live with someone who is vulnerable.

However, an employee does have a right to request a flexible work arrangement as set out below. This right pre-dates COVID-19.

After the state of emergency/COVID-19 restrictions have ended?

An employee is entitled to request a flexible working arrangement under Part 6AA of the Employment Relations Act 2000, which can relate to working from home, or changing times or hours of work.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

Not applicable.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on working from home. The right to request flexible working applies to all employees, from the first day of work.

How does the individual exercise their right?

Requests must:

- Be in writing
- Refer to Part 6AA of the Employment Relations Act 2000
- Explain the work arrangement sought
- State whether this is to be permanent or temporary
- Set out the relevant dates
- Explain why the arrangement is requested
- Explain any changes the employer may need to make to their current business arrangements if the request is approved

What are the employer's obligations on receiving a request?

Employers have an obligation to respond to requests as soon as possible and not later than 1 month after receiving the request. An employer does not have to accept the request, but must explain the reason for declining, such as an inability to reorganise work.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes, an employer can require an employee to work from home on a temporary basis provided this is reasonable.

This was the case while New Zealand was in Alert Level 4 as workplaces were not allowed to open unless they were essential. At lower levels, businesses are encouraged to use alternative ways of working where possible, so employers can have their own approach to requiring employees to work remotely.

Outside the COVID-19 pandemic, whether or not an instruction to work from home is reasonable will depend on the particular circumstances including the nature of the role, the duration of the arrangement and the reasons why home working is being used. For example, a number of employers in Auckland CBD required home working in October 2019 while a large construction site in the city was on fire for two days.

What process (individual and/or collective) must be followed to implement home working?

Notification was sufficient under a state of emergency, as there was no room for flexibility on working remotely. Employers should provide ongoing communications for employees updating them on the situation.

How long can the arrangements be in place for?

There is no set limit on the length of time for which an employer can require an employee to work at home. However, the longer the arrangement continues against the employee's wishes, the greater the risk of the requirement not being reasonable.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home**Can an employer require an employee to work from home on a permanent basis?**

An employer wanting to move to permanent home working arrangements is unlikely to be able to require this and should expect to go through a consultation process to alter the place of work from the employer's premises to the employee's home.

What process (individual and/or collective) must be followed to implement home working?

The employer would need to consult with employees on this change. This would involve putting the proposal to an employee, allowing time for the employee to give feedback and then a decision only when that feedback has been considered.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working**What are the key health and safety obligations that apply to the employer and employee?**

Under the Health and Safety at Work Act 2015 ("HSWA"), a person conducting a business or undertaking ("PCBU") has a duty to ensure, so far as is reasonably practicable, the health and safety of its workers.

Further, a PCBU has a duty, under Regulation 21 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, to manage risks to the health and safety of a worker who performs remote or isolated work – including those working from home.

Health refers to both physical and mental health. Employers may carry out risk assessments to ensure their obligations are met. This can either be carried out by external professionals or an internal assessor. Practical guidance indicates that employers should also be:

- Monitoring the wellbeing of people who are working from home
- Helping them stay connected to the rest of the workforce
- Keeping in touch regarding their working arrangements including their welfare, mental and physical health and personal security

What is the position with the provision and cost of equipment and services for home working?

The provision and cost of equipment and services (such as phone and internet) for home working is a matter for agreement between the employer and employee. The employer must, however, ensure it complies with its health and safety obligations (see above) which may, in some instances, mean that it has to provide or pay for equipment to enable the employee to work at home safely.

Are there any tax allowances which are relevant where individuals are home working?

The New Zealand Inland Revenue introduced a temporary tax exemption (applicable until 17 March 2021) for certain payments to employees to reimburse them for their costs incurred as a result of working from home. In order to qualify for the tax exemption a number of requirements must be satisfied, including a general requirement that the employer must make a specific payment to the employee to reimburse them for the expense of working from home. While various caps apply to the amount that is exempt by reference to what is being reimbursed, in general, the amount that can be paid which is exempt is NZD 15 per week.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home
- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend work premises when requested
- A right for the employer to visit the employee at home at agreed times for agreed purposes

- Agreement in respect of insurance obligations
- Provisions for termination of the home working arrangement

Guidance on workstation set-up can be included in internal policies.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

- An employer has a duty to manage risks to both the physical and mental health and home workers. This means ensuring regular communication to prevent both organisation isolation and social isolation
- Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in team meetings, performance appraisals and staff training
- The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to support and the ability to work closely with colleagues where necessary
- The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers
- Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective
- Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

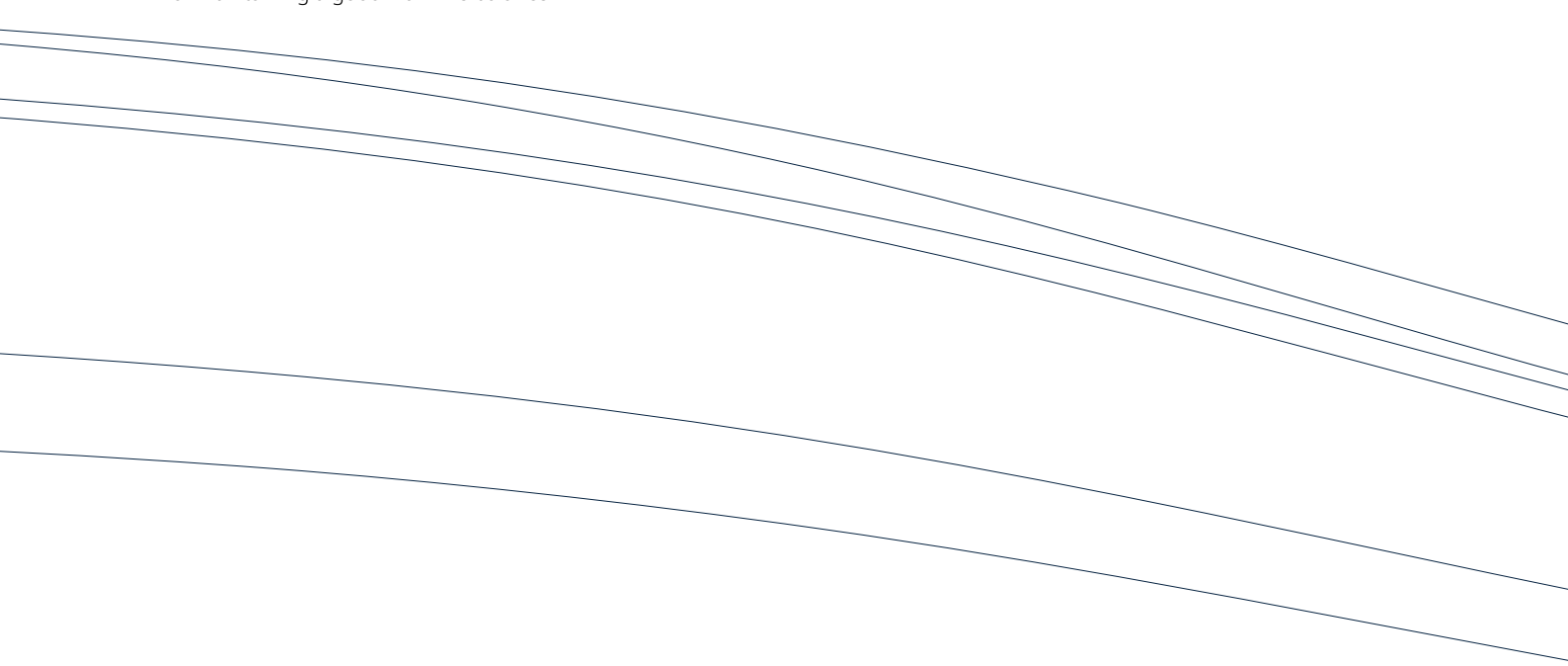
- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for agreement between the employer and employee. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

New Zealand is now at Alert Level 1, which means that restrictions around social distancing and staying home are no longer in place. For this reason, COVID risk is not going to be a reasonable basis for requiring employees to work from home.



Norway

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

Generally, an employee cannot refuse to attend work due to fear of being infected by the coronavirus. Should an employee not show up for work due to such fear, the absence will constitute an unexcused absence.

However, the employees have a right to interrupt work if they consider that it cannot continue without involving danger to life or health. This regulation might be relevant if there is a significant risk of the employee being infected if he/she comes to work.

After the state of emergency/COVID-19 restrictions have ended?

Generally, no.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No, not that we are aware of.

Employee's right to insist on working from home

Who does the right apply to?

There is no general right to insist on working from home according to Norwegian law.

How does the individual exercise their right?

Not applicable, see above.

What are the employer's obligations on receiving a request?

Not applicable, see above.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes. As a general rule, employers may instruct employees to temporarily work from home, as this is covered by the employer's general right of instruction (right to manage). This applies both under the COVID-19 restrictions and after.

What process (individual and/or collective) must be followed to implement home working?

The employer is still required to safeguard the employees' health, environment and safety, and the employer must ensure that systematic health, environment and safety measures are taken across its business.

How long can the arrangements be in place for?

There is no specific threshold for the duration of the employer's right to impose temporary work from home. However note that a regulation regarding work from home will apply if the arrangement is of a more permanent nature. The regulations do however not apply to work from home of short duration or which is only occasional. The applicability of the regulation should be determined in each specific case.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable, see above.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

In order to have employees permanently work from home, the employer is required to enter into an additional written agreement with each employee regarding their work from home according to the regulation on work from home. Hence this cannot be imposed unilaterally by the employer.

What process (individual and/or collective) must be followed to implement home working?

According to the Norwegian Working Environment Act ("WEA"), undertakings that regularly employ at least 50 employees must provide information on issues of importance relating to employees' working conditions and discuss these issues with the employees' elected representatives.

According to the regulation on work from home, the employer is required to enter into an additional written agreement with each employee regarding their work from home. This agreement must include inter alia provisions on the scope of the work, working hours, availability to the employer, termination of the arrangement, confidentiality etc.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

There is no proposal to make this an unilateral right for the employer.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

If an employees will work from home permanently, the employer has some additional requirements according to the Norwegian regulation on work from home. The general requirements in the WEA providing for a safe working environment will also apply.

The employer must ensure that the working environment at home is fully satisfactory with regard to the work station, work equipment and indoor climate.

Special provisions apply to employees carrying out the majority of their work during night time hours.

Further, in order to safeguard employees' health, environment and safety, the employer must ensure that systematic health, environment and safety measures are taken across its business. This includes where work is done from home. So the company should as a best practice conduct a health and safety inspection to ensure it is in compliance with all employee health and safety obligations. Note that the company cannot complete inspections without agreement of the specific employee.

In addition, safety representatives and the working environment committee should (if applicable), as far as practically possible, safeguard the interests of employees in matters relating to working environment.

Finally, normal working hours must not exceed 40 hours per week. All work exceeding this threshold is classified as overtime. During a 4 month period, average working time cannot exceed 48 hours per week, inclusive of overtime. This entails a limit on working hours set forth in the WEA.

What is the position with the provision and cost of equipment and services for home working?

Generally, the employer is required to provide employees with a safe working environment. However, there are no statutory requirements for expense reimbursement/equivalent as such.

Note that it is customary to provide (or reimburse for) tools and equipment required to complete the employee's work, such as computer, printer, phone and internet costs and a desk and chair.

Are there any tax allowances which are relevant where individuals are home working?

No.

What are the key points employers should include in contracts/policies for home workers?

The agreement must comply with the minimum requirements set out in the WEA section 14-6.

Further matters to be addressed as required by the work from home regulation are:

- Scope of the work
- Working hours
- Availability to the employer
- Fixed terms if relevant
- Termination of the arrangement
- Probational period
- Right to and maintenance of equipment
- Confidentiality and storage of documents if relevant

We also recommend including provisions on the following:

- Provision/cost of equipment
- Security of and access to work equipment at home
- Obligation on the employee to attend work premises when requested

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

- Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings and staff training
- The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary
- The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers
- Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective

- Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

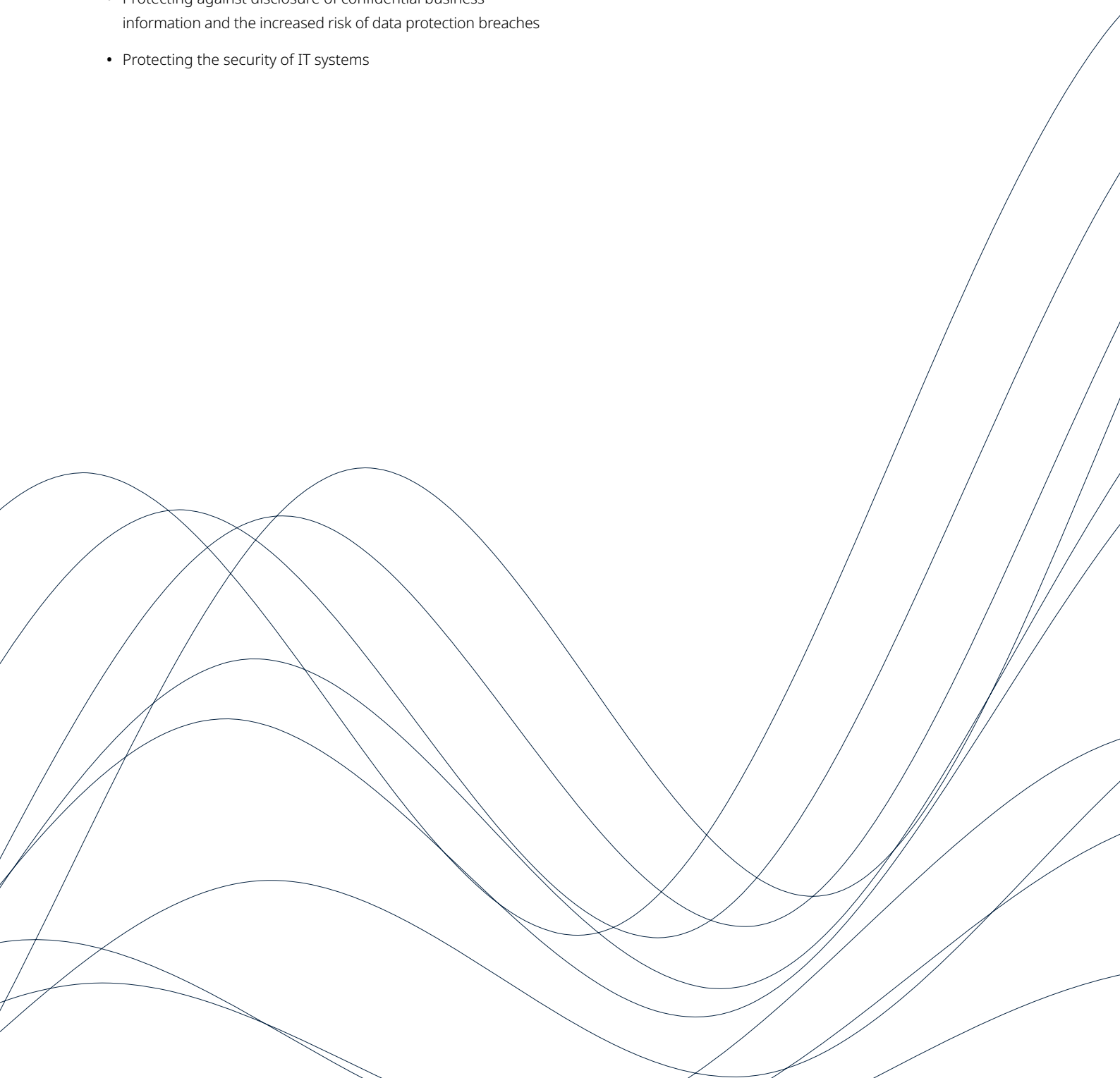
- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

The regulation on work from home regulates the work from the employee's actual home. Hence in our assessment in the work from home agreement the employer can prohibit the employees from work from other locations. The question is however not specifically addressed under Norwegian law, hence the solution is unclear. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Not applicable.



Poland

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

It is important to distinguish between two types of working which are recognized by Polish labour law – teleworking and remote working.

- Teleworking is regulated by the Labour Code. A teleworker is an employee who performs work regularly away from the company's office by means of electronic communication. Teleworking is possible at any time if the employer and employee agree to it
- Remote working is not regulated by the Labour Code but only by the Special Act Introducing Measures Aimed at Counteracting the Adverse Economic Consequences of the Spread of COVID-19 (Act). This solution may be applied on an occasional basis and depends on what the employer decides

The government's COVID-19 guidance is that employees should continue to work from home if they are able to do so.

After the state of emergency/COVID-19 restrictions have ended?

Teleworking – is possible at any time if the employer and employee agree to it.

The Act which extends remote working in Poland entered into force on 5 September 2020. Under this legislation, during the period of epidemic threat or the epidemic state and within 3 months after its cancellation, an employer is entitled to instruct its employees to perform remote work.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

The Polish Government is preparing a draft amendment to the Labour Code to regulate the issue of remote working. The changes could come into force as early as the beginning of 2021. See further information in the *Other relevant information about home working* section below..

Employee's right to insist on working from home

Who does the right apply to?

In the case of teleworking, every employee has the right to request to work from home. The employer should agree to the request, when feasible.

In the case of remote working, an employee cannot insist.

How does the individual exercise their right?

In the case of teleworking, the employee can submit a request on paper or electronically.

What are the employer's obligations on receiving a request?

The employer should agree to the request, when feasible.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes. In the case of remote working, an employer may instruct an employee to work from home temporarily if the employee has the skills and the technology and sufficient accommodation to do so. The employer can cancel this instruction at any time.

Moreover, according to the State Labour Inspectorate, an employee's refusal to carry out an employer's instruction, unless it is contrary to the law or his/her employment contract, may result in the employee being fined. An employer may issue a warning or reprimand for an employee's failure to observe the established organization and order of the employer's work processes.

What process (individual and/or collective) must be followed to implement home working?

There is no specific process required to implement temporary home working. Therefore, the employer may unilaterally instruct its employees to work remotely. Under the Act, the employer is not obliged to justify the instruction; the Act simply states that the employer may instruct an employee to work from home in order to prevent the spread of COVID-19.

How long can the arrangements be in place for?

The law does not specify a specific term. As long as the epidemic or the epidemic threat remains, and for three months after it is over, the employer can instruct its employees to work remotely.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

The Polish Government is preparing a draft amendment to the Labour Code to regulate the issue of remote working. The changes could come into force as early as the beginning of 2021. See further information in the *Other relevant information about home working* section below.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

No. Permanent work at home may be introduced only in the form of teleworking. Teleworking may be agreed upon between the parties to an employment contract either when concluding the employment contract or during the course of employment.

During the course of employment, teleworking may be introduced by agreement between the parties, or at the employee's or employer's request. The employer should, when feasible, comply with the employee's request. However, if an employee does not consent to teleworking, this cannot constitute grounds for the employer to terminate the employment contract.

Moreover, the conditions of telework must be defined in an agreement between the employer and a trade union (or by regulation after consultation with the employee representatives).

What process (individual and/or collective) must be followed to implement home working?

Not applicable.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

The Polish Government is preparing a draft amendment to the Labour Code to regulate the issue of remote working. The changes could come into force as early as the beginning of 2021. See further information in the *Other relevant information about home working* section below.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

If teleworking is performed at the employee's home, the employer must meet its health and safety obligations as set out in the Labour Code to the extent determined by the type and conditions of the work performed.

Also, the employer must specify rules for the protection of any data transmitted to the employee and carry out, where necessary, instructions and training in this regard.

What is the position with the provision and cost of equipment and services for home working?

In the case of teleworking, the employer must provide and insure the equipment necessary for the work and cover the costs associated with the installation and maintenance of the equipment. In addition, it must provide technical assistance and any necessary training. However, by agreement between the employee and the employer, the employee may use his/her own equipment, in which case the employee is entitled to a cash equivalent.

In the case of remote working, the employer is obliged to provide the employee with the tools and materials needed for remote work as well as logistical support. The employee may use his/her own equipment, provided that this allows for security and protection of confidential information. The question of a cash equivalent is not regulated by law.

Are there any tax allowances which are relevant where individuals are home working?

Employers who pay monetary equivalents for using private devices may (under certain conditions) include these expenses in their tax deductible costs. In principle, such equivalents are not subject to Personal Income Tax.

What are the key points employers should include in contracts/policies for home workers?

For both – teleworking and remote working:

- Obligations on the employer and employee (especially obligations on the employee) to protect confidential information
- Rules on the employee's use of the employer's equipment
- The possibility of the employee using his/her own equipment
- Rules on communication between employer and the employee, including the manner by which the employee will confirm his/her presence at work as well as other supervision rules
- Compliance with health and safety rules

Additionally, in the case of teleworking, the employer and the employee should agree on:

- The duration of the teleworking arrangement
- The rules on reimbursement of teleworking-related costs
- Technical support
- Insurance of the equipment

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

For both – teleworking and remote working:

- An employee cannot be treated in a less favourable manner because he/she works from home
- Employees should be informed about monitoring and its purposes two weeks before it is introduced
- The employer must set out the rules for protection of data transferred to the employee, and, where feasible, the employer must provide training on this
- The employer should ensure appropriate tools and materials are provided
- The workload and performance standards should be equivalent to those of comparable office-based employees
- Additionally in the case of teleworking, the employer should be entitled to visit the place where the employee is working to check that he/she is doing the work

What are the key risks with home working in your jurisdiction that employers should be aware of?

- Protecting confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

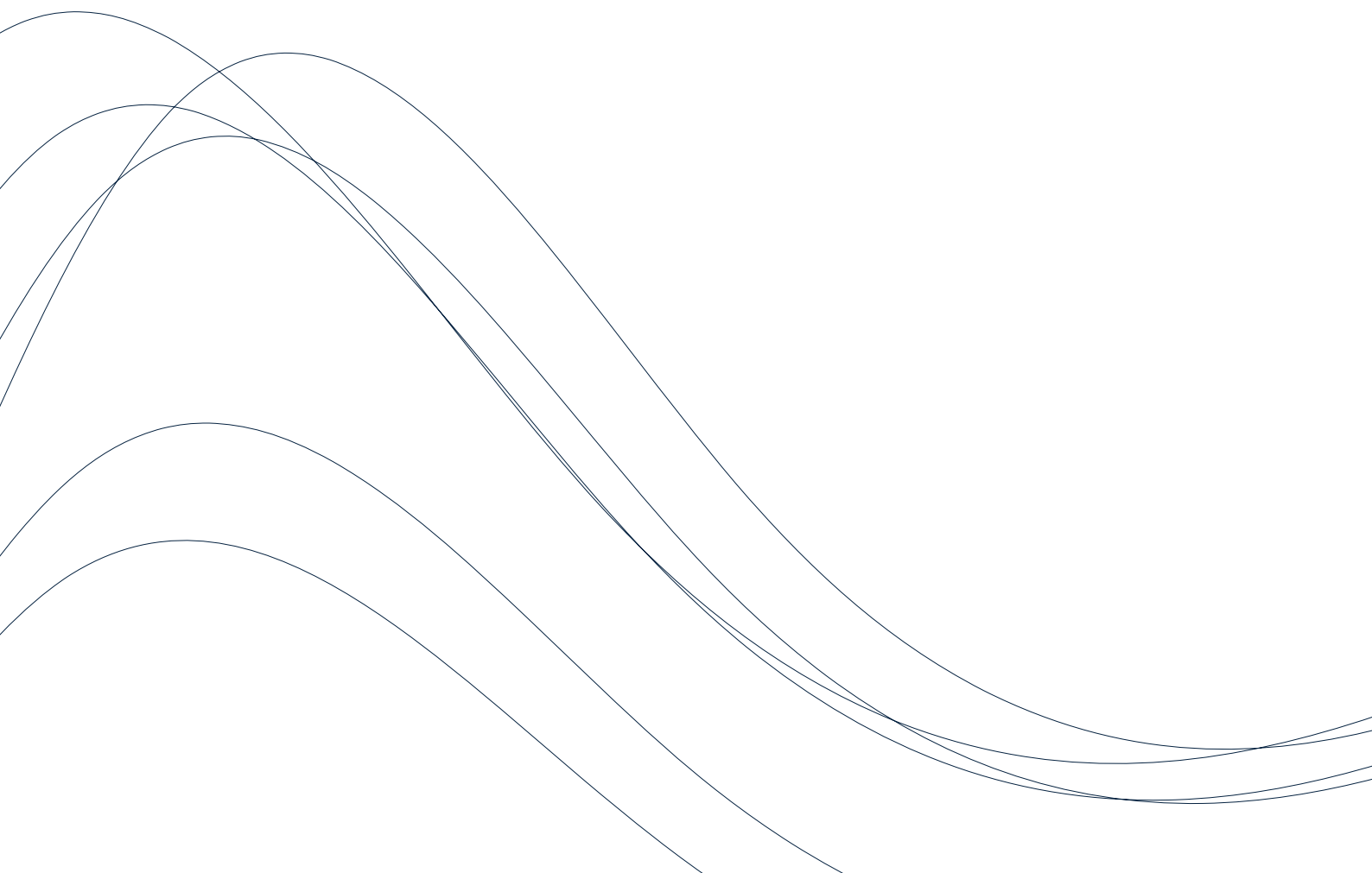
Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

For both – teleworking and remote working – this is not regulated by law. However, generally individuals should be allowed to work from other locations as long as the employee can perform his/her duties.

Please also note that while working abroad, the problem of correct taxation and social security contributions may arise. In such circumstances, every case should be assessed individually. For further information on the business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

The Ministry of Family, Labour and Social Policy is preparing a draft amendment to the Labour Code to regulate the issue of remote working. Under the draft amendment, the existing teleworking regulations will be repealed and replaced with regulations on remote working. The new regulations will address the most important principles governing remote working, such as the process to be followed to allow employees to work remotely, the provision of company equipment to them, and the paying of a cash equivalent to employees who use their own tools and materials while working remotely. It is planned that the changes will come into force as early as the beginning of 2021. For further information [click here](#).



Portugal

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The state of emergency in Portugal was lifted on May 2, 2020. However, COVID-19 restrictions have continued to apply as some parts of Portugal remained in a state of “calamity”

As a rule, teleworking depends on there being agreement between employer and employee.

However, due to the risk of infection, under the state of calamity regime, some employees included in risk groups due to the COVID-19 pandemic or whose children have been affected by the suspension of on-site school activities – as detailed below – may not be refused their request from working from home.

Teleworking is also mandatory when it is necessary to comply with the directions issued by the Directorate-General for Health (DGS) or Labour Conditions Authority (ACT) as regards the company’s premises (to the extent required to meet the recommendations and directions issued).

After the state of emergency/COVID-19 restrictions have ended?

Once infection prevention measures cease to be required, it is expected that abovementioned temporary measures will be revoked, in which case the general framework shall apply for all employees (as detailed below).

If an employee cannot insist on working from home, are there any proposals to introduce this right?

According to the information available, there are no bills to amend the telework framework.

Employee’s right to insist on working from home

Who does the right apply to?

The employer may not refuse the requests to work from home filed by:

- Employees covered by the exceptional regime for the protection of immunosuppressed and chronically ill patients, pursuant to article 25-A of Decree-Law no. 10-A/2020, of 10 March, or with disability over 60% – to be evidenced by a medical certificate. This applies during COVID-19 restrictions

- Employees with children under 12 years old or with a disability or chronic disease (regardless of age) during the period of suspension of on-site school activities outside during school holidays. This applies during COVID-19 restrictions. Note that only one parent may benefit from this regime regardless of the number of children and also note that the summer break started on June 29, 2020
- Employees who have suffered from domestic abuse, once they have filed a criminal complaint and have moved out of the family home. This applies during and after COVID-19 restrictions
- Employees with children under the age of 3, as long as the employer has the resources and means for the purpose. This applies during and after COVID-19 restrictions

Additionally, and as mentioned above, telework should also be granted upon an employees’ request when it is necessary to comply with the directions issued by the DGS or ACT. This applies only during COVID-19 restrictions.

Upon lifting of COVID-19 related measures, only the employees in the conditions identified in paragraphs (3) and (4) may insist on working from home.

How does the individual exercise their right?

The request does not need to observe written form nor any minimum legal content. A verbal communication to the employer, presenting the evidence for the right invoked (if not previously provided), would suffice.

What are the employer’s obligations on receiving a request?

When the request is grounded on a COVID-19 temporary measure (see above), it is not mandatory (although it is advisable) that a written agreement is executed.

In such cases, the employer should communicate (preferably in writing) to the employee that the request to work from home has been accepted and adopt measures to ensure that teleworking is possible (e.g. providing a laptop, VPN services, mobile phone, etc).

When the request is grounded on the general Labour Code framework (employees listed in paragraphs (3) and (4) above), a written agreement must be executed.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

This is not possible, not even while COVID-19 restrictions are in force.

Although teleworking is regarded as a protection measure under the framework currently in force, where the employer wishes the employee to work from home on a temporary basis, the employer must reach an agreement with the employee.

What process (individual and/or collective) must be followed to implement home working?

Not applicable.

How long can the arrangements be in place for?

An initial agreement for telework is limited to 3 years (although collective bargaining agreements may extend the initial duration).

Notwithstanding this, the agreement may be automatically renewed beyond that term and, accordingly, it may be in force "indefinitely" where it is not terminated by any of the parties.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

We are not aware of the presentation of any bills to amend the telework framework.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

No. Under the framework currently in force, the initial agreement on telework is subject to a maximum term of three years. Notwithstanding, the agreement may be automatically renewed beyond that term and, accordingly, it may be in force "indefinitely" where it is not terminated by any of the parties.

What process (individual and/or collective) must be followed to implement home working?

Not applicable.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

According to the information available, there are no bills to amend the telework framework.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

The employer and employee are bound by the same obligations and duties in respect of health and safety (H&S) regardless of the workplace being in the company's premises or in the employee's home (although some may not apply due to impracticality).

We would point out the following key obligations:

- Hiring an H&S service provider
- Performance of mandatory medical exams (before hire; periodically following illness or accident; and every two years or every year for employees over 50 years old)
- Carrying out a risk assessment in respect of the tasks and workplace
- Implementing adequate and necessary measures to eliminate or mitigate the risks identified
- Provision of information and training in H&S and carrying out a yearly consultation session with employees

Additionally, employees who work from home must be covered by an occupational accidents policy and the insurance company must be informed that employees are working under this regime.

What is the position with the provision and cost of equipment and services for home working?

The parties are free to establish ownership and division of costs with respect to working tools, equipment and services for home working.

Where the parties do not agree the terms, there is a legal presumption that the tools and equipment belong to the employer, who will be liable for set-up, maintenance and connected expenses.

Are there any tax allowances which are relevant where individuals are home working?

No.

What are the key points employers should include in contracts/policies for home workers?

Key points include:

- Duration of telework (in particular if it is only a few days a week)
- Duty of the employee to attend the company's premises when required to do so

- Working time restrictions (overtime, nightwork) and obligation to register working times and breaks
- Productivity standard of the employee (in comparison with working from the office) as a condition of the agreement
- Termination framework (in particular detailing the rights of the company to terminate the agreement where the conditions are not met)
- Ownership and division of costs of equipment and services used in teleworking, as well as restrictions on personal use of company equipment
- Exclusion of payment of meal allowances

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Employers are required to respect the employees' privacy and are not permitted to continuously monitor the employee's performance.

Note that the National Data Protection Authority (CNPD) has recently issued an opinion on this matter which includes the following highlight:

- Performance may not be controlled by technological means (such as software to track online logs, permanent location of the device, use of keyboard and mouse, time working on a document, etc)
- The employer may set targets and kpi's, periodical reporting obligations and may schedule teleconference meetings
- Working hours may be recorded using software which is for this purpose but which is designed to respect the employee's privacy and to limit the data collected. Hours can also be recorded by phone, e-mail or other communication methods

Under the telework regime, the employer may inspect the employee's working space at home, however this may only occur (i) in respect of the work performed and use work tools, (ii) between 9am and 7pm and (iii) in the presence of the employee or someone appointed by the latter. No specific notice to the employee is required.

What are the key risks with home working in your jurisdiction that employers should be aware of?

Key risks related to home working for employers include:

- Productivity of employees may be difficult to assess
- Ensuring compliance with H&S duties of employees may be more challenging
- The security of IT systems against disclosure of confidential business information may be more easily compromised and trigger data protection breaches

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

The parties may define the workplace as the employee's home or as a different place which must be specified. It is possible to contractually agree that the employee may only work from his home and not from other locations (such as public places and from abroad). For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

The DGERT (General-Directorate for Employment and Labour Relations) and the Labour Conditions Authority have issued FAQ guides on telework available online.

[FAQ issued by DGERT](#) (available in Portuguese and English)

[FAQ issued by ACT](#) (available only in Portuguese)

Romania

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

Note the Romanian employment law distinguishes between:

- Work from home – whereby the workplace is permanently located to the employee's domicile
- Teleworking – a concept whereby work is commonly performed out of the employer's premises (HQ, working unit etc.), however there is occasional performance of work (for at least one day per month) out of agreed telework locations (which may include or be limited to the employee's home) using information and communications technology

The Responses below mainly relate to teleworking which is more commonly used in practice.

No an employee cannot insist on working at home. Although during the previous state of emergency, the Government mandated that employers should use (unilaterally introduce) home/teleworking whenever possible and thus, arguably, the employee could request this arrangement. During the current state of alert phase, arguably remote working can be continued only with both parties' consent (via an addendum to the individual employment agreement).

After the state of emergency/COVID-19 restrictions have ended?

No. Teleworking is not a right, and an employee cannot unilaterally demand it. Both parties' (employer and employee) consent is necessary.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No.

Employee's right to insist on working from home

Who does the right apply to?

Not applicable.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

Not applicable.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Arguably yes – but only in exceptional cases.

As mentioned above, although during the previous state of emergency, the Government mandated that employers should use (unilaterally introduce) home/teleworking whenever possible, during the current state of alert phase, employers can continue with remote working for employees, but arguably only with the employees' consent (via an addendum to the individual employment agreement).

However, in general and irrespective of the COVID-19 context, Romanian law allows employers to unilaterally impose remote working only in exceptional cases and for a temporary duration (for example, as a protective measure for employees – however, this should be considered on a case-by-case basis, considering the potential risks for the employer).

What process (individual and/or collective) must be followed to implement home working?

For a temporary duration and only in exceptional cases, the employer can impose remote working based on unilateral decision, communicated to the employee – thus no employee consent would be necessary in this specific case.

How long can the arrangements be in place for?

The applicable legal provisions only mention the temporary duration requirement without any further guidelines so this would need to be assessed on a case-by-case basis.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

No.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

No. A permanent amendment to the employee's workplace can only be implemented only with the employee's consent (via an addendum to the individual employment agreement).

What process (individual and/or collective) must be followed to implement home working?

Not applicable.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

As a general rule, the employer has the responsibility for ensuring the health and safety of the employees in all aspects related to work. Specifically with respect to teleworking, the following employer and employee specific health and safety obligations apply:

Employer's side:

- To ensure safe information and communication technology and/or work equipment necessary for performing work – however, the parties may expressly agree in the teleworking agreement on transferring these particular responsibilities on to the employee
- To install, check and maintain the necessary working equipment – however, the parties may expressly agree in the teleworking agreement on transferring these particular responsibilities on to the employee
- To ensure that the employee receives sufficient and adequate training on health and safety matters, in particular in the form of work instructions and information specific for their teleworking location. By law, this must include information and instruction on the use of visual screen equipment

Employee's side:

- To perform their activity, according to his/her training and following instructions received from the employer, so as to ensure he/she does not expose himself/herself, (nor other persons who may be impacted by his/her acts or omissions while working) to accidents or occupational illness
- To inform the employer of the work equipment being used and of the condition of the teleworking location. Also to allow access to the employer, to the extent possible, with a view to the employer taking health and safety measures which are necessary pursuant to the individual employment agreement or with a view to investigating events
- Not to change the health and safety conditions of the teleworking location
- To only use work equipment that does not endanger health and safety at work

- To perform their work while observing workers' obligations as prescribed under Health and Safety Law No. 319/2006, as amended, as well as pursuant to the individual employment agreement
- To observe specific rules and restrictions established by the employer on use of internet networks or on use of the equipment provided which are applicable to the employer's business from time to time

What is the position with the provision and cost of equipment and services for home working?

Although the obligations on (i) providing safe work equipment necessary for the performance of work and (ii) installing, checking and maintaining the necessary work equipment are, as a rule, binding on the employer, the teleworking law is flexible in this respect, allowing the parties to expressly agree on transferring these particular responsibilities to the employee.

By law, the requirement that the employer should bear the expenses related to teleworking activity is a statutory provision of the teleworking arrangement – so any teleworking related expenses should arguably be covered by the employer. An alternative mechanism of including teleworking related expenses in the monthly gross base salary provided in the individual employment agreement could be explored on a case-by-case basis.

Are there any tax allowances which are relevant where individuals are home working?

There are no specific tax deductions/facilities for employers in relation to home working employees.

What are the key points employers should include in contracts/policies for home workers?

By law, there are at least 10 elements that must be mutually agreed with employees in the teleworking arrangement, as follows: (1) express reference to teleworking, (2) period/days worked from the employer's workplace, (3) teleworking location(s), (4) employer checks/supervision schedule & method, (5) teleworking time records (including working schedule), (6) parties' responsibilities, including on health & safety, (7) the employer's obligation to transport materials, (8) employer data protection specific information obligations, (9) preventive measures against employee isolation, and (10) employer coverage of teleworking expenses.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

By law, the employer may check the employee's activity during the days deemed as days when the employee is teleworking. The means that checking the employee's activity as well as

working time are statutory provisions of the teleworking arrangement and thus must be agreed with the employee. The same applies to keeping records of the employee's working hours – this a statutory requirement of a teleworking arrangement which should be agreed with the employee.

What are the key risks with home working in your jurisdiction that employers should be aware of?

Breach of telework rules may expose the employer mainly to:

Administrative liability:

- Performing telework in absence of mandatory documentation (employment contract amendment) – an (arguably overall) fine of ~ EUR 1,100 per employee
- Failure to document in an employment contract amendment that work might be performed under a teleworking regime – a fine of ~ EUR 2,200 per employee
- Failure to provide health and safety telework-specific training – a fine of ~ EUR 400 per employee

There are arguments that, for example, the fines under the first two bullet points above cannot be aggregated (because they relate to similar defaults), but rather only the highest fine of EUR 2,200 per employee should be applied.

Damages:

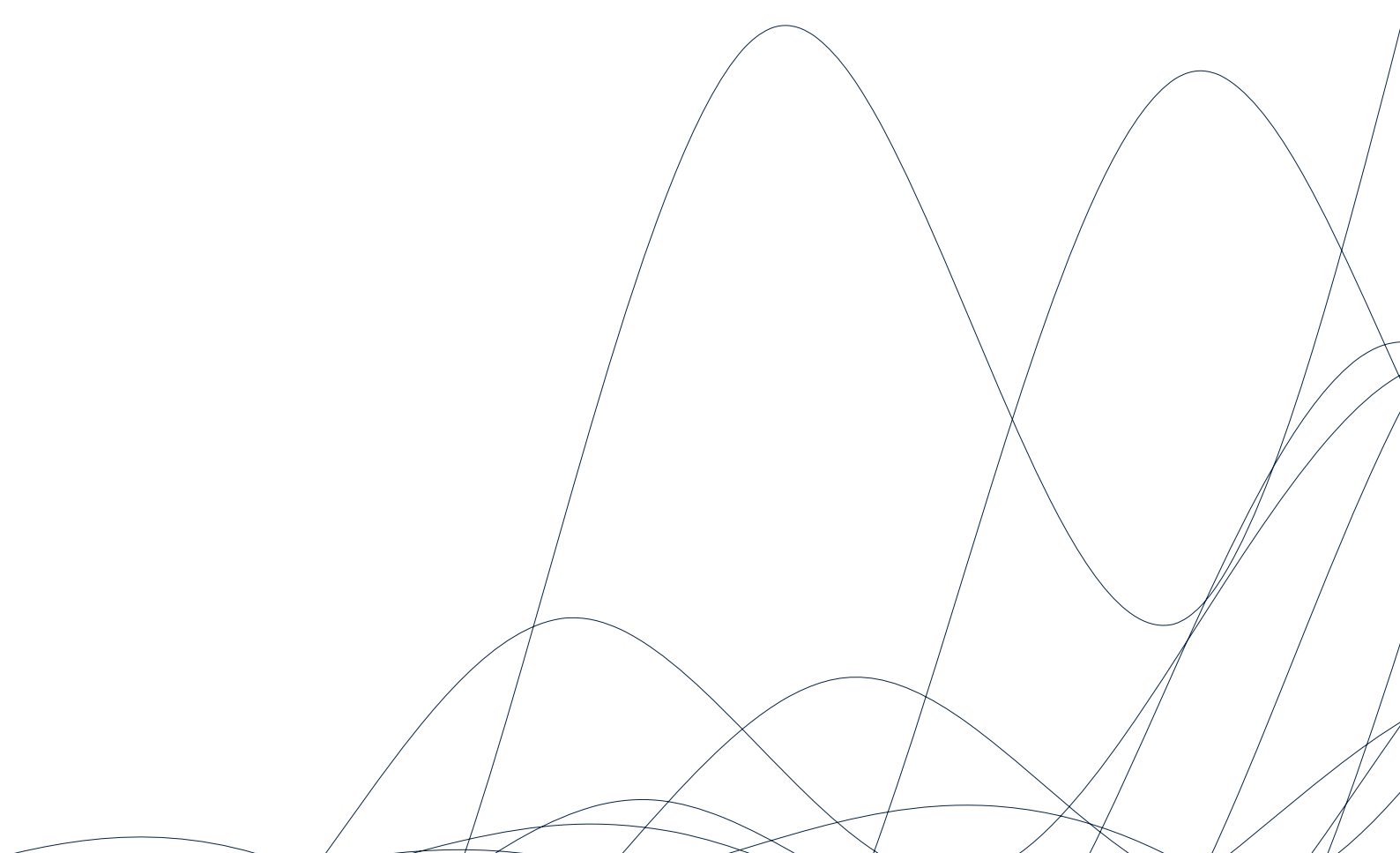
There is possible risk that an employee may be able to claim damages from a discrimination/unequal treatment perspective or otherwise (for example, a claim that he was not able to properly perform and thus reach expected targets/bonus level etc.). In theory, this risk is low as damages have to be proven and it is not wide market practice to ask, or for the court to award, this type of damages.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

The location/locations for performing teleworking are subject to what is agreed between the parties' in the teleworking arrangement – it is not mandatory to limit the location to domicile/residence. However, this limitation could be practical to limit the health and safety risk assessment the employer needs to perform and its associated health and safety liability. Therefore, the employee should be required to work at the address mutually agreed with the employer, as provided in the teleworking arrangement. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Not applicable.



Russia

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

An employee cannot insist on working from home. This is possible only by mutual agreement between the employer and employee.

Please note that now there are no emergency/COVID-19 restrictions.

After the state of emergency/COVID-19 restrictions have ended?

As above.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

We are not aware of any proposals to include such a right in the law.

Employee's right to insist on working from home

Who does the right apply to?

Not applicable.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

Not applicable.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

As a general rule an employer cannot require an employee to work from home (remote work) on a temporary basis without the employee's consent. For this to be put in place, the consent of both the employee and the employer is necessary.

As regards emergency situations, recent amendments to the Russian Labour Code introduced a new type of remote work - temporary remote work in an emergency situation (disasters, industrial accident, acts of God, epidemics, and other situations endangering the life or normal living conditions of all or part

of the population). In these circumstances employers can require employees to work remotely (e.g. from home) on a temporary basis.

What process (individual and/or collective) must be followed to implement home working?

In emergency situations, employees may be transferred to temporary remote work on the employer's initiative.

In such cases, no changes to the employment agreement are required. The employer is only required to put in place an HR document, e.g. in the form of an order, which must include the following provisions:

- a reference to the emergency situation;
- the list of workers transferred to remote work;
- the period for which the employees are so transferred;
- the arrangements to supply employees with the necessary equipment and facilities; and
- the procedure for organising the employees' work.

If no emergency situation exists, an employer may transfer an employee to remote work only by signing an addendum to the employment agreement (which requires the employee's consent).

How long can the arrangements be in place for?

Permanent remote working is possible where the employer and employee agree to this arrangement. An employer and an employee may agree to introduce remote work on a temporary basis for a period of no more than six months.

Where a temporary arrangement for longer than six months is required, it is permissible to introduce permanent remote working by way of an addendum to the employment agreement, and to later sign another addendum agreeing that the employee will return to office working (but in this case both addenda will require the employee's consent).

In emergency situations employees may be required to work remotely for the entire period until the emergency situation is over.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

No, an employer cannot require an employee to work from home (remote work) on a permanent basis without the employee's consent.

With the mutual agreement of the relevant employee, an employer may introduce remote work on permanent basis by signing an addendum to the employment contract.

What process (individual and/or collective) must be followed to implement home working?

An employer must sign an individual addendum with each employee.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

We are not aware of any proposals to introduce such a right.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

When an individual will be working with equipment provided by the employer, the employer is obliged to familiarise its employees with the relevant labour protection requirements. Otherwise the health and safety requirements applicable to on-site workers do not apply to remote employees, except as otherwise provided by the employment agreement.

What is the position with the provision and cost of equipment and services for home working?

The employment agreement should address the provision of equipment and the reimbursement of expenses.

Are there any tax allowances which are relevant where individuals are home working?

The general tax regime applies.

What are the key points employers should include in contracts/policies for home workers?

Key points to include in the contract are:

- the type of work – i.e. remote;
- where the employment contract was concluded – i.e. the employer's location;
- specify the workplace.

Inclusion of the following provisions is also recommended:

- the procedure and deadlines for providing the employee with the necessary equipment, hardware and software for the performance of their duties in accordance with the requirements of the employer;
- methods of communication, working time, etc.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Any arrangements for communication with and control/monitoring of remote workers should be established in the agreement.

What are the key risks with home working in your jurisdiction that employers should be aware of?

Difficulties in –

- tracking tasks and monitoring job performance;
- conducting disciplinary procedures (especially dismissals) with remote employees.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

There is no general requirement that an individual should work from their actual home.

The workplace (e.g. city or address) for performing remote work could be specified in the employment agreement. At the same time, from a practical perspective, it is difficult to track the actual location of a remote employee and to discipline an employee who is not working at the agreed location.

For business risks related to an employee working in a different country, see the [Introduction](#)

Other relevant information about home working.

Information on the introduction of the new remote work law on 1 January 2021 is available here -

<https://www.dlapiper.com/en/russia/insights/publications/2020/12/new-remote-work-law/>

Singapore

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

While there is no absolute right to work from home, the Singapore Government and the Ministry of Manpower have, due to the COVID-19 situation, introduced guidelines setting out the provisions relating to working at the workplace.

In particular, from 28 September 2020, employees who are able to work from home may also return to the workplace to better support work and business operations subject to certain conditions, including that (i) employees whose jobs can be performed from home must continue to do so for at least half their working time; and (ii) no more than half of employees who are able to work from home should be at the workplace at any point in time.

Employers will have to ensure that they comply with the Safe Management Measures as updated by the MINISTRY OF MANPOWER. Employers are also required to communicate to employees the Safe Management Measures and all other arrangements, steps or measures applicable to all of its employees, as far as reasonably practicable.

After the state of emergency/COVID-19 restrictions have ended?

Assuming the Singapore Government and the MINISTRY OF MANPOWER no longer impose restrictions relating to working from the workplace, an employee should generally only be absent from work if they are on authorized annual leave or on public holidays and rest days. Failure to come into the office without a legitimate reason is likely to be a breach of an employee's employment contract.

The MINISTRY OF MANPOWER has however encouraged employers to be flexible and supportive of their employees' needs during this time and employees are also encouraged to cooperate with their employers.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

Save for the current measures put in place by the Singapore Government and the MINISTRY OF MANPOWER, there are no proposals at this stage.

Employee's right to insist on working from home

Who does the right apply to?

There is no absolute right to work from home, although employers may wish to allow more vulnerable employees (such as persons who are pregnant or aged 60 and above, and those who are immune-compromised or have concurrent medical conditions) to do so in view of the COVID-19 situation.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

As set out above, there is no absolute right to work from home, although employers may wish to allow more vulnerable employees (such as persons who are pregnant or aged 60 and above, and those who are immune-compromised or have concurrent medical conditions) to do so in view of the COVID-19 situation. It would also be prudent to consider requests on a case by case basis.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Strictly speaking, this would arguably require employee consent unless their employment contract provides for periods of home working or that an employer can change the place of work by written notice. In practice however, most employers have had to implement temporary home working measures due to the measures implemented by the Singapore Government in response to the COVID-19 situation in Singapore.

What process (individual and/or collective) must be followed to implement home working?

Consent should be sought from employees if employers intend to extend the home working measures beyond what is specified by the Singapore Government and the MINISTRY OF MANPOWER and the employment contracts do not permit an employer to change the place of work by written notice. If so, employees should also be notified of the period of extended home working and the rationale should be explained for this. If any special arrangements will apply, this should also be confirmed in writing.

How long can the arrangements be in place for?

There is no specific timeframe for this.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Save for the current measures put in place by the Singapore Government and the MINISTRY OF MANPOWER, there are no proposals at this stage.

Permanent requirement to work at home**Can an employer require an employee to work from home on a permanent basis?**

Yes, but this would require employee consent unless the employment contract provides for this possibility. While some employment contracts provide flexibility as to place of work, any change which substantially changes the terms and conditions of employment (including a change of workplace) would likely require consent from the employee.

What process (individual and/or collective) must be followed to implement home working?

While there is no specific process required, it would be prudent to require the employee to sign a letter confirming their consent to the home working arrangement and setting out any other details that might apply. It may also be prudent for employers to adopt a work-from-home policy to set out the terms and conditions in relation to such home working arrangements.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Save for the current measures put in place by the Singapore Government and the Ministry of Manpower, there are no proposals at this stage.

Arrangements for home working**What are the key health and safety obligations that apply to the employer and employee?**

An employer has a duty under the Workplace Safety and Health Act (Cap. 354A) of Singapore (WSHA) to take reasonably practicable measures to ensure the safety and health of the employees at work. However, this is not practical in the context of 'telecommuting' or 'working from home', as an employer will not have control and management over the employee's home. The employee should be mindful of the hazards that may exist in his/her alternative work environment, (e.g. home, cafe) and take reasonable care of his/her own health and safety while working in this environment.

We would also highlight that an employer is still required to comply with all relevant Singapore employment laws even where such home working arrangements are put in place. In addition, depending on the circumstances in which an employee gets hurt outside the office while working, the employee may be eligible for compensation if the injuries sustained arose out of and in the course of work.

What is the position with the provision and cost of equipment and services for home working?

There are no requirements to provide allowances and pay for equipment in a home working scenario. We would highlight that the Ministry of Manpower has released an advisory providing that employers should review work processes and provide IT equipment to employees, and we would recommend that employers consider providing such IT equipment. For other equipment and allowances, an employer may want to exercise its discretion given the current COVID-19 climate.

Are there any tax allowances which are relevant where individuals are home working?

If an employee is required by an employer to work from home and the resulting home office expenses such as electricity charges and telecommunication charges are not reimbursed by the employer, the employee can claim these expenses that are incurred for work purposes as a deduction against the employee's employment income for the year.

What are the key points employers should include in contracts/policies for home workers?

Employers should consider including the following in the employment contract of a home worker or in an employer's work-from-home policy:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods;
- Agreement about provision/cost of equipment/services and care of employer's equipment;
- Agreement about security of and access to work equipment at home;
- Obligations on the employee in respect of confidential information;
- An obligation on the employee to attend work premises when requested;
- A right for the employer to visit the employee at home at agreed times for agreed purposes;
- Agreement in respect of insurance obligations;

- Requirement to notify the employer immediately in writing of any safety issues, including any accidents sustained at home; and
- Provisions for termination of the home working arrangement.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Homeworkers who work from home should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training.

The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary.

The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers.

Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective.

Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance.

The employer should ensure it can insist an employee comes into the workplace as and when required and may wish to reserve the right to visit the employee at home at agreed times for work-related purposes.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees;
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches; and
- Protecting the security of IT systems.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is generally a matter for contractual agreement between the employer and employee. An employee may be given a lawful and reasonable direction to not work from particular places. For business risks related to an employee working in a different country, see the Introduction.

Other relevant information about home working.

Guidance for employers on home working, including the Safe Management Measures to be taken at the workplace, is available from the Ministry of Manpower.

<https://www.mom.gov.sg/covid-19/requirements-for-safe-management-measures>

South Africa

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The Regulations issued in terms of section 27(2) of the Disaster Management Act, 2002 (Regulations) state that all persons who can work from home must do so. Therefore, an employee can insist on working from home while the COVID-19 restrictions continue provided that they can effectively work from home and this is not having a negative impact on the business.

Where an employee cannot work from home the employee would not be able to insist that s/he remains home and continues to be paid. In such circumstances, the employee would require the permission of the employer and may be required to take annual leave during this absence. However, the Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces in terms of Regulation 4(10) issued in terms of section 27(2) of the Disaster Management Act, 2002 (OHS Directive) has introduced a right of refusal to work where there is a reasonable apprehension of exposure to COVID-19. An employee can exercise this right if the employer has not taken sufficient measures to safeguard employees from the transmission of COVID-19. The employer would then need to investigate the complaint and cannot take disciplinary action or refuse to pay the employees in the event that the employer has failed to take sufficient measures to safeguard against COVID-19 transmission.

After the state of emergency/COVID-19 restrictions have ended?

In general there is no legal entitlement to work from home and an employee would need the permission of his/her employer to work from home.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No, save for the right of refusal discussed above.

Employee's right to insist on working from home

Who does the right apply to?

If an employee can work from home then they would be entitled to insist on working from home in accordance with the Regulations for so long as the Regulations provide that those persons who can work from home must do so. If employees cannot work from home then they may exercise the right of

refusal to attend the work premises if there is a reasonable justification for believing that working from the workplace poses an imminent and serious risk of exposure to COVID-19 due to a lack of adequate measures being implemented by the employer.

How does the individual exercise their right?

The employee must notify the employer or the health and safety representative of the employer.

What are the employer's obligations on receiving a request?

Where an employee exercises the right of refusal to work the employer must, together with the compliance officer, determine whether the right of refusal is reasonable in the circumstances and whether additional measures should be implemented to safeguard against the risk of COVID-19 transmission. The employer may not discipline the employee or make a deduction from salary in the event of a reasonable refusal to work.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes. An employee can in appropriate circumstances be required to work from home. This would need to be a reasonable instruction and in the context of a global pandemic the instruction to temporarily work from home generally would be reasonable. In particular, the employer has an obligation to provide and maintain a safe and healthy work environment and the employer can accordingly require employees to work from home if it is of the opinion that requiring the employees to work from the work premises may expose the employees to health and safety risks.

Whether an employer will be able to require an employee to work from home after the COVID-19 restrictions have ended would depend on what has been agreed with the employee in the employment contract. If the employment contract does not provide for a work from home arrangement then the employer should consult with the employees on the proposal to introduce a work from home arrangement.

What process (individual and/or collective) must be followed to implement home working?

During the state of emergency the employer can simply instruct employees to work from home in the interests of health and safety as in our view this would constitute a reasonable instruction.

Once the COVID-19 restrictions have ended the employer would need to consider the employment contracts and whether the employment contract provides for working from home. If so, employers can implement working from home in accordance with the employment contract. If, however, the employee has a contractual right to work from a particular location then the employer would require the consent of the employee to change the location to a home location. If the employment contract has some latitude to change the location but does not expressly provide for working from home then the employer should consult with the employees before implementing the change and may need to consider providing office equipment or making a contribution to home office expenses.

How long can the arrangements be in place for?

In the case of temporary work from home during the state of emergency, these arrangements can be in place for the duration of the state of emergency. After the state of emergency has ended, the duration of the arrangements would, subject to the content of the employment contracts, depend on what has been agreed with the employee, or alternatively, what has been implemented by the employer after consultation with the employees on the work from home arrangement.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

During the state of emergency the employees can be required to work from home on a permanent basis for the duration of the state of emergency provided that the instruction to work from home is reasonable in the circumstances.

After the state of emergency whether the employee can be required to work from home on a permanent basis would depend on the employment contracts and whether the employment contract provides for working from home. If so, employers can implement working from home on a permanent basis in accordance with the contract. If, however, the employee has a contractual right to work from a particular location then the employer would require the consent of the employee to change the location to a home location on a permanent basis. If the employee does not consent then the employer can consider unilaterally implementing the change but with the risk of facing litigation from the employees. If the employment contract has some latitude to change the location but does not expressly provide for working from home then the employer should consult with the employees before implementing

the change and may need to consider providing office equipment or making a contribution to home office expenses. If the intention is for this to be on a permanent basis then this should be communicated to the employees during the consultation process.

What process (individual and/or collective) must be followed to implement home working?

The employer can decide whether to have group consultation meetings or individual consultation meetings. The consultation would be directly with the employees. However, if the employee is represented by a trade union then the employer would need to consult with the trade union on the change in work location.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

The Occupational Health and Safety Act (OHSA) places a legal obligation on employers to provide and maintain, as far as reasonably possible, a workplace that is safe and without risk to the health of employees. There is also a duty on employees to take steps to safeguard their own health and that of their fellow employees and to comply with the employer's policies regarding health and safety.

It has been widely recognized that the obligation for an employer to provide and maintain a safe and healthy work environment extends to home offices and an employer therefore needs to take reasonably practicable steps to ensure that the home office is safe. It is advisable to obtain a warranty from the employee that the home office is safe.

What is the position with the provision and cost of equipment and services for home working?

There is no requirement to provide equipment and to pay for the costs associated with running the home office but employees may request a contribution to these costs as part of the consultation process. In circumstances where consent is required from the employee to implement the home office arrangement then employees may not be willing to consent unless the employer makes a contribution to these costs. Furthermore, if the employees were never required to work from home in the past then they may be required to set up their home office with equipment and internet facilities and this is something that the employer should pay for if the employees did not need to carry this expense in the past.

Are there any tax allowances which are relevant where individuals are home working?

Employees who work from home on a permanent basis may be eligible for a tax deduction in respect of home office expenditure but this would depend on the facts and is subject to certain legislative criteria being met. It is not clear whether employees who work from home temporarily during the COVID-19 pandemic will be entitled to any tax deduction and this would be determined on a case by case basis.

Generally, the deduction for home office expenses may only be claimed by an employee on condition that:

- the employee spends more than 50% of his/her working hours, working in their home office or more than 50% of the employees' remuneration consists of commission income;
- the employee has identified a specific part of their residential home to use as a "home office", and uses this part regularly and exclusively for work purposes; and
- the employee's office needs to be furnished with specific equipment or tools that are specific to the employee's trade or profession.

What are the key points employers should include in contracts/policies for home workers?

The employer should warrant that the home office is a safe and healthy environment in which to work; and the employee should indemnify the employer against any risks and/ or hazards that eventuate as a result of the employee working from a home office environment. It is also recommended for the policy to refer to data protection obligations and the requirement to implement and maintain appropriate security safeguards to safeguard personal information that is processed and used in the home office. It is also recommended to provide in the contract and the policy that the employer may in its sole discretion change the work from home arrangement in the future and require the employees to work from work premises.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

The employer should communicate with the employee that the same standards that are required of the employee when the employee works from the workplace will be applicable when the employee is working from home. The employer should also set clear performance objectives and monitor that those performance objectives are being achieved within the required timeframes.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The OHSA places a legal obligation on employers to provide and maintain, as far as reasonably possible, a workplace that is safe and without risk to the health of employees.

Where employees perform their duties from home, the definition of 'workplace' can be extended to the home office and the employer may be liable if it did not take reasonably practicable steps to ensure that the home office was safe and healthy. Furthermore, if an employee suffers an injury at home they may institute a claim against the employer on the basis that it is an occupational injury. The employer should, however, be able to avoid liability by requiring the employee to claim compensation for such injury from the Compensation Fund in accordance with the Compensation for Occupational Injuries and Diseases Act, 1993.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

This would depend on what is agreed with the employee in the employment contract or stated in the work from home policy. If the policy or contract requires the employee to work from their actual home and not from other locations then disciplinary action could be taken for a failure to comply with the policy. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

If employees sustain occupational injuries or diseases in the course of their employment while working at their home/ residence, then the employee may be entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993. The employer must accordingly ensure that it has registered and complied with its obligations under this legislation.

Spain

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

During the State of Alarm, and until 21 September 2020, employers were obliged to implement remote working if technically and reasonably possible with proportionate effort before adopting any other type of measures such as reduction in working hours or suspension of the employment contract. Further, the Guide to Good Practices in Workplaces published in April 2020 recommended that, where possible, employers should promote remote working over a return to the workplace for the 3 months after the termination of the State of Alarm (ie until 21 September 2020) under the principle of minimizing risk. A new law, in force on 13 October 2020, provides a new regime under which remote working can be implemented by agreement between employer and employee – see further information below.

After the state of emergency/COVID-19 restrictions have ended?

Now that it is over 3 months since the end of the State of Alarm, employers may restart orderly and gradual working from the office but they must always ensure they are complying with health and safety obligations and taking account of the principle of minimization of risk.

For certain categories of employee, there may be specific considerations – for example:

- For employees who have an underlying health condition putting them at particular risk from COVID-19, there is duty to make reasonable adjustments and, this is likely to require facilitating home working where possible
- Until 31 January 2021, under the “Plan MECUIDA”, employees with children or relatives to take care of, when there are exceptional circumstances related to the actions necessary to prevent the community transmission of COVID-19, had several additional rights such as the right to adapt their working day and/or reduce it, change shifts, or decide to work from home.
- Also, under section 34.8 of the Workers Statute employees have the right to request changes to the duration/distribution of their working time and the way they provide services to achieve their right to reconcile work and family life, including a request to work from home. Such request (working from home) must be reasonable and proportionate given the requirement to balance the needs of the affected employee and the organizational/productive needs of the company.

A new law, in force from 13 October 2020, provides a new regime under which remote working can be implemented by agreement between employer and employee – see further information below.

Note that if remote work has been implemented as a consequence of the sanitary measures derived from the efforts to contain COVID-19, for the time being ordinary labour legislation continues to apply and therefore the new law will NOT apply except for one point: the employer must (i) provide the resources, equipment and tools required for the employee to work for home and (ii) bear all costs related to the performance of the work – the CBA will define how these expenses should be compensated if they have not been previously compensated.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

Royal Decree 28/2020 on Remote Work, in force from 13 October 2020, provides a framework for employers and employees to agree on remote working arrangements and specifies various formalities to be put in place in relation to remote working arrangements. See further information below.

Employee’s right to insist on working from home

Who does the right apply to?

As explained above, currently, there is no general right to insist on working from home except for the purposes of reconciling work and family life, under Plan MECUIDA or under section 34.8 of the Workers Statute.

The new law on remote work does not provide a right to insist on working from home but provides for remote working to be implemented via employer/employee agreement. The law applies to employees linked to an employer with an employment agreement – so the self-employed and members of the Board or Directors are excluded). To qualify as a remote worker, the employee must work from home/remotely at least 30% of their statutory hours over a three month reference period.

How does the individual exercise their right?

Relevant state-level regulations do not set out any specific requirement which apply when requesting the right to work from home.

In absence of express regulation by the applicable CBA, standard practice is for employees to make their request in writing and including the date of the application, the change to working conditions they are seeking and when they would like the change to come into effect, the rationale behind the request (e.g. specific family needs), etc.

What are the employer's obligations on receiving a request?

Overall, there is no obligation for the employer to accept a request. However, if the request is made on the basis of section 34.8 of the Workers Statute the employer should initiate a negotiation lasting up to 30 days. After this period, the employer should answer the employee request in writing: (i) accepting the request, (ii) making an alternative proposal which could enable the employee to reconcile work and family life, or (iii) denying the right based on objective grounds. The company's decision can be challenged before the labor courts.

Under the new law on remote work, it is mandatory for a written agreement to be put in place in relation to an agreed remote working arrangement. Failure to do so risks civil sanctions. The agreement can be signed together with the initial employment contract or at a later stage, but it must be signed within 3 months. This deadline applies to both new remote working arrangements and to existing arrangements – any existing arrangement had to be formalised in a written agreement by 13 January 2021.

The content of the remote work agreement must include (as a minimum) the following:

- An inventory of the resources, equipment and tools required for the job to be performed;
- A description of the expenses that the employee may incur in working remotely and how compensation payable by the company will be calculated and when it will be paid;
- Working hours and rules on availability;
- The percentage of remote working time and time working at the company premises;
- The remote workplace chosen by the employee;
- Length of advance notice required to exercise rights of reversal (i.e. to change back to office working);
- Means used by the employer to monitor activities. Procedure to be followed if technical difficulties prevent the normal performance of remote working duties;
- Instructions related to data protection/security of information applicable during remote working;
- Length of the agreement.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

As stated above, exceptionally, the Spanish Government specified that remote working should be encouraged, where possible, during the COVID-19 pandemic and until 21 September 2020. Outside the COVID-19 pandemic, an employer cannot require an employee to work from home, even on a temporary basis. It will be necessary to obtain the employee's consent and this is the approach taken in the new law on remote working which provides for remote working to be implemented where agreed upon by employer and employee.

If yes, what process (individual and/or collective) must be followed to implement home working?

Under the new law on remote work, it is mandatory for a written agreement to be put in place in relation to an agreed remote working arrangement. See further information above in relation to what the remote working agreement must cover.

How long can the arrangements be in place for?

Currently and save for the COVID.19 pandemic, there is no set limit on the length of time.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Royal Decree 28/2020 on Remote Work, in force from 13 October 2020. provides a framework for employers and employees to agree on remote working arrangements and specifies various formalities to be put in place in relation to remote working arrangements. See further information above.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

If the contract of employment clearly sets out that the employee may be asked to work from home, the company may be in a better position to implement this. However, few employment contracts will include this option and even where there are contractual provisions allowing flexibility as to place of work, any change must still be expressly accepted by the employee.

As such, an employer wanting to move to permanent home working arrangements is unlikely to be able to require this unless the employee voluntarily accepts. This is the approach taken in the new law on remote working which provides for remote working to be implemented where agreed upon by employer and employee.

What process (individual and/or collective) must be followed to implement home working?

Where the change in workplace will involve a variation to the employment contract and there is no contractual right allowing this, the employer should:

- Seek to obtain employee agreement to permanent home working. Obtaining consent may not be possible in all cases as some employees may not want to work at home or may not be able to accommodate doing so in their home as a long-term measure
- If agreement is not possible but the employer wants to proceed, its option is to unilaterally impose the change and rely on an employee moving to home working to establish their implied agreement to the change

Please see information above in relation to the mandatory requirement for a written agreement (covering specific matters) in relation to remote working arrangements agreed between employer and employee.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No. The new law on remote working expressly sets out that remote work should be voluntary and requires agreement to be reached between the employer and employee.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

Employers have a duty to protect employee health and safety and to provide a safe place and system of work – these obligations continue to apply in respect of individuals working from home. As such, an employer should ensure that the working environment of an employee working at home is assessed for health and safety risks. Note that it is not possible for an employee to undertake their own risk assessment on behalf of and under the supervision of the employer. This should be done by the external health and safety service. Employers should also provide equipment for people to work from home safely.

According to the new law on remote working, special attention should be paid to the right to rest and to disconnect from workplace technology.

What is the position with the provision and cost of equipment and services for home working?

Presently, the provision and cost of equipment and services (such as phone and internet) for home working is a matter for agreement between the employer and employee. The employer must, however, ensure it complies with its health and safety obligations (see above) which may, in some instances, mean that it has to provide or pay for equipment to enable the employee to work at home safely.

Under the new law on remote working, all costs related to the performance of the work should be borne by the employer – this includes all equipment, tools and resources associated with the performance of the employees duties.

Are there any tax allowances which are relevant where individuals are home working?

No.

What are the key points employers should include in contracts/policies for home workers?

Under the new law on remote working, a written remote working agreement must be implemented and this must include (as a minimum) the following:

- An inventory of the resources, equipment and tools required for the job to be performed;
- A description of the expenses that the employee may incur in working remotely and how compensation payable by the company will be calculated and when it will be paid;
- Working hours and rules on availability;
- The percentage of remote working time and time working at the company premises;
- The remote workplace chosen by the employee;
- Length of advance notice required to exercise rights of reversal (i.e. to change back to office working);
- Means used by the employer to monitor activities.
- Procedure to be followed if technical difficulties prevent the normal performance of remote working duties;
- Instructions related to data protection/security of information applicable during remote working;
- Length of the agreement.

When there is a CBA regulating remote working in detail the employer and employee must abide by its terms.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training.

The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary.

The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers.

Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance. According to the current wording of the new regulations, a tailored recording hour system should be implemented.

The agreement may include the right of the employee to come into the workplace and when/how often.

The new law on remote work sets out that the employee's right to privacy must be preserved and that the company will not be able to oblige the employee to install monitoring tools in his/her personal computer systems. Collective bargaining agreements or, failing this, company policies will have to set out to what extent employees will be entitled to use work computer systems for personal purposes.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Compliance with the obligation to record working hours
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for contractual agreement between the employer and employee.

Please provide any other relevant information about home working in your jurisdiction.

For further information on the new law on remote working in Spain, please click [here](#).

Sweden

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The Public Health Agency of Sweden's guidance is that individuals should continue to work from home where they are able to do so.

Employees have in general no right to refuse work if they, in their own opinion, feel unsafe due to COVID-19. If, however, an employee's fear of the Coronavirus is connected to a specific disability, disease or other circumstance (e.g. pregnancy) which will make the employee more vulnerable to the virus, the employer should consider taking precautionary measures in each such specific case. Another situation in which the employer may consider taking precautionary measures to ensure safe work environment could be if an objectively justified risk of infection at the workplace exists, e.g. due to various confirmed infections at the workplace.

After the state of emergency/COVID-19 restrictions have ended?

Please see the answer above, there is no right to insist on home working.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

Not applicable.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on home working.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

As mentioned above, there is no right to insisting on home working. However, in light of the recommendations given by the Public Health Agency, employers who have the opportunity of letting the employees work from home should consider doing so.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

If the employment contract allows the employer to request that the employee shall work from home, or if this otherwise is agreed upon between the employee and the employer, the employee may be sent home to work to ensure a safe work environment. Normal salary must be paid out during this period.

If no such agreement on working from home (as mentioned above) has been agreed upon, but it is possible for the employee to work at home, the employer most likely has a right to request the employee to work from home, especially given the current situation with COVID-19.

If no agreement on working from home has been agreed upon and the nature of the work makes it impossible to work from home, the employer would, most likely, still have a right to send an employee home (to ensure safe work environment). In this case the employee shall be put on garden leave with the right to normal salary.

What process (individual and/or collective) must be followed to implement home working?

There is no specific process required to implement temporary home working although it would be good practice to agree arrangements with the employee including the duration, the position as regards work equipment, keeping in touch arrangements, and any health and safety and business protection measures to be implemented.

If a collective bargaining agreement applies the company might be under an obligation to consult the unions prior to implementing permanent home working, or at least inform the trade union in question. If the company is not bound by a collective bargaining agreement, the company would still be required to inform trade unions of which the affected employees are members.

How long can the arrangements be in place for?

There is no set limit on the length of time for which an employer can require an employee to work at home. However, the longer the arrangement continues against the employee's wishes, the greater the risk of the requirement not being a reasonable instruction within the management powers of the employer.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home**Can an employer require an employee to work from home on a permanent basis?**

The employment agreement must allow the employer to require permanent home working in order to implement such an arrangement. Otherwise, the employer must enter into a new agreement with the employee, which allows the employer to require permanent home working.

Where employees refuse to agree to such arrangement, the company would need to terminate the employment in order to re-employ the employees on new terms and conditions. In a redundancy process, the company is required to request and perform consultation with all relevant trade unions, i.e. the trade unions that the affected employees are members of if no CBA applies or the Unions which are party to the CBA where there is one.

What process (individual and/or collective) must be followed to implement home working?

If a collective bargaining agreement applies the company would be under an obligation to consult the unions prior to implementing permanent home working.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working**What are the key health and safety obligations that apply to the employer and employee?**

The employer has responsibility for the working environment, regardless of whether the employee himself wants to work from home/remotely or if it is done at the employer's initiative.

The psychosocial work environment must also be taken into account. Therefore, the employer should monitor the well-being of employees working from home.

Communication about the any shortcomings in the working environment is particularly important. How far the employer needs to go when it comes to adaptation and what measures need to be taken when an employee works from home or works remotely from another place, depends on the nature of the work and specific risks involved.

What is the position with the provision and cost of equipment and services for home working?

The provision and cost of equipment and services (such as phone and internet) for home working is a matter for agreement between the employer and employee. However, the employer has an obligation to provide work equipment in order to ensure a good work environment. This could entail different equipment depending on the type of work, for example a computer, desk and chair and lighting.

Are there any tax allowances which are relevant where individuals are home working?

No specific tax allowances have been introduced in Sweden for situations where individuals are home working.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home
- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend work premises when requested
- A right for the employer to visit the employee at home at agreed times for agreed purposes
- Provisions for termination of the home working arrangement

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

- Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training

- The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary
- The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers
- Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance
- The employer should ensure it can insist an employee comes into the workplace as and when required and may wish to reserve the right to visit the employee at home at agreed times for work-related purposes

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

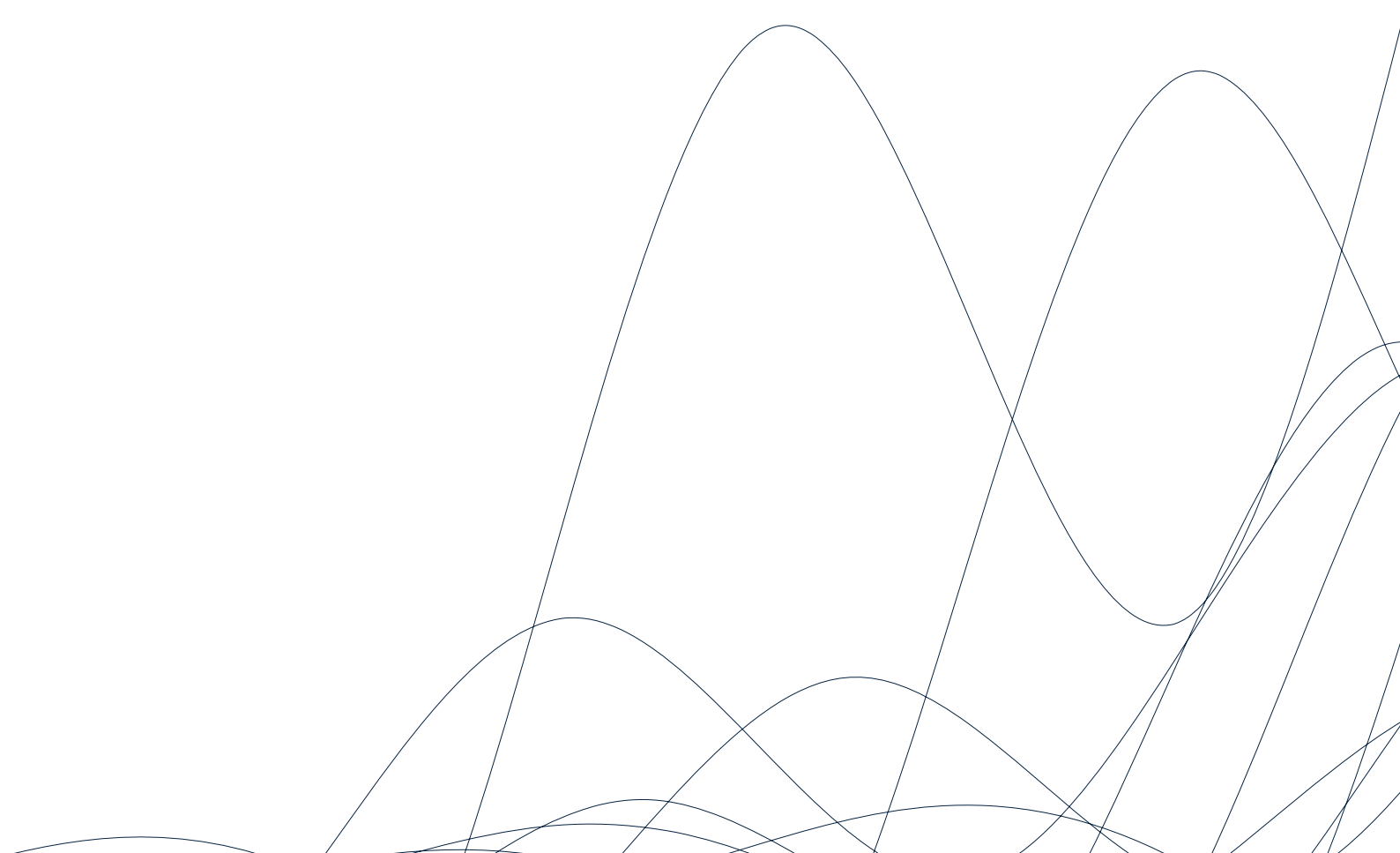
Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for contractual agreement between the employer and employee. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Guidance for employers on home working is available from the Swedish Work Environment Agency:

<https://www.av.se/halsa-och-sakerhet/sjukdomar-smitta-och-mikrobiologiska-risker/smittrisker-i-arbetsmiljon/coronaviruset/systematiskt-arbetsmiljoarbete-och-riskbedomning/>

<https://www.av.se/arbetsmiljoarbete-och-inspektioner/arbetsgivarens-ansvar-for-arbetsmiljon/>



Ukraine

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

No. Employees may not insist on working from home during emergency/COVID-19 restrictions.

A work from home regime may be introduced by an agreement between an employee and an employer.

The current recommendations of the Cabinet of Ministers of Ukraine are that the companies should use work from home regime during quarantine.

After the state of emergency/COVID-19 restrictions have ended?

There is no right to insist on home working.

A work from home regime may be introduced by an agreement between an employee and an employer.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

There is no proposal to introduce into legislation a right to insist on home working for employees.

Employers may introduce an employee right to insist on working from home into their internal documents (e.g. internal labour regulations, collective bargaining agreement).

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on home working.

How does the individual exercise their right?

There is no right to insist on home working.

However, a work from home regime may be introduced by an agreement between an employee and an employer. In such a case, an employee may file an application with a request with the employer.

What are the employer's obligations on receiving a request?

An employer may agree or refuse to introduce a work from home regime at its own discretion. There is no legal requirement to substantiate the employer's decision. However, as we mentioned previously, the Cabinet of Ministers of Ukraine recommended the companies to use a working from home regime during quarantine.

If an employer agrees to introduce a work from home regime, a corresponding order should be issued by the employer. During the quarantine period, the work from home regime may be formalized by an order.

Outside quarantine, in addition to an order, an employment agreement in written form should be concluded with an employee working from home. If an employment agreement in written form has already been concluded with an employee, an additional agreement introducing provisions regarding work from home should be concluded.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

Yes, an employer can require an employee to work from home on a temporary basis. However, there are certain peculiarities in this process.

While the state of emergency/COVID-19 restrictions continue:

- The legislation is unclear on the possibility of unilaterally requiring an employee to work from home without notice
- On 17 March 2020, the Parliament of Ukraine adopted a law (the COVID-19 Law), which allows employers for the period of quarantine or restrictive measures related to the spread of COVID-19 to instruct employees to work from home. This provision is of general nature and the COVID-19 Law does not clarify how it should be applied. The Labour Code of Ukraine allows the introduction of work from home during quarantine based on an order
- Common practice is for an employer to issue an order on the introduction of a work from home regime for all employees, except for those who cannot work from home (e.g. need equipment located at office). In order to avoid potential issues, a working from home regime is better introduced at the initiative of the employees or with their consent

- According to the position of the State Service on Labour, if an employer unilaterally requires an employee to work from home, the procedure for changing essential working conditions should be followed (i.e. an order on changes in production and labour should be issued). A change of essential working conditions is subject to two-month notice period.

After the state of emergency/COVID-19 restrictions have ended:

- An employer can require an employee to work from home on a temporary basis
- As a general rule, a change of place of work (i.e. from office work to working from home) would be considered as change of an essential working condition of employment. This change is subject to two-month notice period and where there is a change in essential working conditions a special procedure should be followed

What process (individual and/or collective) must be followed to implement home working?

The process slightly differs during quarantine and after its end:

While the state of emergency/COVID-19 restrictions continue:

- An employer should issue an order introducing the work from home regime. This order is usually issued based on an application from the employees or with the employees' consent
- According to the position of the State Service on Labour, if an employer unilaterally requires an employee to work from home, the procedure for change of essential working conditions shall be followed. Please see below our comments on the procedure

After the state of emergency/COVID-19 restrictions have ended:

The procedure for change of the essential working conditions should be followed as described below:

- An order on changes in production and labour should be issued
- An employee should be notified of changes of essential working conditions two-month prior its introduction
- An employee should provide agreement or refusal to continue his/her work under new conditions
- If an employee refuses to work under new conditions, the employee may be dismissed

- If an employee agrees to work under new conditions, the employer should issue an order introducing the work from home regime. Moreover, an employment agreement in written form should be concluded with the employees working from home. If there is an employment agreement in written form already in place, an additional agreement introducing conditions for work from home should be concluded

How long can the arrangements be in place for?

While the state of emergency/COVID-19 restrictions continue:

- Under the COVID-19 Law, employers are allowed to instruct the employees to work from home for the period of quarantine or restrictive measures related to the spread of COVID-19. During quarantine an employer may issue an order on the introduction of a working from home regime. The order is usually issued based on an application from the employees or with the employees' consent. Such set-up is possible only during quarantine
- According to the position of the State Service on Labour, if an employer unilaterally requires an employee to work from home, the procedure for change of essential working conditions should be followed. Under this procedure, there is no set limit on the length of time for which an employer can require an employee to work at home

After the state of emergency/COVID-19 restrictions have ended:

- There is no set limit on the length of time for which an employer can require an employee to work at home

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

An employer can require an employee to work from home on a permanent basis.

As a general rule, a change of place of work (i.e. from office work to work from home) will be considered as change of essential working condition of employment. This is subject to two-month notice period. For the purpose of a change of essential working conditions a special procedure should be followed.

What process (individual and/or collective) must be followed to implement home working?

The procedure for a change in essential working conditions should be followed as described below:

- An order on changes in production and labour should be issued
- An employee should be notified of changes of essential working conditions two-months prior its introduction
- An employee should provide agreement or refusal to continue his/her work under new conditions
- If an employee refuses to work under new conditions, they employee may be dismissed
- If an employee agrees to work under new conditions, an employer should issue an order for the introduction of the working from home regime. Moreover, an employment agreement in written form should be concluded with the employees working from home. If a written employment agreement is already in place, an additional agreement introducing conditions for working from home should be concluded

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

As a general rule, employers are obliged to provide safe working conditions for employees. The laws do not contain specific health and safety obligations for employers where employees are working from home.

According to the guidance of State Service on Labour, health and safety obligations in respect of work from home should be regulated by an agreement between employer and employee.

What is the position with the provision and cost of equipment and services for home working?

This issue is not directly prescribed by law. As a general rule, employers are obliged to provide employees with the necessary means to work.

According to the guidance of State Service on Labour, this issue should be regulated by agreement between employer and employee

Are there any tax allowances which are relevant where individuals are home working?

There are no statutory tax allowances for those working from home. Compensation for expenses like light, heat, telephone or internet usage may be provided at the employer's discretion. If the employer pays an allowance towards expenses incurred, such allowances should not be generally taxed provided that an employee provides documents confirming the connection between the expenses the employee's work function. Otherwise, the allowances will be subject to taxation on general terms. Employees working from home are not eligible for statutory tax reliefs in connection with any compensation received.

What are the key points employers should include in contracts/policies for home workers?

Please see below the key points, which should be regulated by an order introducing a working from home regime (during quarantine) or an employment agreement for home workers (after quarantine) according to the law:

- Whether employees manage their working hours at their discretion and whether internal labour rules apply to employees working from home
- The employee's place of work
- Remuneration details, if they differ from any previously agreed

In addition, according to the guidance of State Service on Labour, the following issues should be regulated by an employment agreement with home worker:

- Health and safety issues
- Details of monitoring of home working employees
- Compensation for expenses related to working at home (e.g. internet, electricity) etc.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

This issue is not regulated by law. As mentioned previously, it should be regulated by either an order introducing a working from home regime (during quarantine) or an employment agreement (after quarantine).

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Health and safety issues
- Disclosure of confidential information
- Breach of data protection
- Protecting the security of IT systems
- Issues related to monitoring performance of employees

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

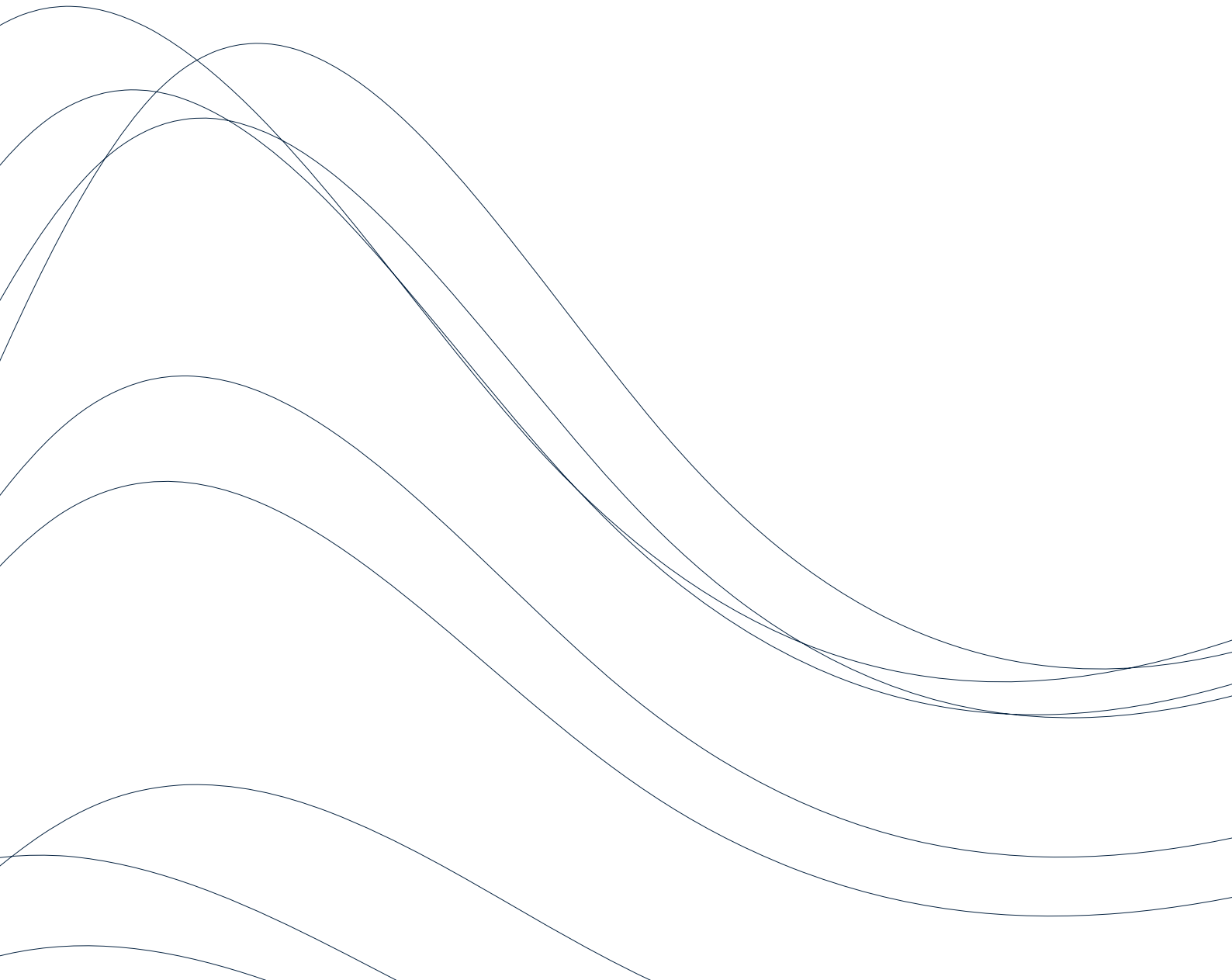
According to legislation, work from home should be performed at the employee's place of residence or another place of employee's choice, including with the help of information and communication technologies, but outside the employer's premises. For business risks related to an employee working in a different country, see the [Introduction](#).

This may be regulated in more detail by an agreement between an employer and an employee.

Other relevant information about home working.

There is a guidance of State Labour Service on introducing working from home:

[Remote work and flexible schedule. Organize work in a new way](#) (in Ukrainian).



UAE

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

As per guidance from the UAE authorities, 100% of private sector employees may now return to work.

Provided that employers are able to adhere to rules regarding social distancing in, and regular sanitisation of, the office, they may require employees to attend the office.

For certain categories of employee, the UAE authorities have declared that they must be given priority regarding working from home, for example:

- Employees who, for health reasons, may be more at risk if they were to contract COVID-19
- Employees aged over 60
- Pregnant employees

After the state of emergency/COVID-19 restrictions have ended?

Employees do not have a right to insist on home working.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

No.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on home working.

How does the individual exercise their right?

Not applicable.

What are the employer's obligations on receiving a request?

Not applicable.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

While COVID-19 restrictions continue:

While COVID-19 measures are in place, employers may require employees to work from home to maintain the health and safety of the workforce. Onshore employers must note safety obligations as outlined below.

After COVID-19 restrictions have ended:

As per the Labour Law and the DIFC Employment Regulations, an employer must provide a safe place of work for an employee. On this basis, an employer can require an employee to work from home on a temporary basis, however obligations regarding health and safety should be taken into consideration.

What process (individual and/or collective) must be followed to implement home working?

There is no prescribed process. From a best practice perspective, we recommend that employees are given written notice that they will be required to work from home. Once COVID-19 restrictions have eased, where home working is to be implemented for a significant period of time, we suggest obtaining employee consent.

How long can the arrangements be in place for?

There is no limit, however (following the lifting of COVID-19 restrictions) an employer should consider its obligation to provide a safe workplace, as above, and the risk that an employee could raise a dispute if the arrangement is in place for a significant length of time and runs contrary to the terms of the employment contract.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

If the contract of employment allows the employer to require permanent home working, it may be possible to implement this arrangement easily.

In the absence of such wording, permanent home working should be agreed to by the employee as a written addendum to the contract. This is to avoid an employee filing a complaint of constructive dismissal on the basis that the employer has unilaterally altered the terms of their employment contract.

What process (individual and/or collective) must be followed to implement home working?

Where the change in workplace will involve a variation to the employment contract and there is no contractual right allowing this, the employer should seek to obtain employee agreement to permanent home working, by way of an addendum to the contract. Obtaining consent may not be possible in all cases as some employees may not want to work at home or may not be able to accommodate doing so in their home as a long-term measure.

If agreement is not possible but the employer wants to proceed, its options are:

- To unilaterally impose the change and rely on an employee moving to home working to establish their implied agreement to the change (there is a concept of acquiescence under the UAE Civil Code i.e. if a change is imposed then after a period of time, the employee could arguably be deemed to have accepted the change if they did not dispute it or complain. However, it is unclear in practice whether this principle would apply to employment contracts)
- To terminate the existing employment contract and offer re-employment under a contract which specifies home working as the place/method of work. Where the employer uses this approach of dismissal/re-engagement, it will need to consider that the termination is likely to be arbitrary under the Labour Law and that the employee may be entitled to compensation as a result. There is no concept of unfair dismissal in the DIFC, save for where the employee alleges discrimination

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

Employers have a duty to protect employee health and safety and to provide a safe place and system of work – these obligations continue to apply in respect of individuals working from home. As such, an employer may wish to ensure that the working environment of an employee working at home is assessed for health and safety risks. Employers should also provide equipment for people to work from home safely.

Please note that DIFC employers are not under an obligation to provide a safe workplace where employees are working from home while COVID-19 restrictions are in place.

What is the position with the provision and cost of equipment and services for home working?

The provision and cost of equipment and services (such as phone and internet) for home working is a matter for agreement between the employer and employee. The employer must, however, ensure it complies with its health and safety obligations (see above) which may, in some instances, mean that it has to provide or pay for equipment to enable the employee to work at home safely.

Are there any tax allowances which are relevant where individuals are home working?

Not applicable.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home
- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend work premises when requested
- A right for the employer to visit the employee at home at agreed times for agreed purposes
- Provisions for termination of the home working arrangement

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

From a best practice perspective:

- Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training
- The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary
- The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers
- Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective
- Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance

The employer should ensure it can insist an employee comes into the workplace as and when required and may wish to reserve the right to visit the employee at home at agreed times for work-related purposes.

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

This is a matter to be contractually agreed between the employer and employee. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Not applicable.



United Kingdom

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

The current UK Government COVID-19 guidance is that individuals should work from home where they are able to do so, but that all workers who cannot work from home should travel to work if their workplace is open.

Employers should adhere to this guidance as requiring individuals who are able to work from home to attend the workplace could risk allegations of, for example, a breach of health and safety duties or of the duty of trust and confidence.

For certain categories of employee, there may be specific considerations – for example:

- For employees who have an underlying health condition which qualifies as a disability, there is a duty to make reasonable adjustments and, during the COVID-19 pandemic, this is likely to require facilitating home working where possible, even if this means temporarily moving an employee to another role
- For pregnant woman, refusing to allow home working may constitute unlawful sex discrimination. There are also regulations which provide for pregnant women to be suspended on full pay where their work could involve health and safety risks
- For employees whose children are at home and who have no childcare, insisting on attendance at work could risk allegations of a breach of trust and confidence or, in certain cases, of indirect sex discrimination

There is a general right for certain employees to request flexible working arrangements which pre-dates COVID-19 – see below.

After the state of emergency/COVID-19 restrictions have ended?

There is no right to insist on home working. However, all employees with 26 weeks' service are entitled to request flexible working arrangements which can include working at home, as well as changes to the times or hours of work. See further below.

If an employee cannot insist on working from home, are there any proposals to introduce this right?

Before it was elected in 2019, the Conservative Party manifesto committed to encouraging flexible working and indicated that in government it would "consult on making flexible working the default unless employers have good reason not to". According to

press reports during the COVID-19 crisis, government officials are considering whether to introduce a legal right to work from home. However, this has not been officially announced.

Employee's right to insist on working from home

Who does the right apply to?

There is no right to insist on home working. However, the right to request flexible working (which can be used to ask to work at home) applies to all employees with 26 weeks' service and does not have to relate to the care of a child or a dependant.

How does the individual exercise their right?

The relevant regulations require that the employee's request must be in writing and must include:

- The date of their application, the change to working conditions they are seeking and when they would like the change to come into effect
- What effect, if any, they think the requested change would have on the employer and how, in their opinion, any such effect might be dealt with
- A statement that theirs is a statutory request and if and when they have made a previous application for flexible working

What are the employer's obligations on receiving a request?

The employer must consider any request for flexible working reasonably and must make and notify the employee of a decision within three months of receiving the request. A [Code of Practice](#) exists to assist employers with flexible working requests.

The employer can refuse a request on the basis of one or more of eight statutory prescribed grounds:

- The burden of additional costs
- An inability to reorganise work amongst existing staff
- An inability to recruit additional staff
- A detrimental impact on quality
- A detrimental impact on performance
- A detrimental effect on ability to meet customer demand
- Insufficient work for the periods the employee proposes to work
- A planned structural change to the business

Any flexible working arrangements which are agreed between the employer and employee are a permanent change to employee's terms and conditions, unless otherwise agreed.

Where a flexible working request is rejected, there is no requirement on the employer to specify on which prescribed grounds its refusal is based nor is there an obligation to provide a right of appeal. Nonetheless, the Code of Practice recommends both these steps as good practice.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

An employer can require an employee to work from home on a temporary basis provided that the instruction to do so remains a "reasonable" instruction at all times to avoid breaching the duty of trust and confidence.

During the COVID-19 pandemic the Government has directed people to work at home wherever possible and while this remains the case, requiring home working will be a reasonable management instruction.

Outside the COVID-19 pandemic, whether or not an instruction to work from home is reasonable will depend on the particular circumstances including the nature of the role, the duration of the arrangement and the reasons why home working is being used.

What process (individual and/or collective) must be followed to implement home working?

There is no specific process required to implement temporary home working although it would be good practice to agree arrangements with the employee including the duration, the position as regards work equipment, keeping in touch arrangements, and any health and safety and business protection measures to be implemented.

How long can the arrangements be in place for?

There is no set limit on the length of time for which an employer can require an employee to work at home. However, the longer the arrangement continues against the employee's wishes, the greater the risk of the requirement not being a reasonable instruction and of the duty of trust and confidence being breached by the employer.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

If the contract of employment allows the employer to require permanent home working, it may be possible to implement this arrangement easily. However, few employment contracts will include this option and even where there are contractual provisions allowing flexibility as to place of work, any change must still be implemented reasonably.

As such, an employer wanting to move to permanent home working arrangements is unlikely to be able to require this and should expect to go through a contractual change process to alter the place of work from the employer's premises to the employee's home.

What process (individual and/or collective) must be followed to implement home working?

Where the change in workplace will involve a variation to the employment contract and there is no contractual right allowing this, the employer should:

- Seek to obtain employee agreement to permanent home working. Obtaining consent may not be possible in all cases as some employees may not want to work at home or may not be able to accommodate doing so in their home as a long-term measure
- If agreement is not possible but the employer wants to proceed, its options are –
 - To unilaterally impose the change and rely on an employee moving to home working to establish their implied agreement to the change
 - To terminate the existing employment contract and offer re-employment under a contract which specifies home working as the place/method of work. Where the employer uses this approach of dismissal/re-engagement, collective consultation with trade union or employee representatives may be required depending on the numbers of employees affected

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

No.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

Employers have a duty to protect employee health and safety and to provide a safe place and system of work – these obligations continue to apply in respect of individuals working from home. As such, an employer should ensure that the working environment of an employee working at home is assessed for health and safety risks. Note that it is possible for an employee to undertake their own risk assessment on behalf of and under the supervision of the employer. Employers should also provide equipment for people to work from home safely.

Health and Safety Executive [workplace guidance](#) suggests that employers should:

- Monitor the wellbeing of people who are working from home
- Help them stay connected to the rest of the workforce
- Keep in touch regarding their working arrangements including their welfare, mental and physical health and personal security

What is the position with the provision and cost of equipment and services for home working?

The provision and cost of equipment and services (such as phone and internet) for home working is a matter for agreement between the employer and employee. The employer must, however, ensure it complies with its health and safety obligations (see above) which may, in some instances, mean that it has to provide or pay for equipment to enable the employee to work at home safely.

Are there any tax allowances which are relevant where individuals are home working?

Where an employee is required to work at home, an employer can pay them up to GBP6 per week (GBP26 per month) to cover the employee's additional costs. In addition, an employee may be able to claim tax relief for certain bills such as business telephone calls or the extra costs of gas and electricity for their home work area. These provisions do not apply where an employee works at home voluntarily – only where they are required to do so.

What are the key points employers should include in contracts/policies for home workers?

Matters to address in the employment contract of a home worker or in an employer's home working policy include:

- An obligation on the employee to adhere to working time limits including taking adequate rest breaks/rest periods
- Agreement about provision/cost of equipment/services and care of employer's equipment
- Agreement about security of and access to work equipment at home
- Obligations on the employee in respect of confidential information
- An obligation on the employee to attend work premises when requested
- A right for the employer to visit the employee at home at agreed times for agreed purposes
- Agreement in respect of insurance obligations
- Provisions for termination of the home working arrangement

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

- Homeworkers should be involved in the business to the same extent as office-based workers so it is essential that line managers continue to involve homeworkers in, for example, team meetings, performance appraisals and staff training
- The employer should ensure appropriate processes and tools are in place to ensure homeworkers have access to line manager support and the ability to work closely with colleagues where necessary
- The workload and performance standards of a home worker should be equivalent to those of comparable office-based workers
- Monitoring and checking facilities should not be used without the homeworker's knowledge. The homeworker should be informed of the purpose of any monitoring facility, and the measures taken should be proportionate to meet their objective
- Homeworkers may feel under pressure to demonstrate that they are being productive while working from home, which could lead to them working longer hours than office-based staff. Employers should emphasise to homeworkers the importance of taking breaks and of maintaining a good work-life balance

- The employer should ensure it can insist an employee comes into the workplace as and when required and may wish to reserve the right to visit the employee at home at agreed times for work-related purposes

What are the key risks with home working in your jurisdiction that employers should be aware of?

The key risks related to home working for employers are:

- Ensuring compliance with health and safety duties owed to employees
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Protecting the security of IT systems

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

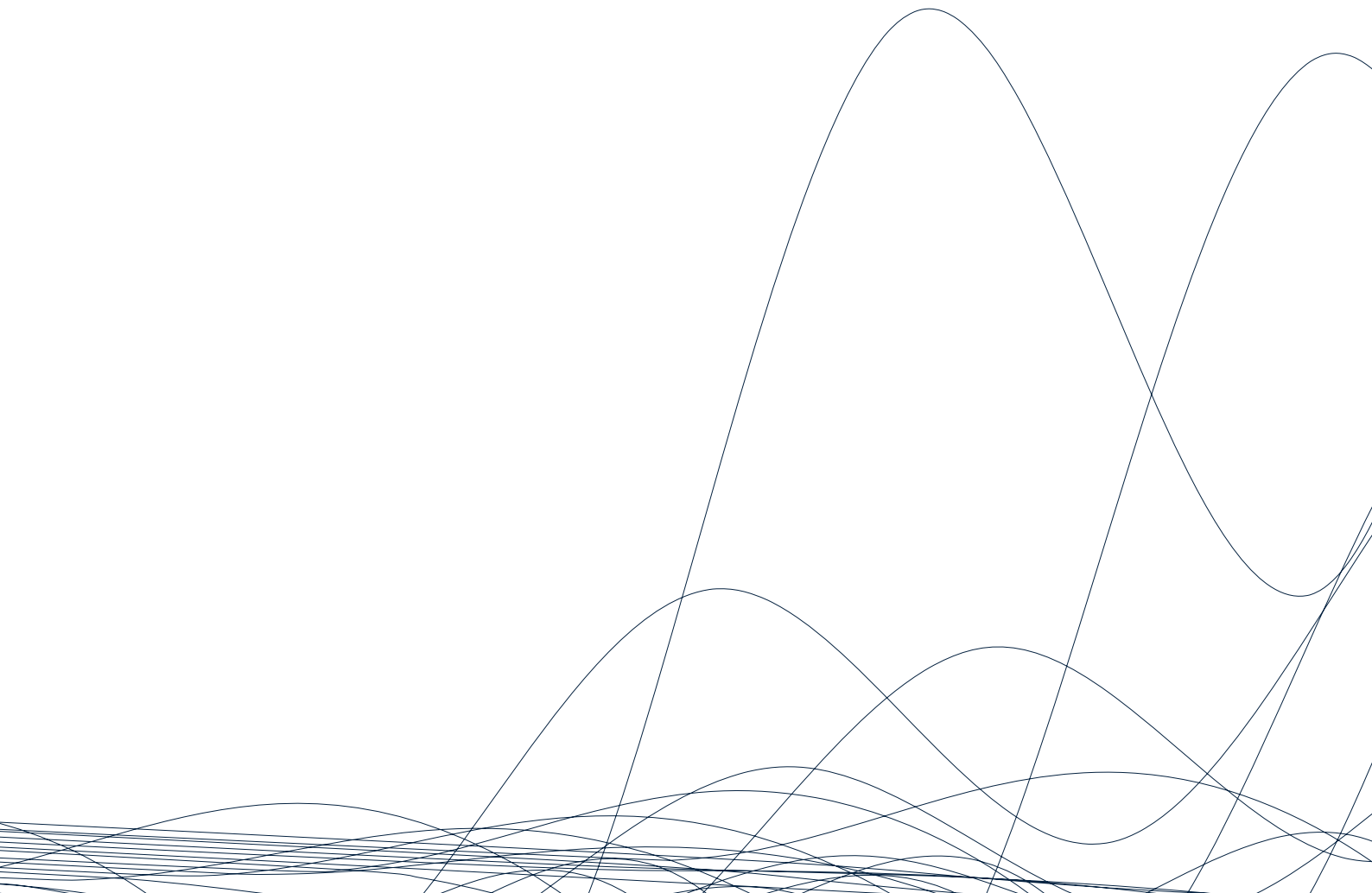
Whether an employee is obliged to work only from their place of residence or is permitted greater flexibility as to where they are permitted to work is a matter for contractual agreement between the employer and employee. For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

Guidance for employers on home working is available from ACAS.

[Home working – a guide for employers and employees](#)

[Working from home because of the COVID-19 pandemic](#)



United States

Can an employee insist on working from home?

While the state of emergency/COVID-19 restrictions continue

While employees in the US generally do not have the right to insist on working from home, remote working may be appropriate based on the circumstances. Flexible workplace policies should also be administered in a non-discriminatory manner.

In addressing employee requests, employers are urged to:

- Review federal, state and local reopening guidance which may encourage home working. For example, US Centers for Disease Control (CDC) guidance provides that employers should support and encourage options to telework, if available, to protect employees at higher risk for severe illness.
- Review state and local orders related to reopening, which may address remote work (e.g., all businesses must conduct their operations remotely “in whole or in part” when telework is possible).

Consider whether a statutory leave of absence provision applies, including the federal Families First Coronavirus Response Act (FFCRA) or other federal, state or local laws that may require or permit leave or reasonable accommodation rights in response to the pandemic or based on COVID-19-related circumstances, such as the Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA). Other existing state and/or local laws may require job-protected unpaid leave related to school and/or family-related obligations.

- For example, under the ADA, a request related to a potential disability will require the employer to engage in the interactive process to determine whether the employee has a qualifying disability, whether working from home would be an effective reasonable accommodation that would permit the employee to perform the essential functions of the job, and whether the accommodation would cause an undue hardship on the employer. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom they are associated (e.g., telework request to protect a family member with a disability from potential COVID-19 exposure).

After the state of emergency/COVID-19 restrictions have ended?

As outlined above, employees in the US generally do not have the right to work at home; however, working from home may be appropriate based on the circumstances (including as an accommodation).

If an employee cannot insist on working from home, are there any proposals to introduce this right?

Not applicable.

Employee’s right to insist on working from home

Who does the right apply to?

Employees generally do not have the right to insist on working from home.

How does the individual exercise their right?

Employees can request to work from home as an accommodation for a disability.

What are the employer’s obligations on receiving a request?

Under the ADA, a request related to a potential disability will require the employer to engage in the interactive process to determine whether the employee has a qualifying disability, whether working from home would be an effective reasonable accommodation that would permit the employee to perform the essential functions of the job, and whether the accommodation would cause an undue hardship on the employer. The employer may also ask for reasonable documentation about the employee’s disability and functional limitations if not obvious or already known. The employer is not required to provide the specific accommodation that the individual requests and may instead offer alternate accommodations that would be effective.

Temporary requirement to work at home

Can an employer require an employee to work from home on a temporary basis?

The employer can generally require an employee to work at home absent obligations under a contractual agreement or collective bargaining agreement.

Federal agency guidance issued during the pandemic confirms the employer's ability to require telework. For example, US Department of Labor guidance provides that "an employer may encourage or require employees to telework as an infection-control or prevention strategy."

What process (individual and/or collective) must be followed to implement home working?

Absent a contractual obligation or collective bargaining agreement, there is no prescribed process; however, employers are urged to consider how they will implement and communicate plans to workers and mitigate risks related to home working (e.g., wage and hour, health and safety, cybersecurity).

Employers may also be able to change an employee's hourly rate or salary depending on the circumstances. See [WHD COVID-19 and the Fair Labor Standards Act Questions and Answers](#).

How long can the arrangements be in place for?

There generally are no limitations on home working arrangements (subject to any contractual or collective bargaining obligations); however, employers are urged to consider risks (e.g., tax, corporate, employment, immigration) related to any employee who may be working in a location different from their original working jurisdiction, such as from a home in another state or country.

If an employer cannot insist on an employee working from home, are there any proposals to introduce this right?

Not applicable.

Permanent requirement to work at home

Can an employer require an employee to work from home on a permanent basis?

There generally are no limitations on home working arrangements (subject to any contractual or collective bargaining obligations).

What process (individual and/or collective) must be followed to implement home working?

Absent a contractual obligation or collective bargaining agreement, there is no prescribed process; however, employers are urged to consider how they will implement a permanent remote working model and mitigate related risks.

If an employer cannot require employees to work from home on a permanent basis, are there any proposals to introduce this right?

Not applicable.

Arrangements for home working

What are the key health and safety obligations that apply to the employer and employee?

Under the federal Occupational Safety and Health Act, employers have a general duty to provide a work environment that is "free from recognized hazards that are causing or likely to cause death or serious physical harm." These obligations apply to work-from-home arrangements. Employers also are urged to be mindful of any federal, state and local reporting requirements (e.g., work-related injuries and illnesses).

What is the position with the provision and cost of equipment and services for home working?

An employer may be required in certain circumstances to provide equipment or reimburse certain costs to enable an employee to work from home. Obligations can vary based on state and local laws.

Are there any tax allowances which are relevant where individuals are home working?

Tax allowances, such as deductions for expenses related to home working, may be applicable depending on the circumstances. For specific inquiries or questions regarding tax issues, please contact us or your DLA Piper relationship partner.

What are the key points employers should include in contracts/policies for home workers?

This is dependent on geographical location, and obligations can vary based on state and local laws. Generally, employers are encouraged to consider issues such as:

- Eligibility and process for home working
- Wage and hour issues (e.g., working hours, timekeeping practices, rest breaks/rest periods)
- Performance requirements and expectations of employees

- Health and safety requirements
- Provision/cost of equipment/services and expense reimbursement
- Security of and access to work equipment and business information
- Obligation of the employee to attend work premises when requested
- A right for the employer to visit the employee at home at agreed times for agreed purposes
- Insurance obligations
- Provisions for modification or termination of the home working arrangement, for example an agreement that the policy is being introduced in response to the extraordinary circumstances presented by the current pandemic and that the employer reserves the right to re-evaluate and change or terminate the policy at any time.

As with other written policies, employers are urged to consider whether to obtain employee acknowledgement and consent. This may be challenging while people are working from home and not physically able to sign and return a document. Employers should be mindful of federal and state law requirements and measures concerning the use of electronic signatures. For specific inquiries or questions regarding these issues, please contact us or your DLA Piper relationship partner.

What are the key points for employers to consider in communicating with and monitoring performance of home working employees?

This is dependent on geographical location, and obligations can vary based on state and local laws. Generally, employers are encouraged to consider issues such as whether any employee privacy rights may be implicated, whether and how to obtain employee acknowledgement and consent, and how to manage employee expectations concerning the measures being taken and why (particularly if employers are introducing keystroke or other tracking software). Employers may also want to consider additional ways of addressing productivity issues, such as setting daily or weekly goals.

What are the key risks with home working in your jurisdiction that employers should be aware of?

This is dependent on geographical location, and obligations can vary based on state and local laws. Generally, key risks include:

- Compliance with wage and hour laws, such as claims alleging off-the-clock work and related overtime and meal and rest break claims.
- Protecting against disclosure of confidential business information and the increased risk of data protection breaches
- Implementation and enforcement of home working policies in a non-discriminatory manner.

For specific inquiries or questions regarding these issues, please contact us or your DLA Piper relationship partner.

Is a home worker obliged to work from their actual home? Could the employer prohibit them from working from other locations e.g. overseas?

The employer generally can prescribe where employees are permitted to work. Employers may require employees to work from their primary residence in their original working jurisdiction or may permit greater flexibility (however, employers should be mindful of risks related to employees working in different localities, such as another state or country). For business risks related to an employee working in a different country, see the [Introduction](#).

Other relevant information about home working.

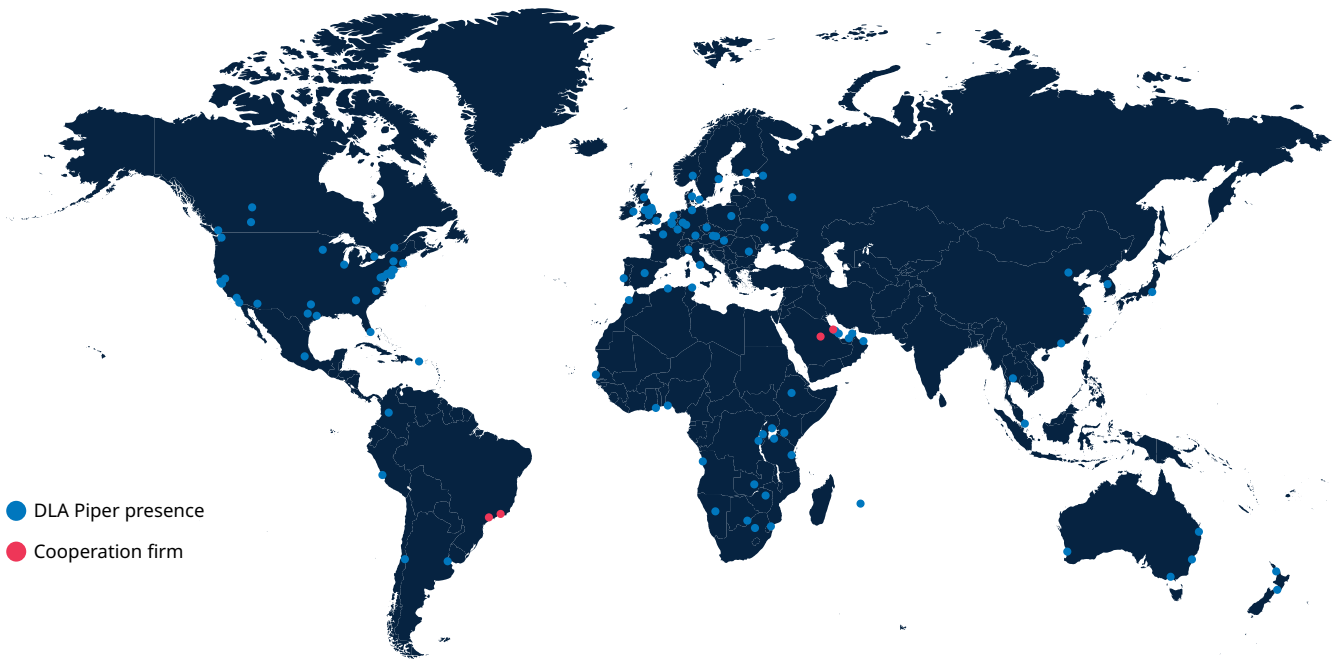
[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)

[COVID-19 and the Fair Labor Standards Act Questions and Answers](#)

About the employment group

DLA Piper's Employment group is a market-leading global practice with a strong reputation for delivering solutions based on advice and supporting clients in the day-to-day management of their people legal issues and risk. It includes over 400 specialist lawyers globally, on a strategic and operational level, on both contentious and non-contentious matters across the public and private sectors. The group advises on all areas of employment,

including trade union and employee relations, discrimination and diversity management, global mobility and data privacy. We also advise on the legal, tax and regulatory aspects of remuneration, employee share incentives and other benefits, and we assist clients generally in designing and delivering their reward strategies.



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