

STRATEGY TO SORT OUT REMOTE WORKING ON BOTH SIDES



The pandemic has certainly seen a seismic shift in work practices. And now that home working is the norm for thousands of employees across Ireland, with remote work hubs also set to become increasingly popular, it looks like both employers and employees have many issues to iron out before things go smoothly. Report by Deirdre O'Flynn.

New legislation is on the cards this year to provide employees with the right to request to work remotely.

The Department of Enterprise, Trade and Employment also intends to introduce a legally admissible code of practice on the right to disconnect from work – covering phone calls, emails, and switch-off time.

These announcements were made in January following the publication of Ireland's first National Remote Work Strategy to make remote working a permanent option for life after the pandemic.

The Department's 'Making Remote Work – National Remote Working Strategy' has outlined the vision for the future of remote working in Ireland. It sets out plans to strengthen the rights and responsibilities of employers and employees, to provide the infrastructure

to work remotely, and provides clear guidance on how people can be empowered to work remotely from the office (see 'Side Panel 2' on the list of actions outlined in the strategy).

CASE IS IMPORTANT REMINDER

Given the speed with which homeworking was introduced – and with remote work hubs set to become increasingly popular – it might be expected that there are issues still to be ironed out before things go smoothly.

One indicator came in January when the Workplace Relations Commission (WRC) ordered an employer to pay compensation to an employee who resigned in May 2020 during the first lockdown after the employer turned down her request to work from home.

Following this first such ruling by the WRC, IBEC's Director of Employer Relations Maeve McElwee had said



"The employer may refuse the request for homeworking if the business does not allow for it" – Siobhira Rush, partner and head of the Dublin office of employment law firm Lewis Silkin.



Employers have gone from managing one office to being responsible for multiple work spaces, according to Criona Turley, CEO and co-founder of Capella.

that the case served as “an important reminder” to employers of their obligations to adhere to health and safety legislation arising from the implications of Covid-19. She noted that this included when working remotely, where appropriate, in line with

public health guidance.

However, McElwee pointed out that the WRC adjudicator had specified that “...this case does not relate to a general right to work from home or to work remotely. It relates to the circumstances arising from the Covid-19 pandemic”.

DEFINITION OF HOMEWORKING

Siobhra Rush, managing partner and head of the Dublin office of employment law firm Lewis Silkin, told ‘Health & Safety Times’ that not every request for homeworking can or will be granted. “The employer may refuse the request if the business does not allow for it,” she added.

Tánaiste Leo Varadkar TD also acknowledged this issue at the launch of the National Remote Work Strategy in January, when he said: “If somebody has the right to request remote working, the onus is on the employer to either say ‘yes’ or explain why not and they would have to give reasons,” he said, adding that these reasons could be challenged by the WRC.

Up until now, there has been no real definition of what constitutes working from home, according to Rush, and she added that there’s no clarity around “what is the minimum time to be considered working from home – in terms of hours, days – and what additional rules will kick in”.

On the health and safety front, once an employee is working from home, that location becomes their place of work and both the employer and employee have responsibilities under the Safety, Health and Welfare at Work Act 2005, and the underpinning health and safety principles.

The Health and Safety Authority (HSA) has also published a document – *Guidance on Working from Home for Employers and Employees* – which has clarified the

EMPLOYERS URGED TO BE COMPLIANT BY INSURANCE IRELAND’S CHIEF EXECUTIVE

In relation to the level of Employer Liability (EL) claims arising from employees working from home, Insurance Ireland’s Chief Executive Moyagh Murdock told ‘Health & Safety Times’ that “our members are not experiencing many claims, but I would still urge employers to ensure that they are compliant”.

She also answered our following questions in relation to the implications for employers and the advice from the insurance companies.

What are EL insurance implications for employers in terms of employees working from home?

- EL policies cover the employer’s legal liability to employees for injury arising out of, and in the course of, their employment.
- This includes when the employee is working from home as that is their place of work.

What would happen if an employee was sitting at the desk, jumped up because one of the children was crying and injured themselves? Would they have a claim under the EL policy?

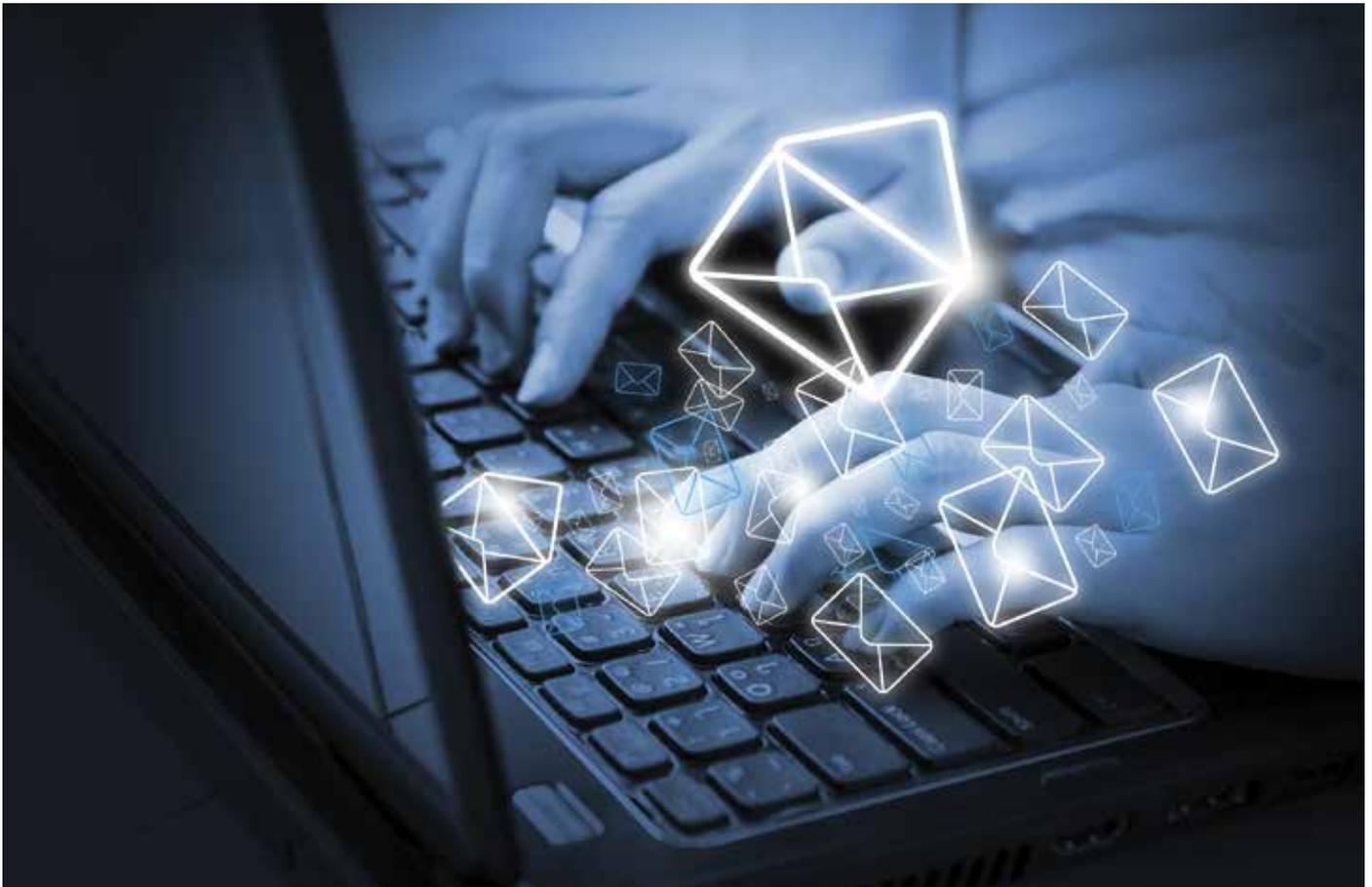
- The employee would need to show that their employer was legally liable for the injury and that liability would turn on the facts of the case.
- If the employer was found to be legally liable, the EL policy would kick in.

What advice are insurers giving to employers in the context of EL and working from home?

- Insurers are generally advising their policyholders to mitigate the EL risk.
- Under the Safety, Health and Welfare at Work Act, 2005, employers have specific duties to ensure the safety, health and welfare at work of all employees.
- The HSA published guidance for employers and employees on working from home, which we’d urge them to consult to make sure they are fully compliant.



Moyagh Murdock, CEO of Insurance Ireland, urges employers to ensure they are compliant.



One of the actions to be implemented in 2021 is the introduction of a legally admissible code of practice on the right to disconnect from work – covering phone calls, emails and switch-off time.

employer’s responsibility to ensure that the employee has a safe place and equipment to do their work

RISK ASSESSMENT CHECKLIST

“Employers must do a risk assessment of the homeworking environment,” Rush noted. “They should have a home working policy and train their employees on that – it should outline what is expected of employees and whether they should be available to come to the office. I foresee a hybrid model where people may work two or three days at home and the other days in the office.”

Significantly, an employer’s responsibilities also extend to a remote working hub if that is where their employee is working from. “The employer needs to ensure that the employee has the right equipment, and that the workspace is suitable there – all of this [in relation to remote working] requires buy-in and investment from employers,” she said.

Employees also have responsibilities under the Safety, Health and Welfare at

Work Act. “They have a responsibility to follow instructions and protect themselves from harm, to take care of equipment”, and to follow the document in the HSA’s guidance.

In the current climate, risk assessments of homeworking spaces are being carried out virtually – employees photograph or video their workplace on their smartphone and are then instructed and trained on how to improve their space. Indeed, a comprehensive homeworking assessment/risk assessment checklist is contained in the HSA Guidance document.

DISCONNECTING FROM WORK

“Working time is also a health and safety issue,” said Síobhra Rush. “It can be difficult for employees whose children are not in school during lockdown to maintain their working hours. There is also a lot of work creep”, she added, with many employees now having to work at night to keep up with their workload or meet deadlines.

This is recognised in the National Remote Work Strategy and one of the actions to be implemented in 2021 is the introduction of a legally admissible code of practice on the right to disconnect from work – covering phone calls, emails, and switch-off time.

“Remote working today is not a reflection of how it will be at the end of the pandemic. However, it will remain in some form; employers will need to have proper procedures, employees will need to be trained, so that there will be a more structured approach in place,” according to Rush.

SAFE ERGONOMIC WORKPLACES

A Dublin-based workplace solutions company has expanded its business designing ergonomic workspaces to providing an online platform that addresses employers’ liability around staff working from home.

“Essentially, employees log on to our portal, receive ergonomic training on how their workplace should be set up, and then complete a self-assessment,



In January the Workplace Relations Commission (WRC) ordered an employer to pay compensation to an employee who resigned in May 2020 during the first lockdown after the employer turned down her request to work from home.

and also upload images of their workplace,” Criona Turley, CEO and co-founder of Capella told ‘Health & Safety Times’. “Our software system

measures their workplace, a member of our ergonomic team analyses the results and we issue a risk assessment and recommendations for each employee.

The employer receives all the results in a dashboard and we highlight high-risk employees, as well as supplying a suggested equipment list.”

Turley said that many employers thought homeworking would last for a few months but that, increasingly, health and safety professionals and employers are becoming overwhelmed. “They’ve gone from managing one office to being responsible for managing multiple work spaces.”

Whilst solutions – such as a laptop stand – may not be expensive, not ensuring safe workplaces can prove to be costly for employers. If they do not take adequate precautions to ensure a safe workplace for their staff, that could trigger costly claims such as musculoskeletal complaints to slips, trips, and falls.

“We had one employee who sat on a beanbag for a year with a laptop on his lap,” recalled Turley. This, she said, can happen “in situations with young kids, and they may be in their first job”. This is where a prompt risk assessment and employer-employee engagement can resolve the situation.

NATIONAL REMOTE WORK STRATEGY HEADLINE ACTIONS

The following actions will be completed over the course of this year, and an Implementation Group will be formed to monitor the progress of the actions with meetings to be held every four months.

- Legislate to provide employees the right to request remote working.
- Introduce a legally admissible Code of Practice on the right to disconnect from work – covering phone calls, emails and switch-off time.
- Invest in remote work hubs, ensuring they are in locations that suit commuters and are close to childcare facilities.
- Explore the acceleration of the National Broadband Plan.
- Review the treatment of remote working for the purposes of tax and expenditure in the next Budget.
- Mandate that home and remote working should be the norm for 20% of public sector employees.

The ‘Making Remote Work – National Remote Working Strategy’ was developed under the guidance of a broad Interdepartmental Group consisting of government departments and state agencies. The research for the strategy draws from the findings of the ‘Remote Work in Ireland’ report (published in December 2019), the results of the Public Consultation on Remote Work Guidance and new research carried out on the topic in 2020.

(Source: Department of Enterprise, Trade and Employment)

