

THE REALITIES OF THE NEW WORKING ENVIRONMENT

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As highlighted in this report, many aspects of the new working environment are still evolving. However, what is resoundingly clear is that the expectations of employees as to where, when and how they work have changed dramatically since the start of the pandemic. There has been a fundamental transformation in the way we work and as the report concludes remote and hybrid working patterns are here to stay.

For most employers, flexible working is now a critical tool for attracting and retaining key talent, even as the future impact on workplace culture, productivity and innovation is yet to be fully evaluated. As we emerge from the pandemic, many businesses have already implemented more structured and longer-term flexible working policies. You can find our comprehensive cross-border guide to the future of remote work [here](#) but below we briefly signpost some of the key legal considerations that may rise from these new ways of working.

Business protection

With more and more employees now working remotely or otherwise between home and the office, the risk of employees (whether intentionally or otherwise) acting in breach of their duty to protect their employer's confidential information and trade secrets has increased. Employers should take proactive steps to audit their existing employment contracts and policies to ensure that these reflect the realities of remote and hybrid work. It is also important for businesses to revisit their onboarding and offboarding procedures to ensure that these comprehensively address the ways in which company information is now being shared and stored by employees in practice. For more detail on this topic, please refer to our article, [Business Protection in a Covid-impacted World](#), which looks at the changing workplace environment, key areas of protection and practical steps for employers to guard their key business interests.

Performance management

As the report highlights, one of the key challenges faced by businesses that have implemented flexible working policies is how best to manage and supervise employees that are working away from the office. Employers may need to consider adjusting existing KPIs and appraisal objectives to place a greater emphasis on results-based achievement going forward, since day-to-day activities and work levels are likely to be much less visible to line managers when employees are working remotely. In order to mitigate the risk of future employment claims, employers should clearly communicate to their staff how their performance is being measured while they are at home and against what specific metrics.

Employee misconduct

Employee misconduct has also taken on a new face in the virtual work environment. During the pandemic, the rapid digitalisation of the workplace saw the introduction of multiple informal channels of communication which has led to a sharp rise in employee complaints relating to workplace harassment and bullying online (see further information in our previous report on [Sexual Harassment in the Workplace](#)). Employers should review their disciplinary and grievance procedures and consider carefully whether they may need to be updated to reflect the practicalities of the ways in which employees are now interacting and communicating with each other.

Equality of treatment

For employers that have introduced hybrid working models, it is important to closely monitor any divergence in treatment between employees that come into the office and those that choose to work from home. New research suggests that women and those with caring responsibilities may be disadvantaged by hybrid and remote working models as they are statistically the least likely to attend the office and benefit from 'leadership proximity bias' which results in leaders unconsciously favouring those they see in person. This might include access to opportunities, workload allocation, promotion prospects, bonuses or any other aspects of employee working arrangements.

Employers should be mindful of the risk of claims for indirect discrimination when treating employees working remotely differently to those based in the office. Where discrepancies do arise, it may become necessary for organisations to standardise certain processes and procedures that they have until now been able to undertake relatively informally at the office.

Mental health and wellbeing

While employees now spend less time commuting to the office, freeing up extra time in their days to spend with family, the flipside is that employees are finding it harder than ever to switch off, with their work inboxes always just within reach. The increased reliance on digital technologies in the workplace has strengthened the 'always on' culture and has further blurred work-life boundaries. Poorly managed homeworking arrangements can contribute to hidden overtime and working time issues, as well as mental health and wellbeing concerns. As employers transition to more permanent flexible working arrangements, they should ensure that they audit such arrangements regularly to ensure compliance with legal requirements relating to working time (including rights to annual leave and rest breaks) and comply with their health and safety obligations towards employees by establishing boundaries and routines that reduce the risk of burn-out, work-related stress and excessive overtime.

For our further resources and insights about the legal implications of the new working environment, please visit our [Workforce of the Future](#) series webpage.

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EXECUTIVE SUMMARY

THE REALITIES OF THE **NEW WORKING ENVIRONMENT**

- ▶ The pandemic signalled some of the most profound and far-reaching changes to working practices we have ever known. As it recedes, organisations have the opportunity to evaluate changes made to ways of working during the pandemic, and to make deliberate choices about what practices to retain, adapt, or discard for the future. Have working practices changed for good? Or will we see a gradual return to the way things were? We find many organisations are taking a middle path, keeping some practices while discarding others. A few organisations are keeping – or discarding – everything, and others are taking a cautious, ‘wait and see’ approach.
- ▶ While the situation remains in flux, taking a moderately paced, flexible, principles-based, data-informed, and experimental approach to defining future working practices is likely to lead to optimal outcomes. Transparent communication, listening to employees, and being open to re-evaluation will help organisations and their people to more comfortably and effectively navigate this transition period.
- ▶ Remote working has been accepted, and is here to stay. While we can expect some return to office-based working, few organisations are likely to return to pre-pandemic levels. However, the precise balance between home and office days, the locations from which people work, and the degree of personal choice employees will have with respect to hours and days are all still in flux. The consequences of mass remote working and permanent flexibility have not yet fully revealed themselves. Organisations will need to systematically assess impacts on outcomes such as productivity, innovation, customer service, learning, wellbeing, and retention, while also surfacing any unintended consequences of the new ways of working.

▶ The pandemic saw a shift away from prescriptive policies towards looser, principles-based guidelines implemented at line managers' discretion. As we move toward post-pandemic working, this may be a change in practice that remains. However, there are risks in proceeding down this path. Do managers have the capability to effectively interpret and manage guidance? Is guidance being applied consistently and fairly? Guidance should be clear and easy to understand; HR should provide managers appropriate support to build their skills in applying it, and monitor and address issues and risks as they arise.

▶ The role of line managers and leaders is, as always, key. Managers need to understand that their personal choice around working arrangements is only part of the story. They have a responsibility to their teams who may have a need for more personal interaction or face-to-face coaching to support their performance and development. Managers need to flex their own preferred patterns to accommodate this. Leaders will need to role model expected behaviours and set an example for their teams to follow. HR will need to support managers and leaders to make decisions in the best interests of their teams rather than on a personal basis, and be prepared to intervene where managers are not acting responsibly.

▶ Technology became a key enabler of new working practices during the pandemic. Technological solutions improved over the course of the pandemic, but people's skills to use the new technology have not kept pace. Organisations are still working out technology-enabled hybrid working rules (for example, how to conduct hybrid meetings), and there is work to be done to bring people up to speed with new norms.

▶ Employees are more reluctant than employers to return to the office. To attract people back, employers are adopting strategies including articulating a compelling purpose for being in the office, making the physical working environment attractive and fit for purpose, communicating skilfully, and using incentives. Organisations should try to understand and articulate where there is a premium for personal interaction and let that drive decisions on location of work, while also being attentive to the needs of different groups.

▶ Returning to the office requires people to make a psychological transition; organisations will benefit from treating the return as a change management scenario. Involve people in designing the organisation's future ways of working and use practical tools to support behaviour change in your context, such as role modelling, defaults, or fresh starts. Remember that people have spent more than two years developing new habits; the behaviour changes required now will require significant emotional and practical support for many people.

▶ Employers are concerned about fairness between employee groups who can work remotely and those whose work requires them to be onsite. Organisations are finding creative ways of listening to employee views and are adapting their employee value propositions to meet the needs of different workforce groups. But fairness is an emotive issue, and one that organisations will need to constantly keep in focus.

▶ Organisations rightly placed employee wellbeing and business continuity at the forefront during the pandemic. As future working practices take shape, it will be essential to renew focus on business growth, innovation and serving customers effectively and to make sure the needs of customers, employees and other key business stakeholders are balanced. We are still some way from understanding the longer-term consequences of choices around people practices made over the last two years.