

# Considerations for employers preparing effective hybrid working models

by Derek McKay

Little has come close to transforming work and how we work since the Industrial Revolution than the impact of Covid-19. And, it continues to shape our world of work as businesses across the globe manage the return to the workplace.

Announcing the latest easing of some restrictions recently, the Government noted that a full return to workplaces as we know them is unlikely to happen before Spring 2022. Public health advice supports this with NPHET asking that employees continue to work from home where possible given it has played such a vital role in containing the spread of Covid-19.

Our view is that many businesses will not return to the same work models that they previously had. In fact, our own research carried out for our HR Barometer Report 2021 identified that three quarters (76%) of businesses have flexible working arrangements or hybrid working in place with nine in ten (92%) of larger businesses with 250+ employees offering it. This is double the number (38%) that had flexible arrangements in place pre-Covid.

The HR Barometer Report also found that eight in ten (78%) believe that having flexible working arrangements benefits their organisations. But this can differ from sector to sector.

Our research also found that four in ten (41%) organisations introduced flexible working arrangements to improve retention and highlighted it as the top initiative introduced for that reason.

The question for most organisations however is, how much of a role flexible working arrangements will have and what the right mix of remote and office-based working is required for the success of the business?

## What's right for my business?

There is no right or wrong approach - but if employers and employees work together in the best interests of their shared vision for their own organisation, then they will shape a working model that works for them. There are a number of key considerations for both employers and employees to consider.

## Will hybrid working lead to success within my organisation?

Firstly, not all jobs can be done remotely or in a hybrid way and employers need to carefully consider what model aligns most effectively with their business strategy and objectives, and if either remote or hybrid working is suitable for their business once public health advice signals a return to the workplace. However, a longer-term view needs to be taken - a decision to simply return to the office just because you can, may not necessarily be the right one, particularly in light of what some of your competitors might be doing and ensuring they don't poach some of your best talent with a different/hybrid model.

Engage with, and listen to your employees; however, don't let their responses be your primary influence in decision-making. We know remote working has worked, we know employees like the flexibility it offers and it's a contributing factor to a better work life balance. But it does have potential downsides; less collaboration negatively impacts innovation, employees can feel

isolated, performance management can be more complicated, which in turn can lead to issues if not conducted in line with correct procedure and legislation.

And, as mentioned above, no one organisation has the perfect solution; 'trial and error' or 'a pilot scheme' may be required. Finding the right mix of hybrid working that suits your business and employees will take time, there are numerous components to consider while all the time keeping a close eye on compliance, security, GDPR and organisational KPIs.

There are also some legislative considerations for employers ahead of devising and implementing hybrid or flexible working models.

## Acknowledging an employee's right to disconnect

A Code of Practice on the "Right to Disconnect" was published by the Workplace Relations Commission (WRC) and signed by An Tánaiste, Leo Varadkar in April 2021. This Code is part of the Tánaiste's commitment to create more flexible family-friendly working arrangements, including working from home and working more flexible hours.

According to the Code, the Right to Disconnect has three main elements:

1. The right of employees to not routinely work outside normal working hours,
2. The right to not be penalised for refusing to do work or attend to matters relating to work outside of normal working hours,

3. Respect another's right to disconnect; do not make or send work calls or emails outside of normal working hours.

In short, it is the right of employees to switch off from work when outside their agreed working hours to help provide a better work/ life balance. This is particularly relevant in a world where remote working has become the norm with the full Government support through its National Strategy for Remote Working.

The Code of Practice provides advice for employers and employees on best practice to support the Right to Disconnect. The Code contains guidance for employers to meet their obligations under current employment legislation; the following is outlined in the Code as the relevant legislations impacted:

Organisation of Working Time (Amendment) (Right to Disconnect) Bill 2020: Section 15 of the Organisation of Working Time Act, 1997 is amended through the provision of:

- The right to disconnect from work related e-mails, texts or calls outside of working hours.
- Implementation of a right to disconnect policy establishing hours to disconnect.
- The production of a report on the right to disconnect detailing ways to
  - minimise out of hours contact.
  - establish a standby allowance.
  - deliver an overtime payment.
  - ensure all working time does not exceed 48 hours.

This insertion into the Act makes it an offence for an employee to be reprimanded, punished, or subjected to disciplinary action if they disregard a work-related communication sent after workhours, unless already agreed under the terms and conditions of a relevant right to disconnect policy.

#### **The Safety, Health and Welfare at**

**Work Act, 2005:** This Act sets out the responsibilities of employers, and employees, in relation to health and

safety in the workplace, regardless of whether the employee is working from home or an office, or both. Employers are still bound by the legislation and have a duty to manage how work-related activities are carried out while ensuring the health and safety of the employer.

Therefore, the employer is responsible for ensuring a safe workstation while also carrying out a risk assessment to ensure it is a safe and suitable workstation.

**Employment (Miscellaneous Provisions) Act, 2018:** The Act states that employees must receive a statement outlining their core working hours within 5 days of commencing employment. Therefore, clearly stating the expected working week for employees. This is particularly relevant for employees who have flexible working arrangements as a "normal" working day may not necessarily be a typical 9 to 5.

**Terms of Employment (Information) Acts, 1994-2014:** Legislation states employees must receive the Terms & Conditions of their employment within 2 months of starting a job, which outlines hours of work and, depending on the sector, that some flexibility may be required in exceptional circumstances.

As with the Employment (Miscellaneous Provisions) Act, it is important that the terms are clearly set out and any agreement regarding flexible working is provided in the Terms & Conditions such as the employee's normal or regular finishing time of work.

#### **Advice for employers devising hybrid working models**

If your organisation is currently devising or defining its hybrid working model, there are some practical things that you should consider:

- Carefully assess the suitability of the roles that you are considering for hybrid working and clearly outline the rationale for your decision-making; this will help avoid any issues or accusations of discrimination at a later date.

- Articulate your expectations relating to hybrid working, making it clear the days/ times you expect employees to be in the workplace or available to carry out work.
- Outline what costs, if any, you are willing to cover outside of the workplace; heating, electricity, broadband, etc. And, be clear on what equipment you are willing to supply the employee with while working remotely – also being cognisant of your responsibilities under the appropriate health & safety legislation.
- Ensure policies relating to performance management, grievance, conflict & dispute are updated accordingly and ensure the procedures that are in place reflect these changes and impact of hybrid working.
- Understand where your employee will be working from when outside the workplace; will they be outside the jurisdiction and if so, what are the tax implications?
- And, agree who is responsible for insurance costs if working remotely from home.

While there is much to consider for employers and organisations when deciding to implement hybrid or flexible working, the benefits can add real value in terms of the employer-employee relationship and increased productivity and profitability.

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