

What's next for Irish businesses and their employees?

by Derek McKay

As the risk of a second wave of Covid-19 continues to be a real threat, businesses have remained vigilant trying to plan and prepare for the various scenarios we may be facing.



The Government's decision to pause Phase 4 of its plan again gives a clear indication that we are still very much in the midst of this pandemic and the health and safety of the population is being put ahead of economics.

While many will argue that a lot of the businesses that are being forced to stay shut may never reopen, there is a clear message being sent out; every business should be prepared for the potential reversal of some of the Phases already introduced.

The idea that the country may be put into reverse should not come as any surprise and businesses that have not planned effectively for this scenario will find themselves in some difficulty. The notion of "emergency urgencies" is gone and what was acceptable from an employment and employees' perspective in March and April is no longer acceptable. Employers and businesses have now had the time and supports to put more medium term, robust plans and policies in place.

Remote working

My previous article in the June issue - The benefits, challenges and unintended consequences of remote working – provided a detailed overview of the pros and cons of working from home as well as some potential 'watch-out' areas for employers.

Given the fragility of the health crisis and the lack of a vaccine, one can expect that many employees will be working remotely for months to come, with the large tech companies announcing staff won't be back in the

office until 2021.

Needless to say, every sector is different, but for businesses with employees working from home there should be clear guidelines, expectations and performance management processes all now in place. Employers, at this point in time, should have the necessary policies and procedures implemented, including health and safety, to protect themselves and their employees from future issues.

Employees should be reminded of their contractual obligations in terms of being present in the office or place of work if their job requires it or if working from home, the core working hours they are expected to be available. Employees cannot make the decision themselves to continue to work from home. Equally, an employer cannot make the unilateral decision that employees must work from home, if it is not in the terms and conditions of the employment contract. Given that one size does not fit all, businesses may have different requirements and/or different physical spaces available to them, whilst employees may be in good health or unfortunately have an underlying health condition that places them in a highly vulnerable category.

From a HR perspective, through effective communication and engagement, agreement with your employees on working arrangements, office/blended/remote, even on a further temporary or trial basis, is where you wish to get to.

As per the Terms of Employment (Information) Act 1994, any changes to the working arrangements with employees must be incorporated into the terms and conditions of employment and shared within one month of the new arrangements.

Our advice to businesses looking to make these types of changes is to pilot any new arrangements for a defined period to see if there are any issues, such as drop in productivity, missed deadlines or unavailability during agreed core working hours. Ultimately, it is the right of employers to revert back to previous arrangements if the business needs require it.

Capturing working hours

It is an employer's obligation to outline the "normal" working day to all employees including the agreed starting and finishing times, rest breaks, weekly breaks and holiday allowance, all of which must be recorded by an employer in line with the Organisation of Working Time Act, 1997. This stands even when employees are working remotely. If employees are working from home, it is not unreasonable to expect them to assist in capturing this information – in fact, as the employer is required to keep records under the Working Time legislation, it should be an expectation that employees will capture this information.

Employers and managers must also remember that employees have the right to switch off. While technology has enabled people to work from pretty much anywhere and at any

time, that does not mean that they are "always on". Employees should not feel pressured in answering emails or calls outside of their agreed working day unless absolutely necessary. In May, research by LinkedIn found that Irish workers working from home were putting in an additional 38 hours each month, which is effectively an extra week each month.

If there is a systemic issue with out of hours contacts from managers and colleagues, the employer runs the risk of breaching the maximum working hours and not adhering to the weekly rest periods outlined in the Act.

Health & safety of employees

Under the Health, Safety and Welfare Act 2005, an employer has a duty of care to provide a safe workspace for their employees and ensure that they prevent any improper behaviours that would put the health, safety or welfare of employees at risk regardless of where the employee is working. For obvious reasons, this is much easier to manage in an office environment. However, employees working from home are still covered by the same duty of care, so arguably an employer with employees working in the office and remotely has two workplaces to manage in terms of health and safety.

While it was not possible to carry out risk assessments for all employees in the weeks following the initial restrictions in March, there is no excuse for not having assessments completed at this stage. This does not mean an employer is responsible for carrying out a risk assessment of the home, just of the immediate working environment.

It is the employee's responsibility to take reasonable care for their own safety, including reporting any incidents or accidents to their employer.

Resource planning

The biggest issue I believe will impact businesses, particularly SMEs, is right-sizing their business and ensuring adequate resourcing.

According to the latest CSO figures, the unemployment rate for July in Ireland was 16.7%, down from 23.1% in June. Government is expecting this figure to drop further with an unemployment rate between 14% and 15% towards the end of the year.

While the numbers are going in the right direction, there is a trend that needs to be watched carefully. Figures released earlier this month (August) show that 12,300 people came off the Pandemic Unemployment Payment (PUP), indicating that they are returning to work. However, the number of people who returned to work with employers


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under the Temporary Wage Subsidy Scheme (TWSS) went up by 12,600 last week. There are currently 69,740 employers registered with the scheme, employing around 390,000 people.

It was announced that the TWSS is being replaced, and by the time of publication the new Employment Wage Subsidy Scheme will be in place. To qualify, businesses must show that they have experienced significant negative economic disruption amounting to a minimum of 30% of turnover or orders during July and December 2020 compared with same period in 2019.

However, the financial assistance available under the new scheme is not at the same levels as the TWSS and will no doubt give employers food for thought.

Given the significant impact this will have financially, businesses will need to make some critical decisions on headcount and their overall cost of employment including salaries, bonuses, pensions and benefits.

The announcements by Bank of Ireland, Aer Lingus and Brown

Thomas recently on planned redundancies, along with other high-profile business closures, show that there is a clear indication that the fall-out from Covid-19 will be hard-felt for some months to come.

Conclusion

While businesses and their employees have now adjusted to and embraced new working practices, there are still a lot of challenges facing employers. Whilst the Irish Government has given a commitment to support employers through the EWSS until March 2021, businesses across the country are reviewing all aspects of their cost-base, including costs associated with people.

Managing redundancies is difficult in the best of times but during a global health crisis, and while employees are working in isolation, it is much more difficult and emotional. However, employers need to focus on the viability of their business, putting it in as strong a trading position as possible going into 2021 while protecting as many jobs as feasible.

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Derek McKay

Managing Director at Adare Human Resource Management.