

REMOTE WORKING POLICY

Employers are required to establish and maintain a written remote working policy. This should include:

- (a) The manner in which requests are managed;
- (b) The time frame in which decision will be made; and
- (c) Any conditions surrounding remote working within the organisation

Each organisation, regardless of size or sector, will need to have a Remote Working Policy which should be communicated to all staff.

MINIMUM SERVICE

An employee must have completed **at least 26 weeks continuous service** before they are entitled to submit a remote working request.

It is envisaged that this new legislation will create greater access to jobs for workers with disabilities. However, from a practical standpoint, it is unclear how this will broaden access and increase participation in the labour market, given the 6-month minimum service requirement.

REQUEST FOR REMOTE WORKING

An employee must give notice in writing of the full details of the proposal to his/her employer, including the following:

- (a) Proposed remote working location;
- (b) Proposed start date for the remote working arrangement;
- (c) Proposed number, and timing, of working days to be worked remotely;
- (d) If the employee made a previous request to the employer, they should note the date of the most recent request; and
- (e) A self-assessment of the suitability of the proposed location including data protection and confidentiality considerations.

MANDATORY SELF-ASSESSMENT

The employee must carry out a self-assessment of the suitability of the proposed remote workspace, including an assessment of data protection and confidentiality. This places a relatively large burden on employees to educate themselves in the areas of data protection and confidentiality laws before carrying out such an assessment. It is also unclear what level of responsibility the employer will bear if a data breach occurs. There is also no explanation provided for how employees are to assess the ergonomic suitability of their proposed remote workspace.

WITHDRAWING A REQUEST

If an employee fails to provide additional information relating to the proposal to their employer, or where the employee fails to meet with their employer to discuss the proposal within 12 weeks, then the employer can deem the request withdrawn.

TIME LIMIT FOR EMPLOYER TO MAKE A DECISION

The employer must **consult** with the employee and **return a decision in writing within 12 weeks** from receipt of the request. However, there is no definition or insight given as to what such consultation might look like.

If the employer agrees to the request, confirmation must be given to the employee in writing and include exact details of the arrangement, proposed start date, confirmation of trial period (if there is one), details of review (if it is for an indefinite duration), and details of any equipment to be provided.

DECLINING A REQUEST

A request can be declined if the proposal is not suitable on business grounds (the Bill gives a list of 13 examples, but this is non-exhaustive list). Business grounds may include the following:

- (a) Work cannot be done remotely;
- (b) Potential negative impact on quality of business/service;
- (c) Concerns for protection of data, confidentiality of intellectual property;
- (d) Internet concerns;
- (e) Employee is subject to ongoing or recently concluded formal disciplinary process;
- (f) Concerns for the commute between the proposed remote working location and employer's on-site location.

RIGHT TO APPEAL AND REFERRAL TO THE WORKPLACE RELATIONS COMMISSION (WRC)

An employee can appeal for the following 3 reasons:

- (a) The employer has failed to return a decision within 12 weeks;
- (b) The employer has failed to provide grounds for refusal;
- (c) The employer has failed to comply with notice requirements.

The right to make a complaint to the WRC is not intended to extend to a right to complain in respect of the substance or merits of an employer's decision to decline a request. This right is limited to a complaint concerning procedural issues only.

Employees must first follow the organisation's internal appeal mechanism (which should be detailed within the Remote Working Policy) before submitting a complaint to the WRC. The intention is that the complaint would be resolved using the employer's internal appeal mechanism.

12-MONTH LIMIT ON SUBMITTING ADDITIONAL REQUEST FOR REMOTE WORK

Employees are not entitled to submit a new remote working request **until 12 months have passed** since the employer's initial decision or, if appealed, 12-months from the date of the final decision in the appeal process.

Should an employee move to a different role within the same employer, they will not be prohibited from making a new request within the 12-months.

AWARDS IN THE WRC

An adjudication officer can award compensation to an employee **of up to 4 weeks' remuneration**.

Employees have the right to appeal an adjudication officer's decision to the Labour Court

OFFENCE

An employer who fails to bring the Remote Working Policy to the attention of its employees shall be guilty of an offence and may be liable on summary conviction to a **class C fine (€2,500)**.

CONTACT US

For more information, please contact Catherine or your usual William Fry contact.



Catherine O'Flynn

PARTNER

Head of Employment & Benefits

+353 1 639 5136

catherine.oflynn@williamfry.com

WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

William Fry LLP | T: +353 1 639 5000 | E: info@williamfry.com

williamfry.com