



Thomas More Chambers

Working from Home during COVID-19

Introduction

During these unprecedented times, working from home on a full-time basis has become the 'new normal'. This is in stark contrast to before the coronavirus (COVID-19) pandemic began, when out of 32.6 million people in employment, only 1.7 million regularly worked from home.¹ The change to enforced homeworking was swift and represented significant changes to the lifestyle and routines of both employers and employees, which, in turn, creates a number of legal and practical issues for employers. It is currently unknown how long homeworking will last for, or indeed if the outbreak of COVID-19 will cause a shift towards homeworking on a permanent basis.

This article considers employers' legal obligations, analyses a range of ongoing issues that homeworking has created, and makes practical suggestions to address the issues, in order to assist both employers and those advising them.

Employer's Obligations

General duty of care

Under [Section 2\(1\), Health and Safety at Work Act etc. \('HSWA'\) 1974](#), employers have a general duty of care to employees, including those working from home. The duty is not absolute and requires employers '*to ensure so far as is reasonably practicable, the health, safety and welfare at work of all his employees*'.

¹ As reported by the Office for National Statistics in: 'Coronavirus and homeworking in the UK labour market: 2019' (24/3/20), available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/coronavirusandhomeworkingintheuklabourmarket/2019>



In order to comply with this duty, the employer must do what is ‘*reasonably practical*’. It is clear that the current restrictions limit employers’ options. However, there are still a range of measures that employers can implement, and the [Health and Safety Executive \(‘HSE’\) have produced guidance](#) to assist employers in this respect. Employers could also consider creating a ‘COVID-19 pandemic controller’ (who could address specific issues that employees are facing during this crisis), and issuing a detailed Remote Working Guidance Document (which deals with general homeworking issues). Specific policies (and accompanying training) should also be produced on a range of matters (for example, assistance on how to set up suitable work areas, reminders to take regular breaks, to stop working at the end of the official working day and explaining whether or not personal devices can be used for work purposes). Employers should also be communicating regularly with employees (over online platforms such as Zoom and Microsoft Teams). The implications of this general duty under section 2(1) HSWA 1974 in respect of specific areas is discussed below.

Risk assessments

[Regulation 3, Management of Health and Safety at Work Regulations 1999 \(SI 1999/3242\)](#) imposes an obligation on employers to conduct a ‘*suitable and sufficient risk assessment of all the work activities carried out by their employees, including homeworkers, to identify hazards and assess the degree of risk*’. This again is not an absolute duty as it requires a risk assessment that is ‘*suitable*’. Given the urgent implementation of the homeworking measures, it was not feasible or suitable to carry out physical risk assessments. However, electronic risk assessments can still be conducted (by providing employees with their own basic assessment forms to complete at home).²

If homeworking is here to stay, the requirements are likely to become more onerous in respect of risk assessments, by for example making it a mandatory requirement for employers to conduct detailed electronic risk assessments for every employee.

² HSE has published helpful guidance tools for electronic risk assessments, available at: <https://www.hse.gov.uk/risk/office.htm>.



Issues presented by homeworking

Hours of work

Although the venue has changed, employees are still contractually obliged to adhere to their normal working hours. Under, [The Working Times Regulations 1998 \(SI 1998/1833\)](#), employees must work a maximum of 48 hours per week ([Regulation 4](#)) and take adequate rest breaks ([Regulation 12](#)). Homeworking presents obvious challenges as employers are unable to effectively monitor employees' hours of work. However, employers should be regularly communicating with employees to check they are not exceeding their contractual hours and if appropriate, ask them to complete timecards at the end of each working day. Of course, employees can 'opt out' of the 48-hour limit, but the obligation to sign a written agreement (and retain records for 2 years) still applies and employers should be ensuring that electronic records are kept ([Regulation 5](#)).

Where possible, employers should consider flexible homeworking arrangements for employees who have childcare or caring responsibilities given the obvious challenges presented by school closures. For example, in [Acas' guidance on homeworking](#), Acas have encouraged employers to be '*practical, flexible and sensitive*' to employees' situations and have suggested that employers consider adjusting hours of work and reducing work targets, for those who are looking after children. This topic will be the focus of our next article, which is expected to be published in the next few weeks.

Equipment

The requirements imposed under the [Provision and Use of Work Equipment Regulations 1998 \(SI 1998/2306\)](#) also create practical difficulties for employers during this time. For example, [Regulations 4-6](#) prescribe that any work equipment, which is supplied by the employer must be suitable for its purpose, maintained in good working order and inspected regularly. It is difficult for employers to maintain and inspect the equipment during this time. However, if employees use their own equipment, they should undertake to maintain the equipment properly and replace it when necessary.



[Regulation 21](#) also requires employers to ensure that there is ‘*suitable and sufficient lighting at any place where an employee uses the work equipment*’. This requirement therefore applies to employees’ homeworking environments. Those employees who were part of the 1.7 million who regularly worked at home would already have designated workspaces (with the appropriate equipment) in place. However, those who were unable to prepare for the transition may have had to create a workspace, which is inadequate for work purposes. Therefore, although not a mandatory obligation, good practice would be to issue employees with home workstation assessment forms (including [DSE workstation checklists](#)), in order to identify those employees who need extra assistance to create adequate workspaces.

Moreover, employers have duties to individual employees under [section 20, Equality Act \(‘EA’\) 2010](#). Under section 20, employers have a duty to make reasonable adjustments for employees who have specialised needs. Therefore the provision of assessment forms would be a useful tool to assess if the work can be conducted effectively and safely, and also identify the needs of individual employees. For example, specialised equipment should be provided for those with specialised DSE needs (such as keyboards, riser stands, monitors) and amplified phones should also be provided for those employees who use hearing aids. If items are not practicable to be delivered (such as ergonomic chairs or height-adjustable desks), reimbursement for these equipment expenses should be made.

At the time of writing this article, working from home has become an established routine. However these measures, if not already, should be implemented as soon as practically possible. In a [‘Working at Home Wellbeing Survey’](#) conducted by the Institute of Employment Studies, more than half of the 500 respondents reported developing neck, shoulder and back pain during the first two weeks of lockdown. This could possibly be due to employees using furniture that is not suitable for work purposes (for example, kitchen stools and coffee tables). Therefore the provision of home workstation assessment forms would be again be a useful tool to remind employees how to set up appropriate workstations to mitigate against injury.

Employers also need to carefully consider what equipment is necessary to comply with their other legal obligations. For example, to comply with GDPR obligations (considered below), shredders would ideally be provided to dispose of confidential documents.



Further, employers should remind employees that their homeworker's domestic supply (including electronic sockets) is their responsibility, given that under the [Electricity at Work Regulations 1989 \(SI 1989/635\)](#), employers are responsible for the electrical equipment that is supplied at work premises.

Insurance and Tax Considerations

Employers should notify their insurers of any work equipment that employees have taken home, to ensure that the equipment is covered by the employer's liability insurance policy. If the policy cannot cover the equipment, employees should take out satisfactory insurance cover. This provision should not be overlooked, given the possibility for claims to arise on the basis that businesses have enacted inadequate measures during the lockdown.

There may also be tax consequences of homeworking, as for example, household expenses may be tax deductible, but only if *'the amount was incurred wholly, exclusively and necessarily in the performance of the duties of employment'* ([section 336 Income Tax \(Earnings and Pensions\) Act 2003](#)).

First Aid

Employers have a variety of other obligations, which may not be as obvious, when compared to issues such as providing appropriate equipment and making reasonable adjustments. The provision of appropriate first aid is one such example ([Health and Safety \(First Aid\) Regulations 1981 \(SI 1981/917\)](#)). What is appropriate depends on the nature of the work involved. However, given that most homeworkers during the lockdown are likely to be office-based staff, it is likely that this type of homeworking is low-risk and the supply of a simple first aid kit would be suitable.

The employer should also enact reporting procedures to allow employees to report accidents because any serious accident/injury at work must be reported to the employer, and this applies to homeworkers ([Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 \(SI 1995/3163\)](#)).



Data Protection and Confidentiality

Under the [EU General Data Protection Regulation](#) ('GDPR') and the [Data Protection Act 2018](#) ('DPA 2018'), both employers and employees have obligations in respect of data protection and confidentiality. Given the urgency of other issues, it is important that data protection does not get overlooked as the ICO can impose significant fines for serious breaches of the GDPR and DPA 2018.³ Organisations must therefore follow appropriate procedures to ensure there is no unauthorised or unlawful processing of personal data ([Article 5 GDPR](#)). For example, employers should hold online training sessions to ensure that employees understand their obligations in respect of protecting the confidentiality of business information and conduct data privacy impact assessments to understand the data protection implications of employees working from home.

In respect of confidentiality, practical methods to protect privacy could include: asking employees not to print documents at home; storing confidential information in secure filing cabinets; installing passwords on laptops and using shredders/confidential bins (which as mentioned above, could be provided by employers) to dispose of confidential information.

Wellbeing

In line with their duty under section 2(1) HSWA 1974, employers should also introduce measures to support the wellbeing of employees. These measures could include offering free access to wellbeing apps which have corporate subscriptions, and holding virtual coffee breaks during defined periods to emphasise that employees should be taking breaks and provide collaborative support. To reiterate, under section 20 EA 2010, employers have an obligation to make reasonable adjustments and this applies equally to employees who are suffering from mental health disorders.

³ For more information, see Sam Frost's article on '[Data Protection in the Age of COVID-19](https://thomasmore.co.uk/data-protection-age-of-covid-19.pdf)', available at: <https://thomasmore.co.uk/data-protection-age-of-covid-19.pdf>.



Conclusion

The coronavirus pandemic has created a range of unprecedented changes, not least the rapid adjustment to homeworking. Employers must remain mindful of their legal obligations to homeworkers under section 2(1) HSWA 1974 and implement appropriate measures. These ‘*reasonably practicable*’ measures should address the range of equipment, hours of work, first aid, insurance, tax, data protection and wellbeing issues that homeworking has created.

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