



**Brabners**  
we make the difference

# Post Pandemic Working

Workplace, Hybrid and Remote Working

# Changing the way we work

**As businesses continue to adapt and respond to the challenges posed by the COVID-19 pandemic, and look at how they want to operate in a post-pandemic world, many are considering making a permanent shift to hybrid or remote working.**

Hybrid working is the term now being used to describe a working pattern which combines workplace based working with the ability to work remotely. At its most basic level it could include normal workplace based working but with an ability to work from home occasionally. At the other end of the spectrum is entirely remote working with employees based permanently from home.

Making significant changes to your operational model is never easy. Just like individuals, businesses will have their own needs and considerations which they will take into account when making their decision about how to operate in the future. They will also have to take into account the needs of their people, and how they will recruit talent in the future.

Whatever decision your organisation makes, you will need to ensure that your employment contracts and HR

policies work to protect your needs and reflect your new way of working. This guide will help you to understand many of the key issues you will need to consider when reviewing your working patterns, and highlight the contractual details which you will need to review.

If you would like to discuss the issues raised here further, please contact **Lee Jefcott**, or your usual contact in the Brabners Employment Team



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# Talent Pool



## Workplace

Will limiting your working to a specific geographic location limit your ability to recruit for the roles that you need?

Some jobs need to be performed at a particular workplace and do not lend themselves to hybrid or remote working. However, this is not the case for many other jobs – and candidates are coming to expect an element of flexibility from their employer.

Limiting the job to a particular location may put off talented job applicants and may cause issues with employees who are reluctant to attend the workplace due to concerns about COVID and may conflict with future work from home requirements that may be imposed.



## Hybrid

If the job can be done partly from home and partly from the workplace consider hybrid working.

Hybrid working has quickly become the employment model of choice for many businesses. Benefits include maximising your recruitment opportunities since hybrid working is likely to attract more candidates.

However, you will need to consider potential downsides including managing employee expectations, being clear on requirements and amending HR policies and employment contracts.



## Remote

Some jobs are now being advertised as “fully remote”.

There are undoubtedly some jobs that lend themselves to this model, but consider if this type of working model will truly work for both parties. If you are unsure you could offer a work trial on a fixed term employment contract.

For the right type of job, the benefits include access to a larger, even global talent pool, unrestricted by geographical location. However, take advice on tax, and social security issues when employing an individual who works overseas. Further, the individual is likely to acquire employment rights under local laws so take advice. Consider also employment status – is there any benefit to engaging the person as a contract worker rather than an employee?

Employees based abroad will benefit from local employment protections, which may be more onerous than those in the UK.

# Pay and Rewards



Will there be a growing disparity between pay and benefit structures for those still attending work, and those that are offered to employees who are working remotely or hybrid?

Employees who cannot take advantage of hybrid or remote working may feel they are entitled to pay and benefits to compensate them for travel and attendance at the workplace when other colleagues have the benefit of remote or hybrid working.



Will pay reflecting “market rates” for working in a city centre location (or London weighting or other allowances) remain appropriate? If not, how will you remove them?

Is it legitimate to consider a salary and benefits reduction to more appropriately align with elements of home working? If so, how will any reduction in pay or benefits be negotiated?

Will you start to offer different packages depending on working model?

There has already been publicity which suggests that employees working in hybrid and remote working arrangements may be overlooked for bonuses and promotions. Hybrid working does lead to the risk of a divided workforce, or even claims of indirect discrimination since groups who are attracted to remote or hybrid working may include higher numbers of individuals with protected characteristics (disabled people, women, and older workers).



For many employers this is a step into the unknown. What salary and benefits packages are appropriate?

Will you offer contribution to the costs of home broadband and heating / lighting? What is the tax position in relation to paying these expenses?

Where the employer pays for benefits for workplace employees (like restaurant subsidies, gym memberships, parking discounts), then consider what benefits are appropriate for fully remote workers.

Remote (and hybrid) workers should have the same entitlement to sick pay, maternity, paternity, and annual leave.

Will you allow remote workers to claim expenses if they travel occasionally to the office to attend meetings? What if this becomes more frequent and where do you draw the dividing line?

# Employment Contracts



## Workplace

### Normal Place of Work

Normal place of work is part of the required employment particulars that must be provided to employees in writing before employment starts – see s1 Employment Rights Act. For employees who will remain at work then this should remain the same.

### Variations

If existing working location is unchanged then there may be no issues to consider.



## Hybrid

Where an employee is required or permitted to work at various places, s1 Employment Rights Act requires a statement to that effect to be provided to the employee, as part of required employment particulars.

Therefore, ensure that these requirements are covered off in the written particulars or in the employment contract. This may involve amendments to existing employment contracts. The existing contractual terms may allow for some degree of hybrid working without any contractual change – legal advice should be obtained on this.

Is there a minimum expected workplace attendance or occasions where attendance is required (like client meetings, training etc)?

It may be advisable to list both the workplace and the employee's personal address as the normal place of work, with additional flexibility if shared spaces are used.

Consider if there will be a change to employment contract terms. Consult on any changes and ideally agree them. Consider your stance if an employee objects to the changes. Will a redundancy situation arise due to a change in workplace? How will you handle any claims for a redundancy payment?

Is there a mobility clause in the existing contracts that allow changes to working arrangements? You may risk breaching the contract if these changes go beyond the scope of a mobility clause.



## Remote

Consider whether the normal place of work should be stated as the home address of the employee, from time to time. Will you include a requirement to attend the workplace for occasional meetings, or attendance at customers' premises if this is relevant?

Employees may need to check their leases, or mortgage conditions to ensure remote working or carrying on a business is permitted.

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# Employment Contracts



## Workplace

### Applying for Flexible Work

Employees with over 26 weeks service have the right to apply for flexible working (which includes remote working). Employers have a duty to consider the request although employers are under no obligation to accept. Note, however, the Government have consulted over potential changes to the flexible working regime and whether the ability to apply for flexible working should be a “day one” right.

We are seeing an increasing trend of employees using this right to request that employers consider hybrid and remote working, particularly those who have home commitments, for example, caring responsibilities.

Some employers already go beyond the existing statutory right and consider applications for flexible working generally from day one. With an expected increased focus on flexible working, what will your stance be, and do you need to revisit and amend your flexible working policy and process?

A refusal to grant flexible working requests can in some cases risk a claim for indirect discrimination. Take advice if you anticipate this may be the case.

### Redundancy Considerations

When considering redundancy (e.g. due to workplace closure), it is advisable to consider if redundancy can be avoided by using flexible or remote working.



## Hybrid

Employees that are currently working on hybrid arrangements may also make flexible working requests.

If you are considering granting an application to work on hybrid arrangements or remotely but are unsure if this will work out long term, consider a trial period. Could you have a right to revert to the previous arrangements if it does not work out?

Closing a workplace and requiring an employee to work remotely may trigger the right to a redundancy payment. Consider the contractual position and any mobility clause carefully. For example, some employees may refuse to work from home even where work is available to do.



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# Employment Contracts



## Workplace

### Travel Distance and Expenses

No real implications for workplace based employees.

### Right to Enter

Not an issue for workplace based employees.



## Hybrid

If considering hybrid working, will you insist that the employee needs to be based within a reasonable travel distance from the workplace so they can attend workplace events and meetings?

Will the employee's travel distance have an impact on how their expenses are met (if at all)?

Consider a right to enter the employee's home in order to check and service any IT equipment provided by employer, carry out risk assessments and to ensure that all equipment and confidential information is returned on the ending of employment.

Employees may be unwilling to accept a clause that allows their employer to enter their home (even if it is only to collect property). In such cases, the employer can arrange for couriers (potentially at employee expense) or deduct from settlement or final pay if property is not returned.



## Remote

Remote workers will only be in the workplace in very limited circumstances, so will you restrict where they can be based? Is your remote working policy limited to being based at home in the UK? Consider implications of an employee working in an overseas location, e.g. tax, social security and local employment laws. Many employers limit remote working to a UK based location and require the employee to seek permission if this location is to change.

If expenses are incurred by an employee in exclusive performance of employment duties, the employee has a tax allowance of £6 per week without having to provide evidence (evidence must be provided where further relief is sought).

Employees can currently purchase and be reimbursed for office equipment when working from home (any policy or contract should cover this). This is currently tax deductible under a HMRC concession that ends in April 2022.

The same issues as for hybrid working.

# HR Policies



## Workplace

### Reviewing Policies

Ensure that ongoing HR policies are fit for purpose even where employees will remain in the workplace. For example, ensure that working safely and social distancing guidance and requirements are up to date. Ensure that your flexible working policy reflects changed employee expectations and is fit for purpose.

### Insurance and Regulations

No real issues for ongoing workplace arrangements.



## Hybrid

Implement a hybrid working policy covering off key areas such as how to apply for hybrid working, what arrangements are available, what is required at the employee's home, equipment and right to enter, any insurance requirements, data security and confidentiality and termination of arrangement.

Consider if your existing insurance policies would cover loss, damage or theft of any office equipment located at the employee's home.

State that the employer will not meet any liability for loss, damage or injury caused by any equipment not provided by the employer.

Employee to check their home insurance – some policies provide that carrying out a business or home working may invalidate cover.

Will the employee be required to take out additional insurance to cover equipment provided at home premises.

Check employee is not going to receive any work-related visitors or customers at home.

Will any work devices be properly stored and locked away in the employee's home when they are not in use?

Is the employee's home secure when it is left unattended?



## Remote

Same considerations as hybrid working policy but adapting this to cover working which is entirely remote, where applicable.

The same considerations as for hybrid working.

Check the requirements of industry regulators. For example, certain industry regulators may impose requirements to be able to offer regulated services for instance the Financial Conduct Authority has released guidance on how firms can continue to meet their regulated responsibilities when allowing hybrid or home working.



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# HR Policies



## Workplace

### Health and Safety

With the continuing risk of COVID-19, if employees are attending the workplace in-person, ensure that working safely guidance is adhered to and that risk assessments are kept up to date.

### Monitoring of Employees

Monitoring employees' use of email or the internet creates issues of potential infringement of the right to privacy together with data protection implications. Any monitoring should fulfil a lawful business requirement, be proportionate and a privacy impact assessment should be carried out. Employees should be informed of the fact and purpose of any monitoring.

### Sickness

No real issues for ongoing workplace arrangements.



## Hybrid

The employer retains their duty to take reasonable care for the health and safety of their employees and to provide and maintain a safe system of work, and safe place of work.

Consider how these duties may be fulfilled with employees working hybrid or remotely.

Additional risk assessments should be carried out. For example, how are employees to report any illness or accidents, are there any particular risks for example lone working.

Some employers are carrying out additional monitoring of employees working at home for example checking when they are working and work output. The same privacy and data protection requirements apply. Covert monitoring is less likely to have a lawful basis – for example it may only be appropriate when investigating criminal activity.

Surveys have suggested that hybrid and remote employees are taking less sick days than employees who come to work. Consider how to ensure that employees who are genuinely unfit for work do not work and report their sickness through the usual channels.



## Remote

The same issues as for hybrid working.

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# HR Policies



## Workplace

### Confidentiality and Data Security

Many businesses have data protection policies and procedures in place following UK GDPR. Employers must have appropriate measures throughout their organisation to prevent unauthorised/unlawful data processing.

Internal IT training in-person with follow-ups can ensure employees are fully informed on data protection and tech/internet expectations.

If employees are coming into the workplace and are being required to provide information on their COVID vaccinations status or test results, this is health data. Health data is special category data with more onerous conditions for the data processor. Any policy and practice should reflect this.



## Hybrid

Data protection regulations apply in the same way even where the employee is working from home.

Many employers are carrying out data privacy impact assessments.

Is your employee allowed to take work documents home or access them at home? Would doing so pose risk to data protection or confidentiality?

Will the worker have a work device? Switching between a work device and a personal device can create additional exposure to viruses, or malware.

When working at home, if the worker lives with others they may be overheard, or confidential documents seen.

How will printed company documents be securely disposed of at home? Where data needs to be transferred from workplace employees to at-home employees, how is this done? Is it secure?

Some employers are updating their cybersecurity policies and others are creating entirely new ones for remote workers – many companies have provided devices that have antivirus protection, VPNs, pseudonymised data, full volume encryption, and two-factor authentication.

Are you able to remotely access devices for maintenance, servicing, updates, or security etc?

How are suspected data breaches or security incidents to be reported and are employees aware of the required standards?



## Remote

The same issues as for hybrid working.

# Working Time and Burnout



## Workplace

### Managing Work Time

Working Time Regulations continue to apply.

Employers should allow relevant rest periods, keep adequate records of working time and ensure that employees do not work more than 48 hours per week (on average) unless opted out.

### Mental Health and Loneliness

Many employers are investing in mental health awareness, workshops, and training. Policies need to carefully manage absences resulting from mental health issues.

Many employers are following ACAS guidance to create Mental Health Champion positions and others are creating Mental Health First Aider roles. Each position should come with adequate training.

Reasonable adjustments may also be required for staff suffering with mental health issues which amount to a “disability” under s6 Equality Act 2010. This may mean providing flexible start/finish times (consider this in the context of requests for flexible working), mentoring, or adapting the workplace.



## Hybrid

Working time is more difficult to police when employees work hybrid or remotely. Some employers use ‘lone worker apps’ with check-in and check-out features.

It is important to delineate between work time and free time, especially if employees are readily accessible by email/call/message and are required to respond. Be alive to issues of excessive work hours as it is easier to slip into this pattern when working from home.

Time spent commuting to the workplace is not normally counted as working time. However, travelling to an occasional workplace for meetings or to customer sites may count. Consider the legal position.

Hybrid workers should also have access to employee assistance programmes like independent counselling or occupational health.

Flexible working arrangements and avoiding frequent commutes can lead to better work-life balance and increased job satisfaction – this can improve retention.

Some employers are introducing Wellness Action Plans that covers approaches to mental health, triggers, early warning signs etc.

Keeping employees engaged and feeling part of the team is key.



## Remote

The same issues as for hybrid working.

Some employees report feeling isolated when they work fully remotely, as they have limited social interactions with their team. Occasional workplace events or additional opportunity for co-working can provide some interaction.

When working from home, individuals may feel pressured to work while ill or work longer hours. Be vigilant about this. Remote counselling and other services should be made available to employees working from home.

Some employers are giving access to paid mental fitness/health apps (like Calm) and others are providing virtual wellness sessions. Remember, out of sight should not mean out of mind! Following government guidance, some employers have introduced a trained loneliness ‘champion’ and added loneliness to managerial training.