

Global Workplace Law & Policy

The pros and cons of remote work

David Mangan (Maynooth University (Ireland)) and Sara Huybrechts (Institute for Labour Law – KU Leuven) · Wednesday, March 1st, 2023



To what extent, if any, will employers permit hybrid working?

Hybrid working involves a split of time for workers performing their duties at the employer's business location and their own homes (though it is possible to work from another location). This is the concept of remote working discussed here. Remote work may also be discussed under terms such as work-life balance, flexible working or flexible work arrangements (though the latter has often involved accommodations for workers with childcare or other caring responsibilities).

The aim here is to set out some of the tension points surrounding hybrid work.

Are we on the crest of the remote work wave?

The term hybrid working gives the impression that anyone can work remotely. This is not necessarily the case. Some work must be performed in-person.[1] Work that can be carried out remotely has been called “remote-capable” in a [2022 Gallup survey of US workers](#). Who decides whether work is remote-capable can be contentious. In one poll, 70 million workers identified their jobs as being remote-capable. In another [study](#) it is found that 37% of jobs in the US can be performed entirely at home. Typically, those so-called ‘teleworkable’ jobs pay more. Lower-income economies have a lower share of jobs that can be done at home.

Nevertheless, there must be agreement between employees and employers regarding remote work. The [European Framework Agreement of 2002 on Telework](#) emphasised the voluntary character of remote work that is conducted on a structural basis. This means that both parties can propose to work remotely but the other party has the right to refuse this offer. Under the Framework Agreement, this right to refuse is not subject to any conditions. Parties are not obliged to provide the reasons for their decisions.

Employers’ decisions often seem to be pivotal here. This matter is particularly important in jurisdictions where there is a right to request remote work, such as the United Kingdom. A new entrant to the remote work discussion, the Irish Government’s plan for a right to request remote work arrangements is currently working its way through the legislative process; [in progress since early in 2022](#). The Government has remained steadfast that there is no opportunity for employees to appeal employers’ decisions to refuse a request (except on a procedural matter). Put another way, the substance of employers’ refusal of requests is beyond challenge. [During debates on this legislation in the Seanad Éireann and in response to questions regarding the absence of an appeal on the substance of refusals, the Deputy Minister stated:](#)

“This is an important provision. The Senator is right because, and we have always been up front about this, the Bill does not introduce an automatic right to flexible working. It is a right to request such working. In fairness, this has always been described as a right to request. Any dispute can only be in relation to the request process and the procedure set out in respect of whether the employer has complied with the various processes set out in the legislation. The Senator’s proposed amendment would extend the power of the adjudication officer or the Labour Court beyond what is set out in the Bill and would look at the reasoning and question the reasoning the employer used. I know that is the Senator’s intent, but it is not what we are in a position to legislate at this point, nor is it what we were ever proposing to legislate for.

All of us are lucky that many of the jobs we do can now be done remotely, but large parts of the workforce do not enjoy this ability. It is important that we recognise this and the fact that the additional benefits are not fully and evenly distributed as yet. We must also recognise that in certain workplaces a right to request remote working is not going to be a reality because working remotely simply does not meet the requirements of that particular workplace now.”

[Transparency in pay has been an important issue that has garnered much attention](#). While employers may be obliged to give reasons for refusing requests for remote working, should transparency extend to those reasons in the form of labour court scrutiny? The Irish Government clearly responds in the negative. Should employers be allowed some scope for decision-making which is beyond further legal scrutiny?

The caring context of remote work

At the EU level, the [Work-life Balance Directive](#) offers a right to request flexible working arrangements for caring purposes (article 9). Flexible working arrangements include the use of remote working arrangements according to article 3.1 (f). When employers refuse this request, they are obligated to provide the reasons for refusal. Pursuant to article 18, the Commission will provide a report about the implementation of this Directive after 2 August 2027. The Directive is set within the context of caring responsibilities, particularly the effort to rebalance family work between men and women (see recital 11 for example). The proposed Irish legislation, for example, contains a right to request flexible working based upon caring obligations as well as a more general right to request. One matter to monitor will be whether the family context of the Directive will limit the availability of remote work (or give priority) to those making requests related to caring responsibilities.

Recalling lockdown under Covid-19, we were deprived of the personal interactions to which we had become accustomed. While a majority of people may not agree that they missed the social interactions at work, it is noteworthy that as we have returned to a pre-pandemic way of working, many want to limit their time at work. The flexibility offered by remote working certainly can be attractive.

The desire for flexibility with work does not originate with the pandemic. When canvassing some of the reasons why individuals seek platform or gig work, this term came up. ‘Gig’ companies contended that the flexibility of ‘gig’ work has been part of the appeal to work with them. Company and worker representatives from Uber and Deliveroo asserted that the flexibility was pivotal.^[2] It may be speculated that platform work may be enticing to those “who might feel that the system doesn’t accommodate the reality of their working relationships.”^[3]

Is there a societal benefit to having people work together?

In its 1992 *Niemietz v Germany*^[4] decision, the European Court of Human Rights set out its broad interpretation of the protection provided to workers by [Article 8 of the European Convention of Human Rights](#). The following is an often-quoted passage from this decision:

it would be too restrictive to limit the notion to an “inner circle” in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings. There appears, furthermore, to be no reason of principle why this understanding of the notion of “private life” should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world.^[5]

Niemietz articulates a wider perspective of a working individual: a person who participates in the workplace, but also has a private life. The intersection of the individual with the workplace does not negate a right to privacy because there is “a zone of interaction of a person with others, even in a public context, which may fall within the scope of ‘private life’”.^[6] In 1992, the court noted the importance of the development of relationships within the workplace. The workplace facilitates human development through these relationships, as demonstrated by *Sidabras and Dziautas v Lithuania*.^[7]

In certain lines of work, such as medicine and law, importance may be placed upon the mentorship or professional development aspects of in-person working. It may be asked whether remote interactions between senior and junior professionals will have a longer-term impact upon these professions.

Is the decision to allow remote work ultimately a business decision by employers?

The workplace is the location of employers' businesses and these entities' interests require consideration. The employment relationship remains one of subordination where workers' rights (such as privacy) are qualified by this very connection.[8] Is this simply a matter of employers weighing pros and cons?

The opportunity to work remotely for part of a work week may entice some workers to join a company. It may also be a way of retaining existing staff.

Conversely, does remote work provide a strategic means of diminishing the risk of problematic workplace incidents? A more recent development has been the attention drawn to the range of workplace relationships; some of which, such as workplace romances and toxicity within the workplace, are possibilities when individuals of different backgrounds are brought together into one locale for an extended period of time. Is it better to keep people physically apart to reduce the risk of workplace conflict?

Does remote work mean less time away from work?

For workers, carrying out work duties at employers' premises may be a way to separate work and home lives. Compartmentalisation, then, can facilitate time away from work in a manner that remote work does not.

Remote workers working exclusively from home during the pandemic saw a 35% increase in their working time, where the increase was defined in relation to work carried out during free time. The increase in working hours was found in those who worked remotely prior to the pandemic, and those to which remote working was forced by the pandemic. Remote workers who were parents to home-schooled children (due to the move to online learning) were one group that reported working during free time. Regarding the difference between working parents and those workers without children: "In March 2021, 29% of those with children aged between 0 and 11 and who were working from home reported working in their free time 'every day or every other day during the last month', compared to 20% of those without children".[9] During the pandemic, evidence also suggested workers' "intensification of ... effort levels, [as well as] an increase in ... hours of work and achieved greater productivity." [10]

The idea of a right to disconnect arises in this context. However, like remote work, there are differences to bear in mind. Not all jurisdictions have a clear, enforceable right to disconnect (a right to disengage from work and not to routinely perform work outside normal working hours). Even if there is a right to disconnect, some workers may "feel they have to remain always connected to their work outside normal working hours". These individuals also find it challenging to relax outside of work.[11]

Outlook for remote work

There may be mixed feelings about remote work; sentiments which fall along the lines of

employees and employers status, where the latter are perhaps less inclined than the former. Like many matters regarding work, remote work requires dialogue between employees and employers. Perhaps the discussion around remote working can lead to enhanced communication in general amongst the workers and employers.

References

[1] To this we may add that there can be debate about how effective some work is when carried out remotely.

[2] House of Commons Work and Pensions Committee, *Self-employment and the gig economy* HC 847 (1 May 2017), [12].

[3] Matthew Taylor (Chair), *Good Work: The Taylor Review of Modern Working Practices* (July 2017), 7.

[4] *Niemietz v Germany* (ECtHR, Judgment 16 December 1992), [29].

[5] *Niemietz* [29].

[6] *PG and JH v UK* (44787/98) [2001] ECHR 546 (25 September 2001), [56]. The same phrase is repeated in *Antovi? and Mirkovi? v Montenegro* Application no. 70838/13 (28 November 2017), [42].

[7] App.Nos.55480/00 and 59330/00, Judgment of 27 July 2004, (2006) 42 EHRR 6, [48]: ‘The ban has ... affected the applicants’ ability to develop relationships with the outside world to a very significant degree, and has created serious difficulties for them as regards the possibility to earn their living, with obvious repercussions on their enjoyment of their private life.’

[8] F Hendrickx and A Van Bever, ‘Article 8 ECHR: Judicial Patterns of Employment Privacy Protection’ in F Dorssemont, K Lörcher and I Schömann (eds), *The European Convention on Human Rights and the Employment Relation* (London, Hart, 2013) 185.

[9] Eurofound (K. Predotova and O. Vargas Llave), *Workers want to telework but long working hours, isolation and inadequate equipment must be tackled* (6 September 2021).

[10] J. Geary and M. Belizon, *Working at home and employee well-being during the Covid-19 pandemic: First findings from the UCD Working in Ireland Survey, 2021*, 17.

[11] J. Geary and M. Belizon, *Working at home and employee well-being during the Covid-19 pandemic: First findings from the UCD Working in Ireland Survey, 2021*, 30.

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