A guide to hybrid working and how to manage it

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About us

Catherine joined the team at JCP after returning to South Wales from a leading legal business in Bristol as an Employment Solicitor. She has more than 11 years' of experience of contentious employment law and employment tribunal proceedings.

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Aim of workshop

1. To give an understanding of hybrid working;

2. To provide tips on what to include in a hybrid working policy and/or contract of employment for a hybrid worker;

3. To provide an overview of how applications for hybrid working should be dealt with.

Background

Due to the pandemic many have been forced to work from home causing us to question why this cannot be done long-term.

While this is not a new form of working we have seen increasing reports in the media about businesses switching to fully remote working or hybrid working.

Background – what is hybrid working?

There is no legal definition of hybrid working…..

It's a form of flexible working where working time is split between remote working away from the workplace (at home or some other remote location) and the workplace.

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Why has it become so popular?

The bottom line is that overall it is considered beneficial for both employers and workers and modern technology makes it possible.

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Why has it become so popular? cont…

Benefits for the worker:

- Nil or a reduced commute time and expense with the benefit of reduced stress
- Better work life balance
- Access to a wider job market

Why has it become so popular? cont…

Benefits for the employer;

- Reduced overheads for office space and travel
- Increased productivity (debatable by some) and better motivation (many employees see it as a perk)
- Operational mobility (access to a wider market of candidates)
- Reduced staff turnover (staff may be lost to employers who will allow hybrid working)
- Ease of holding team meetings if employees are spread across a number of physical sites
- Operational continuity in the event of bad weather, national lockdowns
- Avoiding employee expenses commitments e.g. travel
- Reduced sickness absence (but note Presenteeism)

What the stats say:

The Office for National statistics reported for April 2020 to May 2021:

- The proportion of working adults who did any work from home in 2020 increased to 37% on average, from 27% in 2019

- Working adults stated work-life balance was the greatest positive, while challenges of collaboration were the greatest negative

- Of businesses that didn't permanently stop trading, 24% stated that they intended to use increased homeworking going forward, with the Information and Communication industry recording the highest proportion (49%)

Source: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/businessandindividualattitudestowardsthefutureofhomeworkinguk/apriltomay2021

What the stats say cont…

The Office for National statistics reported for April 2020 to May 2021:

- Online job adverts including terms related to "homeworking" have increased. Homeworking adverts in May 2021 were three times above their February 2020 average
- Of working adults currently homeworking, 85% wanted to use a "hybrid" approach of both home and office working in future

Source: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/businessandindividualattitudestowardsthefutureofhomeworkinguk/apriltomay2021

What's the "catch"?

There are some potential drawbacks to consider such as:

- **Loss of control** and damage to team working and company culture

- Reduced face-to-face collaboration among colleagues and teams, which is important for **innovation** but also for employee **social interaction** and wellbeing

- Managers may not be able to **support** work or workers to the same degree

- **Reduced on-the-job learning** and training opportunities for junior or less experienced workers

What's the "catch"? cont…

- The arrangement is dependent on **technology**
- The employer will be reliant to a large degree on **trust** and may fear that some workers will slack
- **Data security** risks
- Employees working from home may experience **loneliness** and **boredom**, feel **alienated** from their organisation and developments within it. They may also find it more difficult to separate their **work life** from their **home life**

How to mitigate some of the drawbacks…

Have a clear and accessible hybrid working policy and clear contracts of employment of hybrid workers.

<u>NOTE:</u> Employers are required to provide employees and workers with a contract of employment or written particulars of employment. Employers will need to ensure that the contract of employment/written particulars identifies the employees correct place of work :

- Existing employees will need to provide a statement updating the contract
- New employees will need to ensure the contract reflects the correct place of work

The correct place of work maybe remote for part of the week and in the office for the remainder of the time.

Employer considerations

Employers, should consider the following matters and ensure they are covered in a policy and/or contracts for hybrid workers.

GOOD PRACTICE: Consult on any new policy with staff, unions and employee representative groups.

Employer considerations cont…

1. What's **the agreed arrangement** i.e. full time remote working or a few days per week?

2. If full time remote working is permitted (rather than hybrid), the employer should still have a **requirement** for the worker **to attend** the workplace from time to time for meetings (client/team), appraisals and disciplinary matters

3. Do you want to restrict the **geographical area** of the remote working to for example, the employees work/home address or within a specified radius of the home/work address?

Employer considerations cont…

- Is **work from abroad** permitted (be cautious as there are lots of additional considerations that will need to be provided for)?
- Are **working hours** set or flexible and will strict break times need to be observed?

NOTE: If the working hours are flexible the employer should take reasonable steps to ensure the employee is complying with the limits of the maximum work week (if there is no opt out agreement) and that they have proper rest breaks.

Employer considerations cont…

4. Who will pay the **expenses** such as electric, internet and phone for a hybrid worker?

5. How will you ensure your hybrid worker **secures data**? i.e. paperless working via a remote desktop, encryption, a requirement for a private room away from family

NOTE: It is recommended that the employer undertakes a data impact assessment and puts measures in place to mitigate any risk.

Employer considerations cont…

6. Employers will have less physical control over the output of an employee's work and will therefore need to carefully consider the measures it has in place to protect its **Intellectual Property**

NOTE: Employers for whom protection of IP is critical should include an express clause within the employment contract.

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Employer considerations cont…

7. Review **restrictive covenants** in existing employment contracts to consider whether they remain fit for purpose where an employee changes from workplace-based working to home-working or hybrid working

8. The **required equipment** - who will provide and pay for it, and who can have access to it. If the employer supplies computer equipment it will need to consider the application of any systems it has in place for policing its use

Employer considerations cont…

9. Do you want to reserve a **right to enter** the employee's home, for example, to install, maintain and service its equipment, to recover its property on termination and to carry out risk assessments for health and safety purposes?

Employer considerations cont…

10. Do you want to make the arrangement subject to a **trial period** to make sure the arrangement is working?

11. You should include **the right to revert** to office working where for example, the business need changes/the employees job role changes

Employer considerations cont…

12. Ensure the employee has contractual obligation to **return all property**, confidential information and software on termination

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Employer considerations cont…

13. The legal duty for the **Health and Safety** of your employees/workers and contractors. This includes both mental and physical health.

*NOTE: The Health and Safety at Work etc Act 1974 (HSWA 1974)) provides a legal obligation for "**the provision and maintenance of a working environment for employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.**"*

Employer considerations cont…

- Employers must conduct a suitable and sufficient **risk assessment** of all the work activities carried out by their employees, **including homeworkers** and hybrid workers, to identify hazards and assess the degree of risk (*Regulation 3, Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)*)

Employer considerations cont…

- Revisit your **risk assessment** to ensure there is an assessment of risk in relation to hybrid workers and review any existing policy on health and safety to consider whether amendments are needed to reflect changed working practices

Practical tips

- Ensure **regular interaction** with hybrid workers for their own mental health, for collaboration and to maintain the culture, which can include;

✓ Weekly team meetings (which could be virtual)
✓ Collaboration workshops (which could be virtual)
✓ Staff away days and/or office based days
✓ Regular line manager 1-2-1 meetings with where matters can be discussed openly and privately
✓ Newsletters
✓ Staff socials
✓ Line manager training to ensure tailored management styles
✓ A weekly catch up to plan work and set tasks and deadlines

How to deal with a request for hybrid working

- **Informal requests** - how you see fit, bearing in mind the requirement for you to **act reasonably** as an employer (implied duties) and **not to discriminate** on the basis of any protected characteristic, part-time working or fixed-term working and in accordance with any policy or contractual agreements relating to the matter

How to deal with a request for hybrid working cont…

- **Formal requests** will most likely come in the form of a flexible working application

- Employees with at least 26 weeks' continuous employment can make a request for flexible working under the statutory scheme for any reason

- The formal request must state that it is a flexible working request; explain the change being requested and propose a start date; identify the impact the change would have on the business and how that might be dealt with; and state whether the worker has made any previous flexible working requests in the last 12 months

How to deal with a request for hybrid working cont…

The employer must deal with the formal application in a **reasonable manner** (within 3 months) which would usually include…

- ✓ Meeting with the employee allowing right of accompaniment
- ✓ Detailed consideration of the application
- ✓ Communication of the decision
- ✓ The right of appeal

Only one request can be made in any 12-month period.

How to deal with a request for hybrid working cont…

The employer can only refuse a formal request for one (or more) of eight reasons, they are:

I. the burden of additional costs
II. detrimental effect on ability to meet customer demand
III. inability to reorganise work among existing staff
IV. inability to recruit additional staff
V. detrimental impact on quality
VI. detrimental impact on performance
VII. insufficiency of work during the periods the employee proposes to work
VIII. planned structural changes

Useful links

- The HSE has guidance on health and safety and homeworking, it can be found at: https://www.hse.gov.uk/toolbox/workers/home.htm

- On 13 July 2021 ACAS published new advice to help employers consider whether hybrid working could be an option for their workplace and how to fairly introduce it which can be found here: https://www.acas.org.uk/considering-hybrid-working-for-your-organisation

- The Office for National Statistics (ONS): https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/businessandindividualattitudestowardsthefutureofhomeworkinguk/apriltomay2021

Any Questions?