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Employment & Benefits

## Going Remote – Challenges Employers Face in Work from Home Arrangements

### Introduction

The term “*the new norm*” is widely used in mainstream media and can be said to have become synonymous with social distancing, the application of face masks, body temperature checks, etc. In the context of employment, this new norm can be associated with the Work-From-Home (“WFH”) arrangements that allow employees to discharge their duties and obligations from home. Needless to say, the second quarter of 2020 has seen a sharp rise in the percentage of employees with WFH arrangements, particularly those from the service sector.

With the gradual lifting of government restrictions, we are now witnessing more economic sectors reopening. Things are slowly but surely reverting to “*the old norm*”. That said, there are businesses that continue to allow their employees to opt for WFH arrangements.

In this Update, we examine some of the challenges businesses face in the context of employment laws and highlight the need for effective WFH policies to be created and implemented.

### WFH is not a Right

Unless expressly stipulated in the employment contract or mutually agreed between parties, the WFH model is not the norm, and therefore subject to employer's approval. Employers should clearly identify which types of employees can qualify for WFH arrangements and how they should go about applying for approval.

Implementing clear application procedures and defined selection criteria will guard employers against unnecessary allegations of unfair treatment or bias. Creating a platform for employees to understand the reasons WFH applications will be considered will allow employers to select those who are eligible as well as specify the duration of the WFH arrangements.

### Challenges Relating to Monitoring Employees who WFH

With less face-to-face interactions between managers and subordinates, this will undoubtedly give rise to difficulties in assessing the performance of WFH employees. To overcome this, businesses should establish a suitable reporting and appraisal system at the outset to evaluate the quality and quantity of employee performance. Where the employee's performance is assessed based on quantitative

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measures, difficulty in assessing the performance of WFH employees is mitigated since the assessment is based on tangible figures relating to products sold, revenue generated, proposals issued, etc. Where the employee's performance is based on qualitative measures or even a hybrid of both, the WFH policy will be more impactful. The WFH policy should envisage adequate opportunities for:

- review of work progress;
- involvement in projects, etc;
- evaluation of levels of performance;
- fulfilment of employer expectations; and
- reporting of any difficulties employees may face.

It is crucial to establish clear performance objectives. Action plans with specific timetables to supplement the WFH policy can be particularly useful in establishing clear performance objectives. This should be coupled with regular performance reviews to ensure that productivity remains optimal.

Further, businesses should consider implementing mechanisms to track employee attendance while on WFH arrangement via appropriate software that allow employees to sign on and off. Employers must appreciate the fine balancing between establishing a proper attendance record system and ensuring that the implementation of such software does not foster a culture of distrust, which may be counterproductive in the long term.

Furthermore, designing a comprehensive WFH policy that allows proper monitoring of employee productivity and attendance will enable the Human Resources Department to manage employees with pre-existing performance issues more effectively.

## Establishing Effective Communication Channels with Employees

In the virtual environment, it is challenging to communicate complex ideas or nuanced messages, as more work environments have high-context cultures that rely heavily on social cues. Employers should contemplate using technology strategically to stay in direct contact with their employees. Communication and continual engagement are a must to ensure employees on WFH arrangement maintain productivity and performance.

The communications policy should outline communication channels as well as expected responsiveness and availability expectations. Employers are encouraged to implement mechanisms to easily and immediately discuss any challenges employees may experience while working from home.

The WFH policy should list the minimum technological facilities that the employee should have to qualify for WFH arrangements. Employers, however, need to be aware that it is an implied term of an employment contract that employers should, to the best extent possible, provide employees with sufficient means to discharge their obligations under WFH arrangements.

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### Health and Safety Issues

Pursuant to section 15 of the Occupational Safety and Health Act 1994, an employer is responsible for an employee's welfare, health and safety "so far as is practicable".

Further, the Occupational Safety and Health (Safety and Health Committee) Regulations 1996 stipulate that employers must conduct a suitable and sufficient risk assessment of all work activities carried out by their employees, and to identify hazards and recommend remedial measures.

Employers will need to consider these obligations in the context of WFH arrangements to decide what measures they need to put in place. This may include allowing the employer (with the employee's agreement) to enter the employee's home to install, maintain and service its equipment, or to recover its property on termination of the contract of employment, or to carry out risk assessments from a health and safety perspective.

### Data Security and Confidentiality

According to a multinational cybersecurity and anti-virus provider, Kaspersky, and the World Health Organisation, the sudden but necessary switch to WFH has seen a spike in cybercrime. Cybercriminals apparently target WFH employees with spam and phishing emails, including malicious file attachments.

Employers therefore need to be on their toes on issues of data security and confidentiality because employees on WFH arrangement may be more vulnerable to such attacks. The WFH policy should complement existing data protection policies implemented in compliance with the Personal Data Protection Act 2010, and fill any gaps that may exist. Employees may also need specific training on their data protection and confidentiality obligations, the procedures which they must follow, and what is considered an authorised use of data.

### Conclusion

Whilst the pandemic will end in due course, it appears that WFH arrangements are here to stay. A comprehensive WFH policy will play a significant role in assisting employers who may be at risk of industrial relations disputes on issues such as termination by reason of poor performance, retrenchment, misconduct, etc. with specific reference to employees on WFH arrangements. As such, much consideration must be given to drafting an effective WFH policy, taking into account practical considerations as well as existing legal responsibilities.

For further queries, please feel free to contact our employment team below.

Visit our [COVID-19 Resource Centre](#) for views from our lawyers across the region on common issues and legal implications brought about by COVID-19. For specific inquiries, please reach out to your relationship partner or send an email to our [COVID-19 Legal Team](#).

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