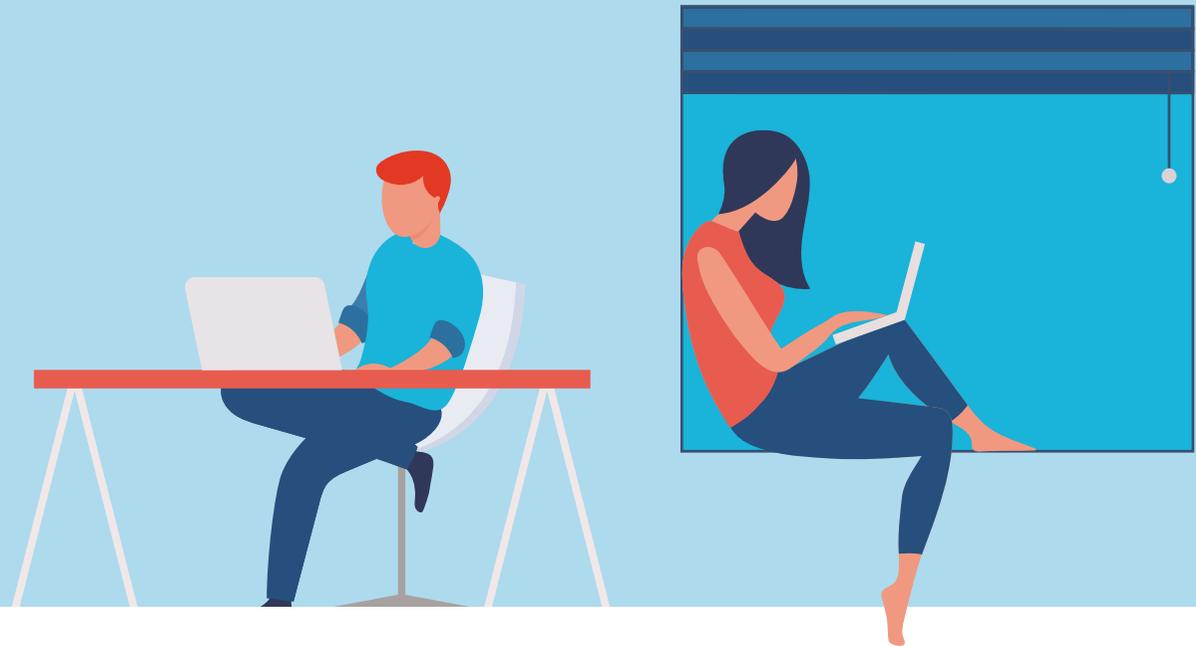


# Hybrid Working



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# Introduction

With lockdown forcing many people to work from home or to an altered pattern of work, COVID has turned the way we work on its head.



With long commutes and a Meal Deal for lunch now distant memories for many, talk is turning to a 'new normal' where flexible working becomes commonplace for many businesses.

The COVID-19 pandemic has shown that, in the case of flexible work design, the impossible turns out to be possible after all. The enforced trial of homeworking has demonstrated to many that it works better than they could have imagined, and perceived barriers have faded away as businesses have learned to design work differently.

Looking to the future, 63% of participants in a CIPD employer survey said that they planned to introduce or expand the use of hybrid working to some degree, combining time in the workplace with time at home, depending on the needs of the job, the individual and the team, and the team working practices.

Whilst this may bring benefits, it is not without its challenges particularly for those businesses whom will be looking to operate a hybrid model combining both home and office working.

However, some employers will not want to adopt such a flexible structure and will want their employees to return to full-time working in the office when restrictions are lifted.

So, what do you need to think about when considering how or if home or hybrid working is right for your business?

The first thing you might want to consider is the benefits of making such arrangements.

# Benefits

Of course, your biggest concern might be, are my employees working when at home, or putting on a load of washing! Despite the difficulties of lockdown, more than two-thirds (71%) of CIPD survey participants said that homeworking had no detrimental impact on productivity. This figure is made up of 33% who said that productivity improved, and 38% who said it was unchanged. And seven in 10 said the increase in home working had either boosted or made no difference to productivity.

## Our research has also found the following benefits:



### Flexibility and agility

home working enables more agility and flexibility in working arrangements. With employees no longer tied to an office, they may be better placed and more willing to work flexible hours such as earlier or later in the day or even at weekends. This may help you meet certain business needs e.g. if you are trading with customers residing in a different time zone.

### Improved employee retention

home working can help retain employees as the flexibility of home working can help them meet childcare needs, reduce their commute and enable them to fit their work around their personal life. Being allowed to work from home, employees will also feel increased levels of trust from their employer, which can contribute greatly to staff loyalty.

### Attract new talent

home working can be offered as an incentive to come and work for you, helping you to attract new talent to your business. Even just offering the option to work from home will give you an advantage in the job market over competitors that don't offer home working as an option to their employees. It also allows you to attract talent from further afield, as you are not bound by geographical boundaries.

### Increased productivity

due to fewer interruptions, which would normally occur in an office environment. By contrast, working from home allows for a quieter environment that can facilitate more focused work. You may also find that employees will work longer hours as they can also use their time saved from commuting to start work earlier, later or both.

### **Increased employee motivation**

by working from home, employees will feel more trusted by their employer as the working relationship isn't as closely monitored and employees are allowed a degree of autonomy to get on with their work. Employees will also be happier developing a home working routine that suits them better and this can contribute towards them feeling more motivated to give their best.

### **Improved health and wellbeing**

working from home eliminates the need for a commute to work that can be stressful to your employees. Time saving such as this also enables employees to get extra health benefits such as additional sleep, spending more time with family, exercising or preparing healthier meals.

### **Financial benefits**

savings on office space, office supplies, utility bills and other facilities. Employees may also be able to take advantage of the tax relief available from HM Revenue & Customs (HMRC) for working from home.

### **Convenience**

you may have employees that do a lot of visits to customer locations and are therefore not regularly in the office. Allowing them to base themselves from home may be more convenient and leads to further time and cost savings.

### **Technology makes it easier**

the internet has made it possible for employees to be continually connected to the office. Tools such as Zoom, and Microsoft Teams have made communication between colleagues and teams much easier and at times can lead to more efficient and effective meetings.

### **Less sickness absences**

employees are more likely to feel happier and more energised working from home and therefore have less chance of their immune system being negatively impacted by burnout. Also, the fact that employees are working in isolation means there is less chance of infections spreading as would be the case within an office environment.

### **Less need for regular holidays**

working from home can feel like a break from the office even though employees are still working. Working from home, employees will feel more energised and will be able to spend more time with their family and therefore will not feel the need to take as much leave. However, it is your duty as an employer to ensure your employees take their holidays.

Of course, with all benefits, we also need to consider potential disadvantages. Our research has resulted in the following findings:

# Disadvantages

## Working from home doesn't suit everyone

working from home might not be suited to everyone's personality or ability. Some employees might prefer the routine and structure that working in an office environment provides them. Some employees may prefer personal interaction with colleagues and also find face-to-face guidance with their manager extremely beneficial in helping them complete tasks and achieve their goals. You also need to be mindful of employees with a disability. Working from home may have a negative impact on the support they need to do their job. Working from home may also not fit in with everyone's home-life e.g. some people may have young children that may be unaware of boundaries and cause interruptions during the working day. Others may not have the physical space required to create a suitable dedicated working area.

## Difficulty monitoring performance

there could be difficulty managing home workers and monitoring their performance. Different personalities may also respond to monitoring with varying degrees of positivity. You could look at setting goals and targets with employees that are easily measured so that if their targets aren't being met you can identify and remedy any performance issues at an early stage.

## Potential burnout

where an office provides a clear physical distinction between work and home life, working at home can lead to employees forgetting to differentiate between work-life and home-life. This may lead to employees finding it difficult to know when to switch off from work leading to longer hours, increased stress and inevitable burnout. You should be encouraging your employees to take regular breaks and remind them of the importance to take their annual leave. A recent CIPD Health & Wellbeing survey found that 60% of respondents have worked outside of their contracted hours to get the work done.

## Cost of working from home

although you are not legally obliged to cover all costs associated the home working, it would be reasonable to cover costs of equipment such as laptops, mobile phones and other IT equipment required to do the role. You will also have to consider adaptations to meet health and safety standards.

## Problems with employee development

you may find that not having employees in close physical proximity leads to difficulty in maintaining employee development and upgrading skills. However, you could encourage employees to take the opportunity to learn new skills through online events and courses.

## Information security risk

information security problems could be more likely to occur when employees are working from home. There is increased risk with laptops being taken home and the need for employees to access servers remotely. You should ensure that you put measures in place to protect your



company data by installing encryption software and remote-wipe apps if mobile devices provided by you go missing. Virtual private networks also encrypt your data and provide secure access to a remote computer over the internet. This helps keep your files and data secure yet accessible to your employees.

### **Negative impact on mental health**

the switch to working from home may have a negative impact on your employee's mental health if they are unable to find a routine that works for them, or if they are struggling to separate work and home life or are feeling isolated. To help, you can encourage your employees to develop a working routine:

- Set up a dedicated work space and set boundaries for other household members.
- Create more opportunities for employees to stay connected by communicating through regular chats and team catch-ups.
- Eating healthily and taking regular exercise can also help improve mental health especially when woven into a regular routine.

### **Employees feeling isolated**

individuals working from home may feel a disconnect from their colleagues and business as a whole that an office environment naturally allows. To address this issue, you should ensure that communication is more regular. So, by scheduling quick catch-ups by phone or regular team meetings through other technologies like Zoom, employees are given more opportunity to feel involved and part of the team. More informal and social catch-ups would also help counteract any feelings of isolation.

### **Decreased staff morale**

it can be harder to maintain team spirit when employees are working at home on their own.

### **Not all jobs suit home working**

working from home suits some jobs better than others. There may be some jobs that just cannot be done from home.

### **Poor broadband speeds**

you should be mindful that depending on where your employees live, they may not be able to access broadband speeds that enable them to do their job effectively e.g. rural broadband is often very slow.

### **Fear of unfair treatment**

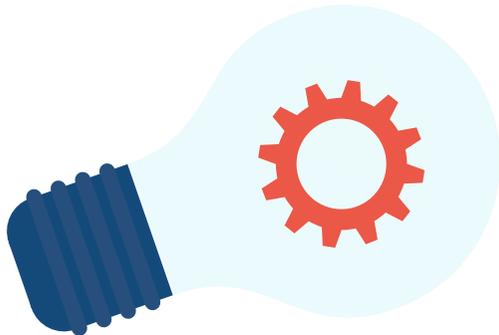
research has found that a fifth of UK workers feel they get less recognition within their career as a direct result of working remotely despite working harder. The poll of 1,085 employees, conducted by Ezra, found 20% felt they received less recognition from their workplace since they started working remotely, while 72% said they received about the same. Just 8% reported they received more recognition. This is despite 55% saying they were more likely to work additional hours since working remotely. Additionally, data from the Office for National Statistics found that between 2013 and 2020, people who worked from home were on average 38% less likely to have received a bonus compared to those who never worked from home.

### **Presenteeism (working whilst ill)**

this year, due to the considerable increase in homeworking during the pandemic, a recent CIPD Health & Wellbeing report found that presenteeism remains common regardless of where people work, with just 16% of respondents not observing any form of presenteeism.

## Considerations - FAQs

With any change, there are always going to be things you need to consider, and obligations placed upon you. Below we have answered some of the questions that we believe you might be thinking about when considering introducing home or hybrid working to your business.



### Who is responsible for the health and safety of employees who work from home?

You are. All the normal health and safety legislation (including the Health and Safety at Work Act 1974, the Display Screen Equipment Regulations, and the Provision and Use of Work Equipment Regulations) continue to apply, and you have the usual duty of care to your home-based employees.

The UK's workplace health and safety regulator, the Health and Safety Executive, has updated its homeworking guidance to take account of future home working arrangements.

### Do I need to carry out a risk assessment for those working from home?

At the very least, you ought to undertake a basic homeworking risk assessment and consider whether there are any risks which arise from the type of work which is being undertaken from home, whether it can be done safely and whether any measures ought to be put in place to protect employees from any risks identified.

## Do we have to have health and safety inspections?

You need to be able to show that you have discharged your duty of care. If possible, it is good practice to get your health and safety officer (or a manager trained in health and safety) to make an initial inspection, and at regular intervals thereafter to get your home-based employees to complete self-assessment forms which are reviewed by your health and safety officer, or by a manager trained in health and safety.

## Do home workers have to be permitted breaks after six hours, like people who work on our premises?

Yes, although it will be difficult for you to manage this, other than by relying on time sheets. You should make sure they know that they are entitled to such breaks, after that you will have to rely on them.

## Do I need to provide employees with equipment to use at home?

There is no general legal obligation on employers to provide the equipment necessary for homeworking.

## How do we ensure that employees who work from home do not do in excess of 48 hours a week?

With difficulty. It is your responsibility to ensure that they do not breach the Working Time Regulations, and a recent case at the European Court of Justice has emphasised that this is a positive rather than a negative duty - i.e you must ensure that your employees take rest breaks, and not just that they can if they want to.

You should at the least get them to do time sheets, which are checked, and look out for obvious signs of an inability to switch off (such as emails sent out in the middle of the night). Alternatively, you may wish to agree with the employee that the 48-hour limit does not apply (although you may then have to keep more extensive records of working time and ensure that no employee exceeds 65 hours a week).

## Are we responsible for data kept at a worker's home, or accessible on their computer?

Yes. If your employees will be dealing with information on other people, you should make data security an issue in the initial checks you make on employees, to find out whether they would be suitable as home workers. You should have a policy on data security which should cover home workers. You will certainly want to ensure that they can lock their work away when they are not working on it.

## If we buy and install the equipment at an employee's home, whose insurance covers it?

This is a matter to be decided between you and the employee. It could be either. However, if it is to go on the employee's home insurance policy, you should ensure that the insurer has been informed, and ask whether there will be any premium variation. If there is a premium variation, it would be reasonable for you to pay it, but no obligation.

## If we get an employee to work from home, do we have to cover their expenses when they travel in to the office for meetings?

This depends on whether their place of work is 'home'. If so, then all travel would start from the minute they stepped outside their front door. However, if you have a hybrid approach, and their place of work states 'office' in the first instance, then you would not need to pay for their commute.

## If we contribute to an employee's extra costs (e.g. heating), what is the tax and National Insurance position?

In theory such payments are taxable, and they will have to be declared. In practice HMRC may allow a local dispensation, of up to £300 a year, on expenses incurred for work and related purposes, including heating, lighting, the metered costs of increased water usage, increases in the cost of home contents insurance and business telephone calls, etc. The expenses must be 'reasonable' and may not include the costs of alterations to the premises, or purchase of furniture.

If you do not make such payments, the employee can claim the cost against their tax liability, though this means less than full recovery. They can also claim for setting aside one room for working at home. This may give rise to a capital gains tax liability, but in many cases, this can be offset by the annual capital gains tax exemption.

(If you are considering this, we would recommend that you seek professional tax advice).

## Who is responsible for paying any additional homeworking expenses?

Employees will be using their own heating, lighting, broadband and sometimes phone lines whilst working from home, but it will be challenging to quantify the amount used for work purposes. You are not legally required to reimburse employees for such costs but may find yourselves under pressure to allow for employees to reclaim some of these expenses. You will need to decide how to approach this and include it within your expenses policy.

## What is the position for new starters who begin employment as homeworkers?

Whilst recruitment activity has slowed down in many businesses, it has not stopped completely. You may wish to consider whether new recruits should be employed on a “working from home” basis from the outset, rather than stating a work location in the contract which they will not attend for some time to come.

## Can an employee work anywhere?

The prospect of being able to work from anywhere across the world is an appealing one for many people. A recent survey found 75% of employees would like to work remotely some of the time after the pandemic, which has already had a profound effect on how and where we work. However, there are some legal considerations.

The first step is to find out where your employees are, where they want to work in the future and where you may want to hire talent. Once you have this data you can start working through a matrix of the issues you need to consider (employment rights, social security, immigration, corporate and personal tax, and payroll obligations) and map this against the countries where employees want to work.

This can be a significant challenge, so you could consider putting limits around this, (confirmed in your employment contracts) including:

- the locations that employees can work in. 76% of employers in a recent survey intended to limit remote working to locations where they already had a presence;
- the length of time they can spend (you may consider allowing a ‘working holiday’ period of up to 30 days working abroad);
- or certain roles – for regulated industries some roles may be required to be performed in the home location.

Once this is established, you then have a framework around which to build an approval and monitoring process for remote working requests.

# Contractual Changes

## Place of Work

If you decide to adopt a hybrid working system, whereby there is a flexible mix of office and home working, then there will be no need to amend the contract if it currently states 'office premises'. However, it is recommended that you introduce a hybrid working policy to confirm the expectations behind the scheme and how it will operate.

If you have downsized offices and there is no longer enough room for everyone, and you are operating on a more 'prescribed' hybrid approach, then there will be a requirement to change the contract.

Likewise, if you have opted to work from home permanently, then you will need to change the location of work to 'home'.

It is also worth noting here, that a change to 'place of work' as a result of either the office premises closing or moving to new office premises may constitute a redundancy situation. It is complicated and will depend on a number of different factors, so it's important to get professional advice if you are in this situation.

## Hours of Work

There may be some considerations around whether the hours of work should change. Is specifying 9-5 still appropriate? Or can you be more flexible here? Perhaps this is a great opportunity to reflect the flexible working approach you have embraced over the lock-down period and perhaps you could consider an 'output led' approach to work - whereby employees work as many hours as are required to get the job done. Or perhaps specify the number of hours per day or week? Perhaps with core hours to be available? It's certainly food for thought.

## Pay & Allowances

Some employee packages are reflective of the 'old' way of work - London weighting; company cars; fuel allowances etc and may not be completely appropriate for the new way of working.

You can, of course, decide to change these terms, but they would be heavily controversial and would likely receive great opposition.

Instead, what companies are tending to do in these circumstances is to keep the 'package' the same, but to enforce pay freezes. You can then put all new starters on the new terms and conditions.

## Expenses

As previously mentioned, it's important to review your policy to reflect whatever decisions are made in this area.



## Changing a Contractual Term

If you wish to make a change to an existing contract of employment, then it is vital that you follow a full and proper process to alleviate any risks in imposing changes to your employees without their agreement.

If the change you are proposing affects more than 20 employees', then you will need to collectively consult – either with employee representatives or trade unions if applicable.

The first stage in the consultation process is to seek agreement from the affected employees to vary their terms and conditions.

It is important to spend some time putting your business case together and really consider the reasons behind requiring the change. It is also important to consider how you see it impacting the individuals in question.

**Remember that these are proposals at this stage.**

Once you have your business case put together, you can communicate this to the affected employees. You should then follow up your proposals in writing and ask for the employee to confirm whether they are happy for you to change this particular clause, or whether they would like to have an individual consultation meeting to discuss this in more detail.

If they wish to have an individual consultation meeting, then it is important that you do so, and that you go in with an open mind. Listen to their opinions, views and concerns and see whether there is a compromise to be had.

Perhaps offering an incentive at this stage might help to encourage them. For example: a one-off additional holiday; agreement to pay travel expenses for 6 months etc.

If the consultation process was successful and your employees accepted the change to terms, then you can go ahead and send a variation to contract letter or send out a new contract of employment.

**If you did not reach an agreement, then there are only 3 options available:**

- 1 Dismiss and re-engage on new terms.
- 2 Unilaterally impose the change.
- 3 Keep the terms and conditions the same.

Option 1 and 2 both hold significant risks – either breach of contract or unfair dismissal (including constructive dismissal). So, it is important to get this process right.

Sometimes, carrying out an employee survey in the early stages, gives you some indication of the appetite for change. Or, you could consider implementing these changes on a trial basis so that employees can essentially ‘try before they buy’!



# Hybrid Working Policy

Having a homeworking or hybrid working policy helps to clarify the company expectations of home/hybrid working.

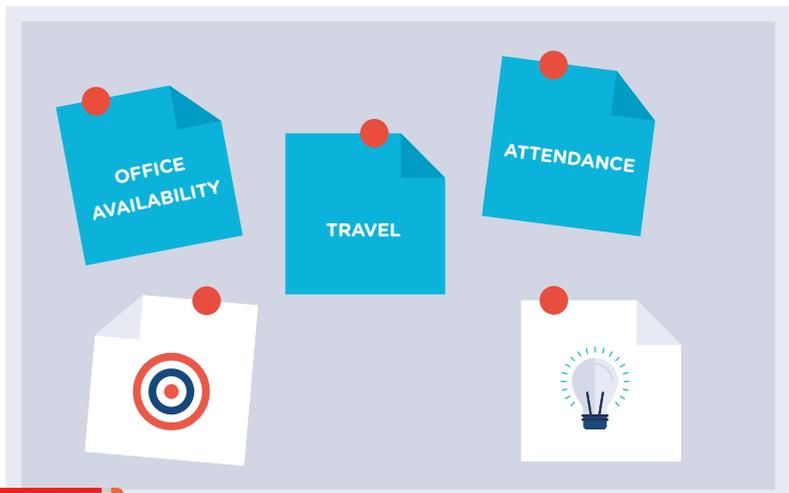
## It should include:

- How it will work.
- Office availability.
- Levels of attendance required.
- Attendance for social events.
- Attendance for meetings.
- Restrictions on home location if applicable.
- The right to withdraw hybrid working from some or all if it is not working.

Other company policies and procedures may be impacted as a result of hybrid working, so it's important to do a review of them all.

## Some possible ones to consider are:

- IT Security.
- Data Protection.
- Immigration.
- H&S.
- Expenses.
- Travel.



# Managing Hybrid Working

Hybrid or home working certainly does have its challenges, but the key to making it work is good, quality management.

Your management team will need to be equipped with the skills to manage performance effectively. Even those that are experienced line managers may need a bit of a refresher. A great thing to do is to survey your managers to see how confident they feel managing this new workforce and what, if any, development areas they may have.

## Some management areas to consider are:

- Clear job descriptions.
- Clear individual KPIs (linked to business KPIs).
- Regular reviews and conversations.
- Development plans.
- Having difficult conversations quickly, nipping any negative behaviour in the bud. It is more likely to fester when working from home.
- Identifying those who find working from home difficult and be willing to have a discussion about it.
- Keep an eye on employee wellbeing. Regular surveys can help to identify any problems, as well as a regular contact and good communication.
- Encourage everyone to contribute to the team – irrespective of where they are working from. Keep up the Zoom’s.
- Be cautious of a 2 Tier workforce – ensure that employees are not managed differently, or given less opportunities, just because they are working from home.
- Review whether some tasks are better conducted face to face i.e. brainstorming problem solving.



# Legal Risks

Hybrid or home working certainly does have its challenges, but the key to making it work is good, quality management.



## **Breach of Contract**

**Unfair Dismissal**  
(including Constructive Dismissal).

## **Discrimination**

Indirect Sex Discrimination – this is when a practice or policy indirectly disadvantages men or women. So, for example – if there is a decrease in pay for home workers, and more home workers are women – then this could indirectly discriminate against women.

## **Failure to Consult**

Breach of the collective consultation obligations carries the sanction of a “protective award” of up to 90 days gross actual pay for each affected.

## **Right to Request Flexible Working**

Indirect Age Discrimination – An example might be if you were to refuse all junior workers from working from home - this could indirectly discriminate against young people.

## Next Steps

To summarise, it is important that any decision made to move to a new way of working is considered and planned.

### Some brief actions points are:

- ✓ Review current working practices
- ✓ Survey your employees
- ✓ Visualise and document your ideal working scenario going forward
- ✓ Assess whether there are any contractual implications
- ✓ Communicate & consult as necessary
- ✓ Create a hybrid working policy
- ✓ Review your other policies
- ✓ Train your managers

If you would like any help or support with anything we have discussed in this paper, then please do not hesitate to get in touch on:

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