

Ireland introduces new code of practice on flexible and remote working

Insights - 25/03/2024

The Irish Workplace Relations Commission (the "**WRC**") published a new code of practice on the Right to Request Flexible Working and the Right to Request Remote Working on 7 March 2024 (the "**Code**").

The Code has been implemented on foot of the Work Life Balance and Miscellaneous Provisions Act 2023 (the "**Act**"), which gives all employees a right to request remote working and gives parents and caregivers the ability to seek arrangements that allow for flexible working.

| Main provisions of the Code

Some of the main provisions of the Code are mentioned below:

| | Remote Working | Flexible Working |
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| Definition | Remote working is where an employee performs some or all of their duties from a location different from the employer's business premises, without any alteration to | Flexible working involves altering an employee's work schedule or patterns in many ways such as job sharing, term-time work or compressed working hours |

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| | alteration to their usual working hours or responsibilities. | working hours. |
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An employee with at least six months service who is a parent or acting in loco parentis who is caring for:

- a child under the age of 12; or
- a child with a disability under the age of 16.

Qualifying criteria

All employees who have at least six months' continuous service.

An employee with at least six months service who is or will be providing personal care or support to their child, spouse, civil partner, cohabitant, parent or grandparent, sibling, or a person residing in their household who is in need of significant care or support for a serious medical reason.

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| Making a request | <p>Requests must:</p> <ol style="list-style-type: none"> 1. be in writing (may be online) and signed by the employee; 2. be submitted no later than 8 weeks before the proposed start date of the remote working arrangement; and 3. confirm: <ol style="list-style-type: none"> (a) the days of the week; (b) the commencement date; (c) the duration of the requested arrangement; (d) details of the proposed location and suitability of the location; and (e) the reasons for the request. <p>An employee must provide any information</p> | <p>Requests must:</p> <ol style="list-style-type: none"> 1. be in writing (may be online) and signed by the employee; 2. be submitted no later than 8 weeks before the proposed start date of the flexible working arrangement; and 3. confirm: <ol style="list-style-type: none"> (a) the commencement date of the arrangement; (b) the form of the arrangement; (c) the duration of the arrangement; and (d) details to support the request (e.g. birth certificate in respect of a child of the employee) <p>An employee</p> |
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| | which the employer may reasonably require in relation to the request. | must provide any information which the employer may reasonably require in relation to the request. |
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An employer has 4 weeks to respond to the remote working request.

An employer has 4 weeks to respond to the flexible working request.

This period can be extended by a further 4 weeks (but not exceeding 8 weeks total) in the event of the employer experiencing difficulty in assessing the request.

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The response must:

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Responding to a request

(a) approve the request and include an agreement which must be signed by both parties setting out the details of the arrangement; or

(a) approve the request and include an agreement which must be signed by both parties setting out the details of the arrangement; or

(b) refuse the request providing details for the refusal; or

(c) provide notice that an extension is required to consider the request further.

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(c) provide notice that an extension is required to consider the request further.

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| Changing the arrangements | The arrangement can be altered provided such changes are agreed in writing. | The arrangement can be altered provided such changes are agreed in writing. |
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An employer who proposes to give notice of termination to the arrangement for remote working must:

(a) notify the employee in writing of the proposal to terminate the arrangement;
(b) include

An employer who proposes to give notice of termination to the arrangement for flexible working must:

(a) notify the employee in writing of the proposal to terminate the arrangement;
(b) include

Termination by the employer of the arrangement

details of the grounds for terminating the arrangement;
(c) give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal; and
(d) consider any representations made by an employee before deciding whether to give notice of termination of the arrangement.
If, after having considered the employee's representations, the employer proceeds with terminating the arrangement, the employee must return to their original working arrangement on the date stated in the notice.

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(c) give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal; and
(d) consider any representations made by an employee before deciding whether to give notice of termination of the arrangement.
If, after having considered the employee's representations, the employer proceeds with terminating the arrangement, the employee must return to their original working arrangement on the date stated in the notice.

An employee

| | | |
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| <p>Return to previous working arrangement</p> | <p>can request to return to their original working arrangements by providing the reasons for the request and the proposed return date.</p> <p>The employer must respond within 4 weeks of receiving the request. If granted, the employee is entitled to return to the original working arrangement that they held immediately before the approval of the remote working arrangement.</p> | <p>An employee can request to return to their original working arrangements by providing the reasons for the request and the proposed return date.</p> <p>The employer must respond within 4 weeks of receiving the request. If granted, the employee is entitled to return to the original working arrangement that they held immediately before the approval of the remote working arrangement.</p> |
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The Code also provides for the following:

- **Abuse of an arrangement:** If an employer has reasonable grounds for believing that an employee is not fulfilling all of the requirements of their role, they can give an employee notice of termination of an arrangement, setting out the reasons for termination and specifying the date on which the employee must return to their original working arrangement. An employee is required to return to their original working arrangement 7 days after receiving notice of termination for abuse of an arrangement.
- **Protection against penalisation:** An employer must not penalise an employee for proposing to or having exercised their right to make a request for remote or flexible working, or to return to a previous working arrangement.

- **Raising concerns:** The Code encourages the use of internal procedures where an employee feels that their request has not been considered in line with the legislation and/or the Code. For larger organisations, the Code also suggests that it appoints a designated member of HR as the point of contact to raise any concerns with.
- **Making a complaint:** If an employee feels that their employer has not complied with legislation or the Code, they have the right to bring a claim to the WRC within 6 months of the date of the alleged breach. This period can be extended to 12 months in exceptional circumstances. If successful, the WRC can direct the employer to comply with specific sections of the Act and/or the Code, or award compensation of up to 20 weeks' gross annual remuneration.
- **Record keeping:** An employer must keep a record of approved arrangements taken by their employees for three years and must include:
 - The period of employment of each employee;
 - The dates on which each employee was on an approved remote or flexible working arrangement; and
 - The number of times each employee was on an approved remote or flexible working arrangement.

Employers who fail to maintain adequate records may be liable on summary conviction of a fine of up to €2,500.

Key takeaways for employers

The Code allows for heightened accommodation in the workplace and aims to positively impact individuals' work-life balance.

A key action point for employers is the development of suitable remote and flexible working policies. The relevant policy should consider the specific needs of the business and the organisation's ability to facilitate remote and flexible working arrangements. The relevant policy should clearly set out the requirements for submitting a request, the suitability of certain roles for such an arrangement and how the relevant policy will collaborate with other company policies that are already in place. Employers should also be conscious of maintaining adequate records or risk facing a significant financial penalty for failing to do so.

For further information on the Code or for assistance with the preparing remote/flexible working policies, please contact Bláthnaid Evans or Marianne Norton via their details below.

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