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## Mandatory Remote Working - Can Employers Force Their Employees to Work From Their Homes?

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The red-hot labor market seems to be cooling off. The (im)perfect storm of unprecedented inflation, market volatility and a looming recession are causing employers to rethink their human capital strategies to get ahead of the curve.

That said, do not expect to see all those “Help Wanted” signs coming down everywhere. After all, the unemployment rates in the U.S. and Europe are still near historic lows despite broader economic concerns.

One constant we have seen throughout the COVID-19 pandemic and the current economic slowdown is that remote working (or lack thereof) continues to be a key part of companies’ human capital strategy.

The pandemic showed many employers that their employees can be just as productive working from home. This resulted in some companies making remote work a permanent option. Other companies have taken the opposite position and publicly stated they want their employees back in the office as soon as it is safe to do so.

If the economic downturn continues and companies start looking for ways to trim costs beyond headcount reductions, we expect some of those companies that are already permitting remote working to eliminate in-office work altogether, thereby eliminating their real estate costs.

Though this may seem like something employees would be largely receptive to, employers must still make sure they understand what their legal obligations are if they want to mandate remote working, and plan accordingly.

Some of the important questions employers must consider before rolling out a mandatory remote work policy are discussed below.

***Do employees have an entitlement to work from the office?***

Employees may have a contractual entitlement to work from an office. It is important for employers to review their employment contracts to determine what employees' contractual entitlements are, and whether the employer has reserved the right to unilaterally change the place of work.

If there is no express contractual provision addressing working from an office, office-based work can still be an acquired right for employees. The applicable laws of the jurisdiction in which the employees work will determine whether working from an office in a particular location has become an acquired right, and if so, whether the employer can unilaterally change the place of work.

Unilaterally moving employees from office-based work to remote working where the employees have a contractual entitlement or have otherwise acquired the right to work from an office could give rise to constructive/unfair dismissal claims in certain jurisdictions. In others, if the employer can justify the change, it may be possible to still implement the change unilaterally.

***Must employees and/or employee representatives be consulted before moving employees to mandatory remote work?***

Depending on the circumstances and the jurisdiction, employers may need to inform and/or consult with employees and/or employee representatives before moving employees to remote work.

The consultation could last days - or it could last months.

If there is an obligation to inform and/or consult with employee representatives, there will likely be certain information that will need to be shared with the representatives, including the reasons for the decision to move to remote working.

Employers should understand the rights of the employee representatives. Ideally, the employee representatives will only have the right to be informed, but it is possible depending on the jurisdiction that the employee representatives have the right to issue an opinion, or under certain circumstances, the employee representative may have co-determination (i.e., approval) rights. This will all depend on local law, the construction of the employee representative body and specific circumstances.

***Do there need to be any changes to benefits and/or allowances if employees move to remote work?***

It seems reasonable that employees moved to remote work would no longer require meal allowances, car allowances or company cars. However, this may not always be the case.

Rather than focusing on the purpose of the benefit, employers should instead look at the legal basis for providing the benefit to the employees. If it is a contractual benefit with no reserved right to alter or amend it, the employees may need to consent to any negative changes. Even if individual employee consent is not required, employee representatives may still need to be informed and/or consulted before any changes can be made.

If employees are going to continue receiving meal allowances, car allowances and/or company cars, employers need to determine whether new hires who are hired directly into remote working will also receive these same benefits. Aside from potential employee relations issues, it is possible that the new hires could have valid discrimination/equal pay claims if offered different benefits from employees who previously worked in the office and had their allowances grandfathered.

Employees may also be entitled to new benefits.



Employees who are required by their employers to work from home may need to receive allowances for internet service or actual physical equipment needed to perform their jobs, such as computers, printers and telephones. Just because employees were not entitled to an allowance or work equipment under a permissive remote working policy does not mean the same approach can be taken when mandating remote work. Employees could even be entitled to additional compensation from employers to compensate them for the employer's use of part of their home (for a home office).

***Are there any laws specific to remote working?***

In response to the rise of remote working during the COVID-19 pandemic, we have seen an influx of remote-working or teleworking laws around the globe.

These laws range from requiring remote-working agreements that address specific points, to providing a right to disconnect after working hours, to requiring periodic in-person meetings between the employer and employee.

***Do health and safety laws extend to an employee's home office if an employer mandates remote work?***

An employer's obligation to provide a safe and healthy work environment to its employees is almost universal around the globe – though the extent of the employer's obligation can vary greatly between jurisdictions.

Many of the new remote working laws make it clear that an employer's health and safety obligations do extend to an employee's home office.

Employers may be required to, among other things, inspect the home office, perform risk assessments and/or require employees to periodically undergo medical examinations.

**CONCLUSION**

Mandatory remote work may be preferred by employers and employees under certain circumstances. Even where remote work arrangements serve the interests of both parties, employers must be careful not to hastily implement a mandatory remote working policy. Before any final decisions, employers should fully understand the process for implementing mandatory remote work in each jurisdiction and its implications on managing their human capital.

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