# Employers: Ready, set, remote work!

**July 14, 2020**

The first half of 2020 has brought its share of challenges and unforeseen events to Canadian employers. While some businesses are beginning to emerge from the crisis, it would be unrealistic to believe everything will return to normal. Thousands of employees around the world will not be returning to their regular workplaces for months, while others may be called to work from home on a permanent basis.

Before the pandemic, working from home was a privilege for employees, giving employers a competitive edge in recruiting and retaining staff. Today, however, remote work is becoming the rule rather than the exception. Traditional work locations and schedules are being upended and employers must be prepared to modernize their management practices and allow for more flexibility.

The following is an overview of some key issues employers are facing in this new reality.

## Q. How to establish the ground rules for remote work?
## A. By developing a remote work policy.

The implementation of a remote work policy is an essential first step in order to clearly identify the employers' legitimate expectations towards their employees working from home. It will provide employers with the tools to supervise and guide their employees when it is not physically possible to do so, by setting out and clarifying the required standards. Such a policy will enable them to impose disciplinary or administrative measures to employees who fail to comply with the established rules of remote work.

Here are some of the questions that such a policy must address:

- Which employees are eligible for a remote work arrangement?
- What are the employer's expectations with respect to performance and availability?
- What are the terms and conditions of remote work (e.g. days per week/month)?
- What health and safety guidelines must be observed at home?
- What is the expected duration of remote work (temporary or permanent)?
- Does the employer have the ability to terminate remote work arrangements at its discretion?

- What are the employer's expectations regarding the use of its work equipment/supplies?

Of course, the policy will have to be tailored to the employer's business. There is no "one size fits all" formula. In addition, such a policy will require updates over time as the situation evolves.

## Q. What can employers expect regarding the performance of their employees working remotely?
## A. The same as usual.

Employees working from home are constantly within a few steps of their workstations. While this may promote short-term productivity, employers must ensure not to hold their employees to unreasonable performance expectations in this new work environment. Indeed, employers should aim to:

- Respect the normal working hours of their employees (including breaks);
- Pay employees appropriately for their work, as they did before the transition to remote work (this includes overtime pay, where applicable); and
- Demonstrate reasonable tolerance for the challenges associated with working at home (children, pets, etc.).

Also, employers must find new ways to measure employee productivity and take new means to prevent time theft (especially for employees who are paid on an hourly basis). Although performance reviews must take into account the realities of working from home, employers will be justified to require the same quality and quantity of work as before. They will also have to be mindful of their employee's right to disconnect. In particular, employers must ensure their expectations of the time to be devoted to work remains reasonable, despite the fact employees are seemingly close to their workstation at all times, even outside of their normal working hours.

## Q. How can employers efficiently enforce their management rights with respect to problematic employee conduct?
## A. By ensuring that disciplinary and administrative incidents are well documented.

The decentralization of the workplace does not mean that employers lose their management rights or their ability to impose sanctions and/or measures unto delinquent employees. However, this fundamental right may become more difficult to exercise. Employers must make use of new methods to discover and prove misconduct of employees working remotely. They should keep a detailed digital record of any events of a disciplinary or administrative nature and ensure that this information remain confidential and up-to-date. Indeed, it would be unfortunate if some crucial notes or communications were to get lost in the homes of management-level employees who, in many cases, will also be working from home.

## Q. How can a spirit of collegiality be maintained despite the isolation of remote work?
## A. By dedicating resources towards engagement.

Another major concern related to remote work is that many employees are affected by feelings of isolation, which can lead to mental health issues. It is true that employees called to work remotely during the COVID-19 pandemic did so under very specific conditions, that is, when isolation was recommended or mandatory, following Public Health agency guidelines. This will no longer be the case in a post-pandemic world. Nonetheless, the challenge remains the same: employers should maintain employee engagement by remaining in regular contact with their team. To this end, employers (and their representatives) could, among other things:

- Establish tangible team goals;
- Remind employees of the importance of their individual roles in relation to the company's mission;
- Ensure that managers provide regular feedback to their employees; and
- Plan regular team meetings in advance, to be held both virtually and in-person where possible, to allow for formal and informal discussions.

These efforts will help maintain team spirit, a sense of community and, ultimately, enhanced long-term employee commitment.

## Q. What is the extent of employers' health and safety obligations in the context of remote work?

## A. The same as usual. Employers continue to have the obligation to take the necessary measures to protect the health and ensure the safety, security and physical well-being of their employees, even those working from home.

Employers whose employees are working from home remain covered by applicable occupational health and safety and compensation legislation. In order to ensure compliance with these requirements, employers must verify that their employees' at-home work environment is safe and that their workstation is adequate and free of danger.

Furthermore, employers should consider measures to promote the mental health of their employees, as isolation and stress can have a harmful impact on the mental well-being of employees. In addition, Canadian courts have repeatedly recognized that a lack of help and support from employers as well as particularly stressful working conditions can lead to psychological injuries, which in turn may constitute a work-related accident or occupational illness.

## Q. Do employers have an obligation to accommodate work-life balance?

## A. Yes.

Reconciling family life with the constraints of remote work can be a significant challenge. Indeed, attempting remote work-life balance can cause increased stress and affect employees' mental well-being.

Moreover, employers cannot discriminate against their employees because of their family situation. In fact, family status is a prohibited ground of discrimination under several provincial human rights legislations, and most of the applicable minimum labour

standards legislation provide for leave or protections related to family obligations. Thus, an employee who works from home may be entitled to accommodation measures when their family obligations come into conflict with their job responsibilities, up to the point of undue hardship to the employer and in compliance with law. Such accommodation measures may include, but are not limited to:

- Proportional working hours and pay reductions;
- Flexible work hours; and
- Reassignment of tasks.

## Q. How can employers protect their confidential information?
## A. By conducting a thorough review of traditional means of protection and implementing new ones.

Employers have the right to expect that the confidential information that their employees access from home remains protected, just as in the traditional physical workplace. Indeed, employees working remotely are still required to act with caution when using their employer's confidential information.

In order to promote the protection of their confidential data, employers should, among other things:

- Develop and communicate a specific policy regarding data protection tailored to remote work, or modify existing policies;
- Train employees on at-home confidentiality practices; and
- Assess the risks associated with the use of their employees' personal technological equipment for both personal and professional purposes (such as those related to phishing, infiltration, digital fraud or theft or loss of devices).

## Q. What is the extent of employers' rights to monitor their employees who are working from home?
## A. Reduced monitoring rights.

One's home is considered to be where the expectation of privacy is at its highest, whereas it is recognized to decrease in the workplace. What happens when home and workplace collide? Various privacy issues may arise from this change in environment, particularly when employees are required to use their own technological devices. Also, employers will not be free to visit their employees unexpectedly and without authorization, such as they would in the traditional workplace, for example if they suspect suspicious behaviour on the part of the employee or if they wish to inspect the employee's work environment.

## Q. Are employers legally required to reimburse the costs associated with remote work?
## A. Generally speaking, they have no legal obligation to do so.

As a result of the sudden relocation of the work environment caused by the pandemic, some employees have had to spend important sums of money to be able to work

comfortably, while others have settled for little in the hopes that the situation would only be temporary.

Generally speaking, in Canada, applicable laws do not require employers to reimburse the costs associated with remote work (including office equipment, internet, ink, stationery, etc.). However, they cannot legally require their employees to pay for expenses which could be considered as related to the operations of the business. Thus, it would be ill-advised to require employees to pay for their fundamental remote working tools.

In any case, until Canadian courts take a firm stand on the matter and clarify the issue, employers should consider developing a policy to clearly set out the rules of cost allocation. This will enable them to avoid excessive claims or, conversely, to have employees working remotely in discomfort unnecessarily.

In conclusion, adjustments will be necessary in order for both employers and employees to be prepared to face the new challenges of remote work. This said, this work arrangement provides an array of benefits for all, such as: better work-family balance, saved resources and reduced absenteeism, to name a few. It is evident that remote work can be advantageous in many ways, even discounting the pandemic. Thus, employers who will innovate and adapt to this work arrangement will be in a great position to continue to attract and retain the finest talents moving forward.

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