



RIGHT TO REQUEST REMOTE WORKING – INTERNATIONAL REVIEW

Department of Enterprise, Trade and Employment

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1. Background

On 15th January 2021, Ireland's first National Remote Work Strategy to make remote working a permanent option for life after the pandemic was published. The Strategy is built on three fundamental pillars:

1. Create a Conducive Environment
2. Develop and Leverage Remote Work Infrastructure
3. Build a Remote Work Policy and Guidance Framework

In the context of Pillar 1 (Create a Conducive Environment for the adoption of remote work) the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar T.D., committed to legislate to provide employees with the right to request remote work over the course of 2021.

As part of the development of the legislation a public consultation process was launched on 1st April 2021 and ran for five weeks until 7 May 2021.

The Department of Enterprise, Trade and Employment is also examining a sample of remote working legislation internationally to see how the request process operates in other countries and to get a sense of what might work well in an Irish context. While remote working is very topical in recent years, especially owing to the Covid-19 Pandemic, the form that it takes varies considerably in different countries and there is no consensus around an ideal model or system.

This paper aims to provide a general overview of remote working legislation in the EU and other selected countries internationally with more in-depth analysis provided on remote working in the UK, Spain, the Netherlands and New Zealand.

2. Remote Working in the EU

Currently Ireland is one of six EU Member States (along with Croatia, Germany, Hungary, Malta and Poland) that are pursuing the introduction of legislation governing remote working.

At present 12 Member States have legislative provisions governing remote working (Austria, Belgium, Czech Republic, Estonia, Finland, France, Luxembourg, Netherlands, Portugal, Romania, Slovakia and Spain). However, the form the provisions take varies considerably from country to country.

In Austria, new statutory provisions were introduced in spring 2021, which regulate basic requirements and framework conditions for working from home. No unilateral right to request remote working was introduced, rather remote working requires the agreement of both employee and employer. Under the new law, such agreements must be concluded in writing and can be terminated by both the employee and the employer for good cause with notice of one month. As a general principle, the employer must provide employees with all relevant work equipment and bears the costs for such equipment. Neither the employer, nor the labour inspectorate, have a right to inspect the employee's workplace at home.

In Belgium, traditionally labour law distinguishes between two forms of telework, namely:

- structural telework where the employee works at a chosen location outside the company premises on a regular basis and with the use of information technology; and
- occasional telework where employees are offered the possibility to occasionally perform telework in the case of 'force majeure' (e.g. an unplanned train strike or serious traffic disruption) or for personal reasons (e.g. a doctor's appointment).

Both systems are characterised by their voluntary nature and an agreement must be reached by the parties no later than the start of the remote working arrangement. For structural telework the employer must provide the equipment necessary to perform the telework and must pay any internet and communication costs linked to the telework. In the case of occasional telework, there is no obligation on the employer to cover costs or provide equipment, only to make arrangements for this with the employees. While there is no right to disconnect, there is a right to discuss it. Indeed, at regular intervals and whenever requested by the workers' representatives, this issue must be discussed in the Health & Safety Committee (or, in its absence, with the trade union delegation, or, in the latter's absence, with the workers themselves).

In the Czech Republic, home or teleworking is briefly covered by the general provisions of the Labour Code which state that employees can perform work only at the employer's workplace or at another agreed upon place. However, it requires the agreement of both parties, with agreement being key. The Labour Code does not contain any specific guidance as to the telework costs compensation. The employee working from home should follow the rules for occupational safety and health protections. The agreement on teleworking should cover the issue of the employer's

access to the employee's workplace (i.e., home) to (i) inspect working conditions with respect to occupational safety and health or (ii) investigate work accidents.

In France, the legislation allowing for a right to work from home came into force in 2017. When an employee requests to work from home, any refusal from an employer must be justified on objective grounds. The legislation has been updated in 2021. The French Labour Code now defines telework as "any types of work organization by which a work that could have been done within the employer's premises is voluntarily performed by an employee outside these premises, using information and communications technologies" (Article L.1222-9 of the French Labour Code).

The French Labour Code previously stated that telework was to be performed "on a regular basis". The deletion of the reference to the regular nature of telework opens up the possibility to implement situational telework (based, for instance, on a family status, temporary personal constraints, etc.). Telework can be performed exclusively from home or interspersed with work periods within the premises of the company. Permanent telework arrangements must now be instituted through a collective agreement or, in the absence of such agreement, through a specific company/group policy, after having obtained the opinion of the Social and Economic Committee (new staff representative body which will supersede the "Works Council" as from 2018 in France), if there is one. The collective agreement or, in the absence of such agreement, the company/group policy must include at least:

- The conditions for the implementation of a telework arrangement and the conditions in which the employee may return to a non-telework position,
- the conditions in which the employee shall accept the terms and conditions of the telework arrangement,
- the conditions in which the teleworking employee's working hours will be monitored and his/her workload regulated,
- the determination of the timeslots within which the employer may usually contact the teleworking employee.

In addition to these four legal requirements, the collective agreement or the company/group policy must also specify how the costs of telework will be handled.

In Luxembourg, new regulations came into effect in 2021, however the regulations don't provide for a right to request remote work rather any remote or teleworking arrangement must only be established by mutual agreement between the employee and the employer. The Convention outlines that the agreement:

- must include information on start and finish times, and
- the procedure for returning to the traditional way of working,
- stipulates that for regular teleworking, it is up to the employer to provide the equipment needed for the teleworking and to cover the costs directly incurred by the telework.

In the Netherlands, the Flexible Work Act (*Wet flexibel werken*) makes it possible for employees with at least six months service to request their employer (subject to having 10 or more employees) to change the agreed workplace, including requesting to work remotely. The employee must make

his request at least two months prior to the proposed start date and the employer must inform the employee no later than one month prior to this proposed date whether he approves the request or not. If the employer fails to respond to the request, it must be granted. The employer is free to refuse such a request, but does have a 'duty to consider' and must substantiate the refusal in writing. Once a year, employees can submit a request to work from home. When the request to work from home (based on the Flexible Work Act) has been approved by the employer, there must be important business reasons (e.g., continuous underperformance of the employee) to revoke the arrangement. The employer is obligated to ensure the employee's health and safety in the workplace, even if the employee works from home, and the employer must bear the costs of providing equipment. There is also an anti-penalisation provision protecting an employee who is dismissed for seeking to change working hours or work remotely.

See further details in the case study on the Netherlands at section 6.

In Portugal, teleworking is governed by the Portuguese Employment Code. It is considered a special type of employment contract and must be agreed in writing. The parties may agree to change a standard employment contract into a teleworking regime or the reverse. The agreement to change temporarily the standard employment to teleworking has a time limit of three years. There are two situations in which an employee can ask to be subject to teleworking and the employer must accept this unless the roles are incompatible with remote working:

- (i) an employee who is a victim of domestic violence, has filed a criminal complaint and has left their previous home and
- (ii) an employee with a child below the age of three years and the employer has the adequate means to implement teleworking.

As teleworking is considered to be a special type of contract, the Employment Code does not contain any provision regarding the hybrid model. Under the Employment Code, the parties must agree on the terms of ownership of equipment and its use and costs. Unless otherwise agreed by the parties, it is assumed that the employer owns the information technology and communication equipment and must pay for its installation, maintenance and costs.

In Estonia, the parties to the employment contract must enter into a bilateral agreement on remote working either at the start of the employment relationship or during the employment relationship before the remote work starts. In entering into the agreement on remote work, the employer assumes the obligation to provide the remote worker, among other things, with the following:

- a safe working environment,
- occupational safety,
- up-to-datedness with information about work arrangements,
- sufficient work equipment,
- data protection and privacy.

The Employment Contracts Act provides that the employer is obliged to ensure the work conditions comply with the requirements of the Occupational Health and Safety Act.

In Finland, the most significant change in the new Working Hours Act 2019 was the introduction of the possibility to agree on a flexible working hours arrangement, by agreement. The Act, which came into force in January 2020 introduced a new concept of flexible working hours, an arrangement where employees have the right to decide the timing and the place of work, whereas the employer will define the work duties and the targets thereof as well as the schedule for the work. The flexible working hours arrangement can be used for work where at least half of the working time is not tied to a specific time or place. The employees can, within the agreed limits, decide their working time.

In Romania, the 2018 law on teleworking allows workers who work on a computer to do so from home, offering more flexibility to both workers and employers. It allows a right to work remotely, from home or another location that is approved by the employer for at least one day per week. The employer has the same health and safety obligations as in the primary workplace and must bear the cost of providing equipment. Interestingly, workers' representatives have access to the telework place for verifying the work conditions of teleworkers.

In Slovakia, "home-work" and "telework" must be agreed in an employment contract. An employer cannot impose this set-up unilaterally. If the parties agree that the employee shall schedule working time himself/herself, the employee loses certain benefits that otherwise apply to "normal work": the employee shall not be entitled to salary for overtime, salary surcharges for work at night, on holidays, or on Saturday or Sunday, or for work in difficult conditions (unless the employer and employee agree otherwise). The employee is still entitled to his/her uninterrupted weekly rest or daily rest periods and has a right to disconnect.

The employer can agree with the employee that the employee shall use his/her technical and software equipment for telework. Otherwise, the employer must install and maintain such equipment required for telework. If the employee uses his/her own working tools or items for work with the employer's consent, the employer shall compensate the employee for same.

In Spain, new legislation enacted September 2020, states that remote working is voluntary for both the employee and the employer, and the employer can never impose remote working. The parties must enter into an agreement that must be included in the initial employment contract (new hires) or as an addendum to the existing employment contract, before the arrangement starts. Interestingly included within that legislation is a right for employees to digital switch-off outside working hours, or right to disconnect. The legislation imposes:

- Obligations on teleworking workers:
 - a. Obligations related to data protection and cybersecurity.
 - b. Employee's control. The company may adopt the control and surveillance measures it deems necessary to ensure compliance with his/her duties, always taking into account the dignity and privacy of the worker.

- Obligations on employers:
 - a. To provide the worker with the necessary means to carry out the work correctly (e.g. table, chair, computer and keyboard).

- b. To compensate the worker for the expenses that the worker may incur for doing the work at home (e.g. additional costs of electricity and internet connection).
- c. To maintain the same rights that the worker had prior to performing the work remotely.

See further details in the case study on Spain at section 5.

In Denmark, it should be noted that while there is no legislation specifically covering remote working, the Danish labour market is known for its “flexicurity model”. The Danish employment system’s combination of flexibility and security combines a relatively low level of employment protection legislation, allowing employers the flexibility to reconfigure their staff to adapt to changing market conditions, with a high level of security for the individual through public unemployment benefits.

3. Remote Working outside the EU

Elsewhere in Europe, **in the UK**, employees can apply under the Employment Rights Act 1996 for flexible working if they’ve worked continuously for the same employer for the last 26 weeks, if they are legally classified as an employee and have not made a request in the previous 12 months. It is known as ‘making a statutory application.’ Flexible working requests can be made to reduce hours/work part time, change start and finish times, have flexible start and finish times, do compressed hours, work remotely or job share.

Upon receipt of such a request the employer must:

- look at the request fairly, following the established code of practice ¹
- make a decision within a maximum of 3 months.

In Switzerland, there are no express provisions in place providing a right to request remote working.

Further afield, **in Australia**, there is no general right to request remote working. However, some employees who have worked for the same employer for at least 12 months can request flexible working arrangements, such as changes to hours, patterns or locations of work. In order to make the request they must:

- be the parent or carer of a child who is school-aged or younger
- have a disability, or be a carer
- be 55 years and older
- be experiencing violence from a family member or supporting family or household members experiencing family violence.

¹ Acas Code of Practice on flexible working requests

In New Zealand, the Employment Relations Amendment Act 2014 provides all employees, both full and part time and at any stage of the employment process, with the right to apply for flexible working. Although the Act gives employees a process, it does not prescribe the outcome of an application. Employers are required to respond to a flexible work application in writing within one month of receiving the application and it must be considered in good faith with further discussion with the employee.

In Asia, neither Japan nor South Korea currently provide for a statutory right to request remote work or have indicated plans to introduce it. However, the Covid pandemic has led to increased uptake in remote working in South Korea and a code of practice for employers has been put in place.

Neither **Canada nor the United States** provide for a right to remote or flexible work at national level.

4. Case Study 1: The United Kingdom

Employees can apply under the Employment Rights Act 1996 for flexible working arrangements.

i. Scope of Legislation

According to the Advisory, Conciliation and Arbitration Service (ACAS), a state body which provides information and advice to employers and employees on workplace relations and employment law, employees in the UK have the right to make a flexible working request if they:

- Have worked for their employer for at least 26 weeks
- Are legally classed as an employee
- Have not made any other flexible working request in the last 12 months.

Under the law there is a right to request flexible working which may be to:

- reduce hours to work part-time
- change start and finish time
- have flexibility with start and finish time (sometimes known as 'flexitime')
- do contract hours over fewer days ('compressed hours')
- work from home or elsewhere ('remote working')
- share the job with someone else.

Employees can ask for the change to be for:

- all working days

- specific days or shifts only
- specific weeks only, for example during school term time
- a limited time, for example for 6 months only.

There is no legal right for an employee to appeal a flexible working request.

ii. Minimum Service

In the UK an employee is required to have worked for the employer for a minimum of six months in order to request flexible working.

iii. Time-Limits

The law requires that all requests, including any appeals, must be considered and decided on within a period of three months from first receipt, unless there is an agreement to extend this period with the employee. If a meeting is arranged to discuss the application including any appeal and the employee fails to attend both this and a rearranged meeting without a good reason, the employer can consider the request withdrawn. If an employer does so, they must inform the employee. Once the employer has made the decision, they must inform the employee of that decision as soon as possible. It should be done in writing as this can help avoid future confusion on what was decided including:

- the agreed change
- when the change will start
- how long the change will last, if for a fixed period of time
- a review date, if the change will be looked at to see how it's going.

If accepting the employee's request, or accepting it with modifications, the employer should discuss with the employee how and when the changes might best be implemented. An employee can submit another request after 12 months.

iv. Health and Safety and Provision of Equipment

In UK law, employers are responsible for the health and safety of all employees, including those working from home. Employers must conduct a risk assessment of their employees' work and workplace, including any work from home. Under the law, a risk assessment must be 'suitable and sufficient'. The code of practice suggests that employers and employees (or their representatives should reach an agreement on who will provide or cover the costs of equipment and repairs.

v. Reasons to refuse a request

The employer may reject a request, but it must be for one of the following business reasons as set out in the legislation:

- the burden of additional costs
- an inability to reorganise work amongst existing staff
- an inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- a detrimental effect on ability to meet customer demand
- insufficient work for the periods the employee proposes to work
- a planned structural change to the business.

5. Case Study 2: Spain

The new Spanish legislation, enacted September 2020 imposes:

- Obligations on teleworking workers:
 - a. Obligations related to data protection and cybersecurity.
 - b. Employee's control. The company may adopt the control and surveillance measures it deems necessary to ensure compliance with his/her duties, always taking into account the dignity and privacy of the worker.
- Obligations on employers:
 - a. To provide the worker with the necessary means to carry out the work correctly (e.g. table, chair, computer and keyboard).
 - b. To compensate the worker for the expenses that the worker may incur for doing the work at home (e.g. additional costs of electricity and internet connection).
 - c. To maintain the same rights that the worker had prior to performing the work remotely.

i. Scope of Legislation

The Spanish law does not infer a right to request remote work. Such arrangements are voluntary in nature and must be agreed between the employer and employee.

ii. Minimum Service

Remote working arrangements may be included from the outset of the employment relationship and contained within the written statement, or if agreed at a later stage must be issued as a revised statement of the terms and conditions of employment.

iii. Time-Limits

By law any agreement on remote working must include the length or duration of the remote working agreement and the length of the notice period that should be provided to amend or remove the arrangement.

iv. Health and Safety and Provision of Equipment

The employer must conduct an Initial Risk Evaluation and a Risk Prevention Plan with regard to the area of the employee`s home that will be used. Any physical inspection of the employee`s home will require their consent.

The employer must provide all the means, equipment and tools necessary to render services, as well as guarantee the adequate maintenance thereof. The legislation further specifies that the employer cannot require the employee to install programs or applications on devices owned by the employee, or to use these devices to render remote services.

v. Reasons to refuse a request

The Spanish law does not infer a right so there is no formal mechanism or reasons to refuse.

6. Case Study 3: Netherlands

With the Flexible Working Act, which came into effect on 1st January 2016, the Netherlands has a comprehensive policy on flexible working in terms of both time and location-based flexibility.

i. Scope of Legislation

Under Dutch law there is a right to request to change hours and location of work, and a right to review of the decision. However, it only applies to companies with 10 or more employees.

ii. Minimum Service

In the Netherlands an employee is required to have worked for the employer for a minimum of six months in order to request to change hours and location of work.

iii. Time-Limits

The employee`s request must be submitted at least two months before the proposed start date and must include the proposed start date and the suggested new arrangements.

The employer has an obligation to consult with the employee on the request to adjust working hours. The employer must then inform the employee of its decision and the reasons for a rejection (if rejected), in writing. If the employer does not respond at least one month before the proposed date, the requested change is considered to be accepted.

If the employer grants or rejects the request, the employee can in principle submit a new request after one year.

iv. Health and Safety and Provision of Equipment

Employers are obligated to ensure the employee's health and safety in the workplace, even if the employee works from home. Therefore, the employer has to apply effective and preventive measures to ensure a safe and healthy environment. The workplace itself and the equipment must be adapted to the individual needs and characteristics of the individual employee. This means that the employer should in any case provide the employee with a suitable chair, table and proper lighting in order to perform the work, should the employee not possess such items.

v. Reasons to refuse a request

The employer might reject a request of a change of workplace based on a number of factors.

These include if the change:

- causes safety problems
- causes roster problems
- leads to financial or organisational problems
- is not supported by sufficient work
- is not in line with an established formation or staff budget.

7. Case Study 4: New Zealand

In New Zealand, employers have a legal obligation under the Employment Relations Amendment Act (2014) to provide a process for any employee to request a flexible working arrangement.

i. Scope of Legislation

Under the Employment Relations Amendment Act (2014) there is a right to request flexible working which includes working remotely. The request must specify the variation of the working arrangements requested and whether the variation is permanent or for a period of time. The request must also specify the date on which the employee proposes that the variation take effect and, if the variation is for a period of time, the date on which the variation is to end.

ii. Minimum Service

This applies to any permanent full or part-time employee at any stage of their employment lifecycle and for any reason, so no minimum period of service applies.

iii. Time-Limits

An employer must deal with a request as soon as possible, but not later than 1 month after receiving it, and must notify the employee in writing of whether his or her request has been approved or refused.

If the request is refused an employee must refer a complaint to the adjudication service within 12 months.

If the request is declined another request cannot be submitted for 24 months.

iv. Health and Safety and Provision of Equipment

In New Zealand, no matter when or where an employee works, ensuring their health and safety is a shared responsibility between the employer and the employee. When working remotely, the employee is responsible for organising a work area that is appropriately set up to ensure that they can work safely.

To ensure that this is the case, an employer may request an employee to provide photos of their work location and may also request a health and safety assessment of the workstation.

Employers may provide employees with certain technology to assist them to work remotely. This may include a laptop, phone or other equipment relevant to the role.

When making a request for flexible work, it is the employee's responsibility to think about the technology and equipment they may need to make it work and to list their requirements clearly on the application form.

v. Reasons to refuse a request

There are a number of reasons why an employer might reject a request, namely:

- inability to reorganise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes
- burden of additional costs
- detrimental effect on ability to meet customer demand.

In addition, an employer must refuse a request where the employee's working request would be inconsistent with a collective agreement applicable to that employee if the employer were to approve same.

8. Some Learnings for Ireland

Certain schemes are unique depending on the particular legislative or industrial relations environment they operate in and may not necessarily be transferable in an Irish context. While remote working legislation exists in various countries, the form they take varies from country to country. Many of them include remote working with other flexible work alternatives.

That said, there are also various provisions identified in the international review that may be suitable for consideration in the Irish context, with some provisions possibly benefitting from modification or enhancement as appropriate. The following provisions are particularly of interest in that regard.

In Spain, remote working arrangements may be included from the outset of the employment relationship and contained within the written statement, or if agreed at a later stage must be issued as a revised statement of the terms and conditions of employment. The employer must provide the worker with the necessary means to carry out the work correctly (e.g. table, chair, computer and keyboard.)

In the Netherlands, the employer might reject a request for remote work based on a number of factors. These include if the change:

- causes safety problems
- causes roster problems
- leads to financial or organisational problems
- is not supported by sufficient work
- is not in line with an established formation or staff budget.

In New Zealand, when working remotely, the employee is responsible for organising a work area that is appropriately set up to ensure that they can work safely. An employer may request an employee to provide photos of their work location and may also request a health and safety assessment of the workstation.

In the Czech Republic, the agreement on teleworking must cover the issue of the employer's access to the employee's workplace (i.e., home) to (i) inspect working conditions with respect to

occupational safety and health or (ii) investigate work accidents. This would need careful consideration in the Irish context.

In terms of exclusions, **the Dutch legislation** limits the scope to companies employing 10 or more employees. There is no precedence in Irish legislation for limiting an employees' rights based on the size of the entity they work for.

All of these provisions from different countries offer a valuable contribution to the consideration of the appropriate regime to be applied in Ireland.