

The Right to Request Remote Work – Update for Employers in Ireland

The Draft Scheme of the Right to Request Remote Work Bill 2022 was published by the Irish government on Tuesday 25 January 2022.

Summary

- Employees with 26 weeks continuous service may make a request for remote working arrangements.
- Employers have up to 12 weeks from the date of the request to make a decision.
- An Employer may refuse the request on business grounds.
- Employers must have a written policy on Remote Working which is available to employees. It will be a criminal offence to fail to have a written policy in place.
- Employees can seek redress from the Workplace Relations Commission ("WRC") if an employer breaches its relatively technical obligations to respond to the request for remote work or fails to give reasons but an employee cannot complain to the WRC regarding the substance of the reasons given. The employer retains a wide discretion to refuse requests for remote working.
- The WRC will publish a Code of Practice on the general principles applicable to the statutory right to request remote working.

When will this draft law come into force?

We do not know yet but probably not until the late spring or early summer. The draft legislation will be not be published until mid-April.

Who does it apply to?

It applies to employees in Ireland including temporary or permanent workers. It does not apply to contractors.

An employee must have 26 weeks continuous service with the employer before they can make a request for remote working.

The penalisation provisions as currently drafted can protect employees from day one.

What is remote working?

Remote working includes both home working and working from a location other than the employer's place of business, for example a co-working space.

The outline draft does not expressly link the definition of remote working to Ireland and until there is further clarification, all requests to work remotely should be handled in accordance with the new rules when they come into force.

How does an employee make a request?

The request must be in writing and an employer may provide a precedent form which employees must use to submit their request.

The draft legislation pushes the burden of proving the suitability of the request on to the employee who must include a self-assessment of the suitability of the proposed remote work location including the specific requirements of the job, data protection, confidentiality, reliability of internet connectivity and the ergonomic suitability of the workplace.

How and when should the employer respond?

The employer must first consult with the employee or the trade union representing the employee.

The employer must give the application due consideration and where it decides to decline the request, must communicate the reasons for the refusal to the employee. The refusal must be related to "business grounds" a non-exhaustive list of which is included in the legislation.

The employer must provide full details of the arrangement where the response is favourable, including provision for review of the arrangements and details of what equipment the employer is providing.

The response must be issued within a reasonable time period and in any event no longer than 12 weeks.

Once an employee's request has been assessed correctly by the employer, an employee will not be able to submit another request for a period of 12 months.

What are the grounds on which the employer can refuse a request?

An employer can refuse a request for "business grounds" including but not limited to:

- Inability to redistribute work to other staff;
- Potential negative impact on the quality of product or service;
- Potential negative impact on performance of the employee or other employees;

- Concerns for the protection of intellectual property, confidentiality of information and data protection;
- Health and safety;
- Internet connectivity;
- Planned structural changes to the business; or
- If the employee has been recently or is currently involved in a formal disciplinary process.

What happens if the employer refuses the request or proposes an alternative proposal?

The employee must accept or reject the alternative proposal in writing within one month of receipt of the response.

If the request is refused, the employee can submit another request after 12 months has elapsed from the date of response by the employer to the original request unless they have changed role in which case they can submit a new request in the new role provided they have 26 weeks continuous service.

The employer should allow for an internal appeal.

What is the employee's avenue of redress if the employer refuses?

This is a draft law that seems to lack "teeth". The employee can only complain to the WRC where the employer has failed to comply with the technical requirements to respond and to give reasons. The employee cannot complain about the validity of the reasons given.

The employee must exhaust internal procedures first and can only submit a complaint to the WRC two weeks after the commencement of the internal appeal process.

The WRC can direct the employer to communicate a decision and the notice of the grounds for refusal as necessary. The WRC can

also direct the payment of compensation of up to four weeks remuneration.

An employee is also protected from penalisation for proposing to exercise or exercising their entitlement to request remote working.

What should Employers do now?

Until the draft legislation is published the following steps are recommended:

- Prepare to articulate a policy on remote working which is not confined to responding to the COVID-19 pandemic but reflects the employer's policy on remote working into the future.
- Prepare to consult with employees regarding any proposed change to an existing policy or to implement a new policy.
- Consider how Managers will be equipped to handle remote working requests to ensure that the response is communicated on time and in accordance with the employer's obligations.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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