

The new working world: the detail

Webinar Q&A

We have listed the questions received prior to and during our webinar hosted on 20 June 2021. Please see our responses below.

- **We have a number of individuals who have moved out of London to pursue a better lifestyle / bigger property etc. This would result in a much longer commute for them if they were to attend the London office every day. Is it fair to allow them to not have to do the long commute but others who are more local to do the commute? There have been great savings in commuting fees, but this creates a disparity. Any suggestions on how we manage this?**

You need to keep in mind the notion of fairness. It would seem unfair on local colleagues if they were required to come into the office and the colleagues who had chosen to move further afield were not required to come in. I would have thought that any colleague thinking of moving out of London would have at least thought of the possibility of still having to attend at work. One possibility would be to require everyone to attend at certain times or for certain occasions.

- **How does mental health stack up as a reason to not come back into the office? For example, if employees say they suffer anxiety regarding coming into the office given their "fear of Covid/ commuting" etc. would we need to allow them their requests? These are real concerns and fears voiced by employees.**

This is an area that needs to be dealt with sensitively – not only because of the importance of considering the wellbeing of the employees but also because of the potential legal risks. The employees may be disabled within the meaning of the Equality Act. That would bring into play the duty to make reasonable adjustments and also the need to make sure that any decisions that are taken are justified. The other issue is s44 and s100 Employment Rights Act. The employees may well be protected from any detriment or dismissal if their refusal is because of a fear that they would be exposed to a risk of serious and imminent danger if they were to come in. I would recommend talking to the employees to explore further the basis for their fears.

- **If implementing an informal flexible / hybrid working policy whereby we are happy for employees to work from home or office depending on their preference, but they must come to the office when required for meetings, should a change be made to the contract? Or should just a policy be put in place as a framework?**

Your plan is to have an informal, flexible hybrid working policy. As such you should introduce it as a policy framework making clear that it will be regularly reviewed and the default position remains that set out in the contract of employment with your employees.

- **If an employee has put in a flexible working request to work from home permanently due to their ethnicity creating a higher risk in relation to Covid, but the role requires some office work due to team development needs and knowledge sharing, what is the risk of discrimination should it be rejected and a hybrid working pattern adopted instead? (i.e. 60/40)**

As with the second question above, this is an area that needs to be dealt with sensitively for the reasons set out in that answer. If the teams' needs and knowledge sharing reasons are sufficiently compelling they will provide a reason for rejecting the flexible working request and a potential justification of a claim of indirect discrimination. The key is to consult with the employee to understand their concerns. It may be that, properly understood, their risk from Covid is no greater than your other employees.

DISCLAIMER

This document is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking, or refraining from taking, any action as a result of the contents of this document. DMH Stallard LLP is a limited liability partnership registered in England (registered number OC338287). Its registered office is Griffin House, 135 High Street, Crawley, West Sussex, RH10 1DQ



Simon Bellm
Partner, Employment

01293 558511
Simon.Bellm@dmhstallard.com



Stephen ten Hove
Partner, Employment

020 7822 1518
Stephen.tenHove@dmhstallard.com

DISCLAIMER

This document is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking, or refraining from taking, any action as a result of the contents of this document. DMH Stallard LLP is a limited liability partnership registered in England (registered number OC338287). Its registered office is Griffin House, 135 High Street, Crawley, West Sussex, RH10 1DQ