

CIPD Ireland
A3 The Locks, Charlotte Quay,
Dublin 4.
info@cipd.ie
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CIPD submission to the Code of Practice on the 'Right to Request Remote Working'

Thank you for the opportunity to contribute to the consultation on the Code of Practice on the 'Right to Request Remote Working'. This is required under Part 4 of the Work Life Balance and Miscellaneous Provisions Act 2023 and we understand the Code aims to set out practical guidance for employers and employees as to the steps that may be taken for complying with the requirements of the Act in relation to applications for flexible or remote working.

The CIPD is pleased to respond. The CIPD has been championing better work and working lives for over 100 years. We help organisations thrive by focusing on their people, supporting our economies and societies. It's the professional body for HR, L&D, OD and all people professionals - experts in people, work and change. With almost 160,000 members globally and 6,000 in Ireland - and a growing community using its research, insights and learning - we give trusted advice and offer independent thought leadership. It's a leading voice in the call for good work that creates value for everyone.

Background and research findings

The Work Life Balance and Miscellaneous Provisions Act 2023 will bring in significant change for Irish workplaces. In our view it is unfortunate the way the legislation has been framed, as the differing legal entitlements for different cohorts of employees is not conducive to building a strong cohesive inclusive work culture. CIPD evidence indicates that flexible working can help increase employee engagement, job satisfaction and wellbeing across an organisation. At the CIPD, we believe that flexible working should be the norm, not the exception.

We believe the Code provides an opportunity to articulate how employers may go beyond the legal parameters and use organisation policies to provide access to more flexible ways of working for all. We would also like to see it encourage an evaluation of how traditional on-site role holders could be given more flexibility, see some [UK examples here](#).

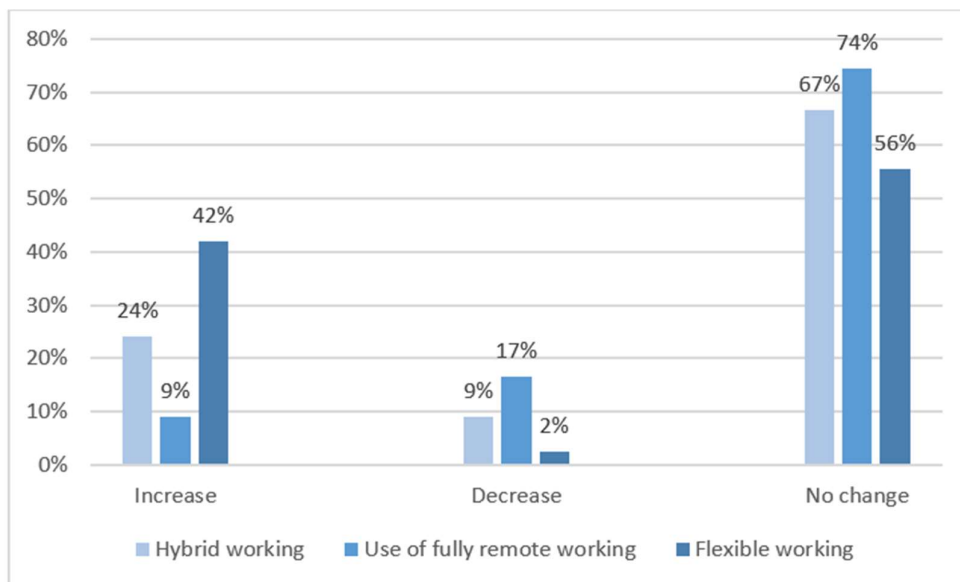
One significant outcome of the pandemic has been how flexible and remote working has become central to organisations' strategies to attract and retain employees. CIPD's HR Practices in Ireland reports ([2022](#) and [2023](#)) found that this has not faded as workplaces opened up in 2022. Our 2023 research found that twice as many respondent organisations were enabling the majority of their employees to work in a hybrid way - with over a quarter (26%) of organisations allowing more than 75% of staff to work remotely compared to 12% the previous year. This reflects the high volume of remote working identified in the recent CSO census reports.

The HR Practices in Ireland annual benchmarking survey has been capturing views on remote and flexible working over recent years. In our 2022 survey 95% of respondents

believed employees should have the right to request flexible working. In the 2021 survey a clear majority of respondents (76%) agreed that employees should have the right to request remote working. 60% of respondents felt that employees should have completed their probationary period and a minority (36%) felt that employees should have completed a year of employment before having the right to request to work remotely. The Code needs to be sensitive to employers' concerns about having time to assess how the role and the role holder perform prior to contractually agreeing remote and flexible working arrangements.

Our more recent 2023 survey (data gathered before the legislation was finalised) identified the level of remote and hybrid working and plans around changing their availability in the future. Less than half (42%) planned to expand access to flexible working, only 24% planned to increase access to remote working, and 17% expected to see a reduction in the use of fully remote ways of working.

Plans to change ways of working



Principles for the Code

We note the Code will address applications for flexible working arrangements as well as remote working. We have consulted with members on the points below.

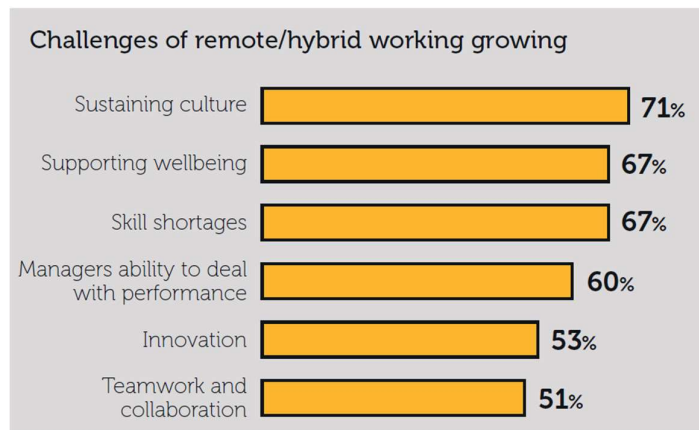
- The Code should define the principles of good working practices, to educate both employees and employers on the important considerations to effectively implement remote and flexible working arrangements.
- We believe the Code needs to provide a comprehensive understand in of who is eligible for each leave, and the relevant criteria. This will be important for employers in having to explain to employees the rationale for different entitlements.
- Due to the complexity of cross -border working, managing taxation, insurance, pensions, legal entitlements, etc we recommend the Code focus on the entitlement to work remotely within the State.

- It would be of benefit to see a breakdown of responsibilities between employers and employees, and a graphic or table could help to bring clarity to the situation
- It is important that the Code is very clear on issues around entitlements, and that a voluntary change in location or work pattern is not an entitlement to increases in pay or benefits.
- Overtime and weekend premia have to remain related to requests to work additional hours, and not as an entitlement because of a self-selected flexible working pattern.
- The Code needs to address the implications for topics such as travel and subsistence entitlements and other tax benefits when it comes to remote working (eg links to the relevant Revenue guidance), or the consequences for any hybrid arrangement that may be put in place.
- It would be helpful for the Code to clarify record keeping and Health and Safety responsibilities for both the employer and employee.
- The Code should recommend that all contract changes have a built-in duration, to allow it to deal with changing circumstances. It will be in the interest of both employees and employers to define duration and have review processes built

The law is, and hence the Code should be, clear that it is the employee who puts in the request. We recommend advising employees to look at the organisation's policy and have informal discussions with their line manager in advance, to understand what has to be taken into account in relation to any reorganisation of work. It is important that trial periods to test out new ways of working are encouraged, to assess how it can best meet the employee's and employer's requirement. This is often most flexibly done in advance of a formal application, as it can be adjusted as it goes. The Code should encourage both employees and employers to trial new approaches prior to their formal set up (this is in no way to restrict employee entitlements).

The recently published 2023 HR Practices survey findings demonstrated that the challenges which organisations are facing are growing, not decreasing as time passes. Most challenges have not previously had the high level of responses that as we've seen this year. While introducing entitlements to request remote and/or flexible working, consideration has to be given to how employers can engage with employees to minimise the negative impact.

Many organisations are recognising that they need to do a culture reset to build a future-focussed sustainable organisation. Wellbeing and upskilling have to remain a central focus for sustainable people and employment, and remote and flexible working structures have to facilitate delivering these successfully through a range of avenues, including both online and face-to-face. Embedding a future-focussed culture build on the voice of all employees and incorporating diverse needs will be central to Ireland's future success.



We highly recommend that the Code articulate the need for remote and flexible contracts of employment to include the requirement for employees to attend specified locations for essential reasons. These can be called out in the contract to include critical business meetings, collaboration events, specific training, wellbeing and other business critical reasons.

The Code should recommend that all contract changes have a built-in duration, to allow it to deal with changing circumstances. It will be in the interest of both employees and employers to define duration and have review processes built. Formal reviews of new ways of working should be included at 3 and 6 months.

It is important for both employers and employees that the Code identifies justifiable grounds for refusal of requests. These should be similar under the right to request remote or flexible working arrangements, and a table provided to highlight where and why there are differences. **These grounds should focus on the demands of the work itself, wellbeing and health and safety concerns, outputs and performance.**

Valid grounds for refusing remote working should include

- where work has been defined as on-site work, for example direct engagement with customers or on-site employees / service providers
- the nature of the work, eg specialist onsite roles including operations, and onsite technical facility and infrastructure roles
- to meet requirements for security and confidentiality of data and minimise cybersecurity risks
- to ensure health, safety and wellbeing of employees, including unsafe home environments
- where supervision and/or need for particular skillsets as back up for on-site roles is necessary and justifiable
- as a result of restructuring where either the ways of working or nature of the work has changed
- when off-site or flexible work no longer meets business / customer needs
- lack of broadband connectivity
- where performance, productivity or behavioural concerns exist and need to be addressed, either through formal discipline procedures or informal learning.
- a change in customer requirements

A key delivery agent for the effective implementation of remote and flexible working is the line manager, who has the conversations about ways of working, when and how works gets done, and has to deliver internal collaboration and delivery of business objectives. However our research tells us that only 50% of respondents were supporting / training managers to deal with remote and hybrid working. Elsewhere in the findings, leadership development has been called out as a top priority for over the next two years.

CIPD recommends that the Code calls out the need for relevant training for managers to be able to effectively deal with the diversity of ways of working which remote and flexible working arrangements will facilitate.



Separately, the Code can encourage employers to think more broadly about their workforce needs, upskilling and career paths so employees in on-site frontline roles can acquire new skills to take on other work activities which can provide greater flexibility in location or working pattern.

The introduction of these entitlements is creating a complex environment. Additional guidance to support employees and employers work their way through this complexity. We recommend that process maps and tables are incorporated into the Code, to help clarify entitlements and requirements. Examples to consider may be found in Code of Practice on Determining Employment Status produced jointly Department of Social Protection, the Office of the Revenue Commissioners. Clearly presented supports for employees to walk through their entitlements and for employers to understand their responsibilities is necessary to maximise effective take-up and compliance.

We are happy to engage further with the WRC on the proposed Code.

Yours sincerely

Mary Connaughton

Director, CIPD Ireland

Conclusion: The CIPD in Ireland will continue to liaise with the WRC and we are open to further dialogue. We will continue to keep our members informed as to the progress of the Code of Practice.