



Public Consultation on the Introduction of a Right to Request Remote Working

The purpose of this consultation is to seek your views on the introduction of a statutory right for employees to request remote working. The background to this initiative is set out in the attached consultation paper, which also provides you with an opportunity to provide your views on important relevant issues including: reasonable grounds for refusing a remote working request; the right of complaint; provision of necessary equipment; and monitoring of activity by employers.

The document provides space for your responses to the questions set out.

Your Name: Rachael Ryan

Organisation (if applicable): SIPTU

Please indicate if this submission is made in a personal/employee capacity, an employer capacity or on behalf of your institution, organisation or group.

Organisation

Name of company, institution, organisation or group covered by this submission:

SIPTU

Background

Respondents are requested to make their submissions by email to:

Remoteworkingrequest@enterprise.gov.ie

The closing date for submissions is Friday 7th May at 3pm.

For telephone queries please contact John Simmons on 087 4351917.

On 15th January 2021, the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar TD, published [Making Remote Work: National Remote Work Strategy](#), Ireland's first National Remote Work Strategy to make remote working a permanent option for life after the pandemic. It draws on the results of [Public Consultation on Guidance for Remote Working](#) held by the Department over July and August 2020 and the Department's 2019 report [Remote-Work-in-Ireland](#). The Strategy sets out plans to strengthen the rights and responsibilities of employers and employees, to provide the infrastructure to work remotely, and sets out clear guidance on how people can be empowered to work remotely away from the employer's premises.

It is recognised that not all occupations, or particular roles within an enterprise, will be suitable for remote working. Therefore, even in cases where employers want to facilitate workers and be as flexible as possible, it will not always be an appropriate or suitable option.

The Remote Work Strategy is built on three fundamental pillars which are bolstered by underpinning conditions.

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

Pillar One is focussed on creating a conducive environment for the adoption of remote work. As remote working is a new way of working for many, it will need new and different measures in place to facilitate this in the future. Changes to how and where people work will have impacts on a number of different areas, such as the rights and responsibilities of employers and employees, health and safety legislation and tax arrangements. The actions in this pillar are centred on assisting employers and employees. The underpinning conditions are horizontal factors that focus both on the promotion of remote work and best practice, and the skills needs from its increased adoption. Through progressing actions in each of these areas, the Government will realise the vision of this Strategy – to ensure remote work is a permanent feature in the Irish workplace in a way that maximises economic, social and environmental benefits.

This consultation is being undertaken in the context of Pillar 1 of the National Remote Work Strategy (Create a Conducive Environment for the adoption of remote work). This pillar outlines actions which need to be taken to ensure that those adopting remote work are facilitated.

These are:

- Legislate to provide employees the right to request remote work
- Introduce a code of practice on the Right to Disconnect, for which a public consultation has already been held
- Provide employers and employees with ongoing up-to-date guidance on remote work
- The Tax Strategy Group will be tasked with reviewing tax arrangements for remote working for (i) employees and (ii) employers in the context of Budget 2022.

I. Benefits and Challenges

There are multiple benefits that can be derived from remote work, which will help to achieve numerous public policy objectives. These benefits include increasing participation in the labour market, attracting and retaining talent, enabling balanced regional development, alleviating accommodation pressures, improving work/life balance, improving child and family wellbeing, reducing the amount of time spent commuting, and reducing carbon emissions and air pollution.¹

The impacts of increased remote work can be substantial and remote working has the potential to fundamentally change the nature of where, how, when and why people work. This in turn will bring about economic, spatial, environmental, cultural and societal change.

However, the increased adoption of remote work is not without challenges. Research has highlighted different impacts for employees and employers. In the case of employees, remote working is linked with negative effects on mental health, with workers experiencing feelings of isolation, loneliness and stress. Employees also experience difficulty switching off and keeping regular working hours.

Employers too face challenges. Feedback provided to the Department has highlighted how remote working does not easily enable creativity, group dynamics, shared ownership and collegiality. If these obstacles cannot be overcome, it could result in long-term impacts on firms' productivity. Research has also found that remote working can lead to an innovation deficit due to difficulties in collaborating with colleagues.²

On a broader scale, remote work could also have a negative impact on national employment levels. With remote work becoming increasingly popular, there could be challenges in attracting and retaining talent in Ireland.³ Broader issues such as data protection and taxation policy also arise in the case of employees who may wish to locate outside of Ireland.

Whilst increased remote work could help to revitalise villages and towns across Ireland, it could result in challenges for cities as increasingly workers may choose to work from other locations. Another consideration is how remote working can impact differently, depending on gender, with care burdens and reduced visibility of remote workers having potentially negative impacts for women in the workplace.

II. Definitions and how they apply to Ireland

The term remote work refers to the broad concept of an arrangement where work is fully or partly carried out at an alternative worksite other than the default place of work. Many phrases are used to refer to remote work including: telework, e-Work, mobile work, smart working, telecommuting, flexible working, hub-work, locationless work, co-working, home office, virtual office and platform

¹ [Department of Enterprise Trade and Employment \(2019\) - Remote Work in Ireland](#)

² [Microsoft, \(2020\) Building Resilience & Maintaining Innovation in a Hybrid World](#)

³ [Microsoft, \(2020\) Building Resilience & Maintaining Innovation in a Hybrid World](#)

work. These concepts are all related and share a degree of overlap, with remote working being the broadest concept encompassing all of these terms.

Both the 2019 Remote Work in Ireland report and the National Remote Work Strategy adopted the following definition of ‘telework’, as described in the 2002 European Framework Agreement:

‘a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer’s premises, is carried out away from those premises on a regular basis.’

The definition of flexible working is much broader than remote work and may include the possibility of starting or finishing work at different times, doing compressed hours, having access to flexitime, and shared working options.

III. Occupational safety and health legislation and remote working

The underlying principle of occupational safety and health legislation in Ireland is that all workers enjoy the same basic entitlement to a safe and healthy work environment regardless of their status. Equally, all employers have the same basic duty of care to provide a safe and healthy work environment and to ensure that work practices are conducted in as safe a manner as possible. Under the main piece of occupational safety and health legislation in Ireland (Safety, Health and Welfare at Work Act 2005) an employer’s basic responsibility for the safety and health of employees who work from home remains the same as for other classes of employees. This means that working from home must be well managed and coordinated, so as not to put employees at risk from any long-term health and safety hazards. Safe systems of work should be provided that are properly planned, organised and maintained. Potential risks should be assessed, and appropriate control measures put in place.

Employees also have a responsibility to take reasonable care of themselves, to co-operate with their employer and follow instructions.

The Health and Safety Authority guidance on working from home is available from the HSA’s website (www.hsa.ie). It provides very practical advice for both employers and employees on how to adapt to working from home while respecting statutory duties and responsibilities. This guidance includes:

- Laying out the responsibilities of both employers and employees
 - Employers in the provision of a safe place of work; that the work and equipment are suitable; a prearranged form of contact, and
 - Employees in regard to their own safety; co-operation with their employer; following instructions provided
- Requirement for a dedicated working from home policy
- Identification of a suitable work location and provision of suitable equipment
- Compliance with regulatory requirements for display screen equipment
- Provision of adequate training

- Awareness of work-related stress issues and how they should be managed
- Protection of sensitive groups such as pregnant or post-natal employees and people with a disability.
- Compliance with risk assessment requirements (including a sample checklist)
- Establishment of robust communications between employees and management/employers.

Having an overall good safety management system in a workplace is more likely to be beneficial to an employer in terms of averting workplace incidents or accidents which could potentially lead to claims and/or increased insurance costs. Therefore, it will be very important for employers to have confidence in their ability to deliver a safe working environment in the context of remote working.

IV. Current remote work arrangements

The increase in home working as a result of COVID-19 has brought remote working to the forefront of working life. Though the adoption of remote work was already increasing in Ireland, COVID-19 has greatly accelerated this trend, making remote work a central part of the workplace today and into the future.

Whilst this arrangement has been beneficial for some, it is important not to conflate the experience of homeworking during the COVID-19 pandemic with remote working under a regular scenario. The sudden introduction of mass emergency homeworking often resulted in less-than-ideal working conditions for both employers and employees. In particular, there have been significant challenges faced over this period including a lack of adequate remote working infrastructure, unsuitable home working environments and the non-availability of early learning childcare and schooling.

Additionally, from the employer's perspective, not all work lends itself easily to remote working, for example where a worker needs to be physically present on-site to do a task, interact with others, or use location-specific specialised machinery or equipment. Therefore, even in cases where employers want to facilitate workers and be as flexible as possible, it will not always be an appropriate or suitable option. In cases where remote work is suitable, a hybrid or blended model with a combination of remote work and onsite work may be the preferred arrangement. Some organisations may adopt a model where employees are required to come onsite only a few days a week or month. Some companies will need a core of 'anchor' people, that will be in the office or onsite most days because they need to be. Remote working doesn't work for everyone, or for all aspects of an organisation.

Despite these substantial challenges, the interest in remote working in the long term remains strong amongst employees. Research carried out in October 2020 found that 94 percent of participants

would like to work remotely, at least some of the time, after the crisis.⁴ This figure is almost 10 percent higher than it was in the first phase of the research published in May of the same year.⁵

Currently in Ireland, all employees can request remote work from their employers but there is no legal framework around which a request can be made and how it should be dealt with by the employer. Introducing legislation on this topic will provide a framework around which requesting, approving or refusing such a request can be based. It would also provide legal clarity to employers on their obligations for dealing with such requests.

In August 2019, the Work-Life Balance Directive came into force in EU Member States. It introduced a new set of legislative actions aimed at achieving better work-life balance for parents and carers. This Directive includes the right to request flexible working arrangements for carers and working parents of children up to eight years old. Member States have three years to comply with the Directive. National preparations for transposition of this Directive are being led by the Department of Children, Equality, Disability, Integration and Youth.

V. Selection of right to request remote work in other countries

In almost half of EU Member States employees may, by law, collective agreement or at the discretion of the employer, be entitled to request remote or tele working. In addition, others are currently considering or progressing measures in this policy space, while some others have initiated temporary arrangements during the Covid-19 pandemic.

Finland has policies on flexible and remote working for employees and has recently introduced a new Working Hours Act in 2020. This gives the majority of full-time employees the right to decide when and where they work for at least half of their working hours. The new Act replaces the concept of a 'workplace' with a more neutral concept 'working place', which aims to better address contemporary ways of working. In practice this means that working hours will no longer be tied to a specific place of work, rather working hours will mean time spent working. This has the potential to significantly ease agreements concerning work done from home.

In the **UK**, flexible working requests include requests to work from home or elsewhere ('remote working'). Flexible working legislation is enabled by a code of practice published in June 2014 by the Advisory, Conciliation and Arbitration Service (ACAS). **UK** employees 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

⁴ [NUI Galway Whitaker Institute & Western Development Commission \(2020\) - Remote Working during COVID-19: Ireland's National Survey - Phase II Report](#)

⁵ [NUI Galway Whitaker Institute & Western Development Commission \(2020\) - Remote Working During COVID-19: Ireland's National Survey - Initial Report](#)

- Have not made any other flexible working request in the last 12 months.

Employers in the **UK** are required to:

- Look at a request fairly, following the ACAS Code of Practice on flexible working requests
- Have a sound business reason for rejecting any request
- Make a decision within a maximum of 3 months.

In the **Netherlands**, employees with at least one year of service with an employer which employs at least 10 employees are entitled to request placement at a different location or to work from home. In principle, the employer should honour such a request unless there is a “significant business or service interest” involved in not doing so. The employer might reject a request of a change of workplace based on several 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**, under the Employment Relations Amendment Act (2014) all employees can ask at any time to change hours of work (over a day, a week or year), days of work or place of work. An employer is obliged to give each request fair consideration and to respond to a given request no later than one month after receiving it.

VI. Some principles that will apply to a right to request remote work in Ireland

- **Employer’s remote work policy** - The Terms of Employment (Information) Act 1994 provides that an employer must provide its employee with a written statement of the particulars of the employee’s terms of employment. It also provides that an employer must notify the employee of any changes in the particulars given in the statement. It is envisaged that an employer’s policy in relation to remote working will be included in the written statement.
- **Time and attendance** - It is proposed that all employees granted remote working will be required to maintain records of their time and attendance as required by the Organisation of Working Time Act.
- **Location of remote work** - It is envisaged that the legislation will provide for a right for employees to request remote working at a nominated location or locations on the island of

Ireland. An employer would be free to offer remote working outside of Ireland to an employee, if he/she so wishes and there are no legislative barriers preventing the job being located outside of Ireland. However, a right to request remote working abroad will not be legislated for.

- **Risk evaluation and risk prevention plans** - It is intended that an employer should conduct an Initial Risk Evaluation and a Risk Prevention Plan with regard to the proposed remote working location intended to be used. An employer must ensure that the location can comply with health and safety requirements, security, data protection and confidentiality obligations in considering the request.
- **Equal access to training and career development** - It is intended that employees working remotely should have the same access to training and career development and be subject to the same appraisal policies as comparable colleagues working in the employer's premises.
- **Equal access to conditions of employment** - It is intended that employees working remotely should have the same access to conditions of employment as comparable colleagues working in the employer's premises.
- **Ongoing review of arrangement** - It is intended that any accepted remote working arrangement will be granted subject to ongoing review by the employer.

VII. Monitoring of employees' activity

An employee's privacy in the workplace is protected by law. However, that right to privacy is balanced against the rights of the employer to run their business and protect their company.

An employer has an interest in protecting their business, reputation, resources and equipment. To achieve this, they may want to monitor use of email, internet and phone.

When an employer collects, uses or stores information about their employees – including monitoring emails, internet use or using a CCTV system – they must comply with the General Data Protection Regulation (GDPR) and the Irish Data Protection Act 2018.

If an employer wants to monitor their employees' internet use or emails, it must be:

- **Necessary** – an employer must be sure that monitoring is necessary and should consider less intrusive ways of supervising you before deciding on monitoring. For example, blocking websites would be less intrusive - and generally more acceptable - than monitoring internet search history.

- **Legitimate** – the monitoring should have a legal basis, for example, to ensure that employees are not using the internet to download illicit emails, or to disclose confidential company information to people outside the organisation.
- **Proportionate** – an employer’s monitoring must be proportionate to the risk of the perceived threat happening. Monitoring all emails to ensure that employees are not passing on confidential information about the company would not be proportionate. However, monitoring emails using an automated system to scan for viruses would probably be considered proportionate.

Further information is available on <http://www.dataprotection.ie/>.

VIII. Publication of submissions and Freedom of Information

Any personal information, which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2018. However, please note the following:

- The information provided in the submission form will be shared with relevant Government Departments and State organisations during the review process.
- The Department will publish the outcome of the reviews and the submissions received under this consultation on its website, and
- as information received by the Department is subject to the Freedom of Information Act, such information may be considered for possible release under the FOI Act. The Department will consult with you regarding such information before making a decision should it be required to disclose it.
- If you wish to submit information that you consider commercially sensitive, please identify that information in your submission and give reasons for considering it commercially sensitive.

IX. Note regarding responses

Respondents are encouraged to keep their responses within the box accompanying each question. Please answer any questions that are relevant to you or your organisation.

Question 1: Timeframe for employer to respond

a) What timeframe for response should apply to employers on receipt of an employee's complete request to work remotely;

- 1 month
- 2 months
- other?

SUBMISSION

Notice requirements and / or response times are already contained in the following Irish legislative acts: The Parental Leave (Amendment) Act 2006, the Maternity Protection Acts 1994, the Carer's Leave Act 2001, the Paternity Leave and Benefits Act 2016, the Adoptive Leave Act 1995 and the Organisation of Working Time Act 1997 in relation to annual leave. The Minimum Notice and Terms of Employment Act 1973 applies varying notice periods to the termination of an employment contract depending on the worker's length of service.

Each of the above legislative acts allows for a worker to submit their notice / request to their employer a minimum of 4 – 6 weeks prior to the commencement date of the type of leave in which they are seeking. The employer is then obliged to respond to the worker within a minimum of 2 weeks prior to the commencement date of the leave requested, confirming the commencement date, or seeking a postponement.

While these legislative acts relate to a request for a leave of absence from work, they are helpful in determining the timeframe required by an employer to consider, implement, and adapt to changes in the workplace.

The closest existing Irish legislative provision to the type of request being considered in this consultation is however s.18A of the Organisation of Working Time Act 1997 that relates to a worker's request to be placed on a banded hours contract. This section provides for a response time from the employer of 4 weeks from the receipt the request.

SIPTU therefore submits that as the request being considered in this consultation will be to work remotely and not to be absent from work for a period of time, 4 weeks' notice (prior to the proposed commencement date) from the worker to their employer with a 2-week response time (prior to proposed commencement date) to confirm or refuse the request is sufficient.

Question 2: Length of service before having entitlement

- a) What minimum length of service is appropriate for an employee to have served in the employment of the employer before having an entitlement to make a request for remote work?**

SUBMISSION

Several existing legislative acts relating to either the termination of a contract of employment or a notice / request for a temporary leave of absence from the workplace require minimum lengths of service however, they must be distinguished from the request being considered in this consultation which provides for the worker to remain in work, although off site.

The remote working framework and proposed legislation is envisaged to benefit Irish society in the following ways: *“By providing more job opportunities in rural areas, alleviating accommodation pressures in cities, increasing regional development and infrastructure, improving the work / life balance of employees, resolving childcare availability and affordability issues, and reducing carbon emissions and air pollution due to a reduced volume of commuters.”*

SIPTU submits that a minimum service requirement has the potential to negatively impact on these envisaged benefits for the following reasons:

- *Workers would be required to commute and attend their workplace for a certain period before submitting a request to work remotely;
- *In order to attend their workplace for this period, workers may have to secure suitable but temporary accommodation and childcare facilities within a commutable distance;
- *As a result, the reduction of carbon emissions and air pollution would be less than envisaged;
- *The need of workers to temporarily relocate or rearrange their personal circumstances would negatively impact on a worker’s personal finances and ability to maintain a work / life balance; and
- *The results of regional policy assessments determining the needs of regional towns and villages and the demands on local services would be obscurely affected.

In addition, a significant number of workers have been working remotely since March 2020. There was no service requirement for these workers to work remotely. In a survey of the SIPTU membership from our Public Administration and Community Division taken in August 2020 and containing 1,819 responses, 45% of participants were of the view that they were getting the same amount of work done from home, 39% of participants were of the view that they were getting more work done from home and only 16% of participants were of the view that they were getting less work done from home. SIPTU therefore submits that, to fully realise the positive impact of the proposed remote working framework and legislation there should be no minimum length of service required to submit a remote working request.

- b) After what duration can another request be submitted if the first request was declined?**

Similar to the existing provisions in s.18A of the Organisation of Working Time Act 1997, SIPTU submits that if a request for remote working is refused, a worker should have a right to internally appeal this decision and if necessary, refer this refusal to the Workplace Relations Commission to determine the reasonableness of the refusal.

Should the Workplace Relations Commission uphold the decision of the employer to refuse the request, SIPTU submits that the worker should be entitled to submit a new request when the reasons for the first refusal no longer apply or after 12 months of the last request, whichever is sooner.

Similar provisions are set out in the UK under the Flexible Working Regulations 2014 and the ACAS Code of Practice and Guidance on Flexible Working. These provisions detail the process that should be followed by the employer when reasonably considering a request and implementing a fair and transparent internal appeals procedure.

Question 3: Risk assessment of a proposed remote workplace

As an employer, how confident would you currently be in carrying out a risk assessment of an employees' proposed remote workplace? What, if any, additional information, guidance or assistance might you require?

SUBMISSION

As acknowledged above, the obligations on both employers and workers under the Safety, Health and Welfare at Work Act 2005 (SHWWA 2005) already extend to workers who work remotely as was reaffirmed in an important issued by the Workplace Relations Commission in January 2021, and involving a claim taken by a SIPTU member (*An Operations Co-Ordinator v A Facilities Management Services Provider [ADJ-00028293]*).

Several workers in Ireland were already working remotely prior to the Covid 19 pandemic and since March 2020 this number has increased exponentially. Many Irish employers were therefore already engaged in virtual and in person remote risk assessments prior to this and have continued to be throughout this time. In addition, the Health and Safety Authority have also issued a helpful guidance on both employers and worker's obligations in this regard.

Section 26 of the SHWWA 2005 relates to the obligation on employers to engage in consultation with and allow for the participation of workers in health and safety workplace matters.

SIPTU therefore submits, that while it will be paramount to ensure that the potential risks of remote working are assessed, and safe working practices are in place at each location, health and safety requirements, including the obligation of consultation, are not envisaged to be a detrimental obstacle to the introduction of the proposed remote working framework and legislation.

Question 4: Remote work policy requirement

Should there be a provision inserted in the legislation that employers must have a policy on remote work which can be inspected by employees and the Workplace Relations Commission? (The policy could set out details such as the type of work that may be suitable for consideration of remote work and equally work that is not appropriate or suitable for remote work. In some companies the potential for remote work may be zero or extremely limited.) This type of provision is already in use. For example, Section 20 of the Safety, Health and Welfare at Work Act 2005 requires employers to prepare, or cause to be prepared, a written “safety statement” and a copy of a safety statement, or relevant extract of it, shall be kept available for inspection.

SUBMISSION

The Safety, Health and Welfare at Work Act 2005 which places the obligation on employers under s.20 to develop and implement safety statements that can be inspected by the Health and Safety Authority, already extends to workers working remotely. These statements should therefore include the detail set out in the question above i.e., details of the type of work that is suitable for consideration of remote working, although specifically from a health and safety prospective. If not already done so, SIPTU recommends that employers engage in this process with their workers to update their current safety statements to reflect any existing remote working arrangements. Further engagement and amendments would then be required once the remote working framework and legislation is fully implemented.

Separately, SIPTU submits that a provision is included in the proposed remote working legislation that provides for the Workplace Relations Commission to develop a Code of Practice similar to the ACAS Code of Practice and Guidance on flexible working in the UK. This sets out the details of who has the right to make a request, how a request should be made, the obligation on the employer to reasonably consider the request, the consequences of an approval or refusal of a request and the right to appeal. This Code of Practice should be provided for in addition to the proposed legislation and not an alternative to the proposed legislation.

In addition, SIPTU submits, as is the case for all work practices, that an internal policy on remote working be developed in each workplace. This should, at a minimum, set out the details of the remote working rights of workers and the process that should be followed internally to assert them. The proposed legislation should set out that where collective bargaining is in place, engagement with workers and union representatives, is required ahead of the implementation of the policy.

Question 5: Reasonable grounds for refusal

a) **What are reasonable grounds for refusing a remote working request? Please list.**

SUBMISSION

SIPTU submits that any reasonable grounds given by an employer for refusing a remote working request should be objective, transparent, provided in writing to the worker that made the request, and be subject to appeal.

Reasonable grounds to be included in the proposed legislation may include:

- *That the nature of the work is such that it would be sufficiently impossible to be done remotely;
- *That following a risk assessment, the health and safety risks identified are such that they cannot be overcome; and
- *That an approval of the request would cause significant changes to the structure of the workforce and would have a substantially negative impact on the work practices of other workers in the workplace concerned.

SIPTU submits that an intracule of establishing reasonable ground for refusal encompasses a reasonable consideration of all aspects of the request. In ICTU's consideration of the right to apply for remote working they have said that *"Without the requirement to give requests reasonable consideration, Irish employers have shown themselves to be too quick to out of hand refuse to negotiate a work from home company policy with trade union reps, prior to Covid."*

b) Is it acceptable that an employer offers an alternative hybrid working pattern with a combination of remote work and onsite work, in response to any request for remote working? (For example, if an employee is requesting 50% remote working and an employer wishes to offer 20% or a lower percentage than the amount requested.)

In the SIPTU survey referenced above in SIPTU's answer to Question 2, of those surveyed:

- 10% of participants expressed a desire to remain working from home full-time;
- 14% of participants expressed a desire to return to the workplace full-time;
- 15% of participants expressed a desire to return to the workplace for 3 - 4 days per week;
- 40% of participants expressed a desire to return 2 - 3 days per week; and
- 20% of participants expressed a desire to return 1 day per week.

SIPTU therefore submits that for the practical implementation of the proposed remote working framework and legislation, a degree of flexibility should exist.

Question 6: Withdrawal of remote working

It is intended that any accepted remote working arrangement will be granted subject to ongoing review by the employer.

- a) If an employer seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?

See below

- b) If an employee seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?

See below

- c) If an employer seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?

See below

- d) If an employee seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?

See below

SUBMISSION

SIPTU would like to highlight that there is no consultation question in relation to how long a remote working arrangement will last under the proposed legislation and if in any circumstances it can be indefinite. As a result, it is difficult to provide definite time frames of notice periods to change or withdraw a remote working arrangement when this detail has not been explored.

SIPTU is aware however from its survey referenced above in Question 2 that there will be situations where workers have only applied for positions because they encompass an opportunity to work remotely, and some workers will have relocated and made significant changes to their personal circumstances either because of the Covid 19 pandemic or because their remote working request was approved. Participants listed commuting to and from work as their primary concern surrounding a return to work with 54% expressing a COVID related concern.

As a result, SIPTU submits that clear provision for the duration of a remote working arrangement is included in the proposed legislation, together with minimum and maximum notice periods for the purpose of withdrawing or implementing changes, which are relative to the duration of the remote working arrangement agreed.

In addition to this, while SIPTU accepts that any remote working arrangement will contain a review clause, and this will be provided for in the proposed legislation, SIPTU notes that the criterion for a review is also not the subject of any of the consultation questions. SIPTU therefore submits that the criteria to be considered by the employer when reviewing an individual's existing remote working arrangements should be limited to the criteria listed in SIPTU's answer to Question 5 above. The proposed legislation should also set out a clear provision for the frequency of such reviews and an appeals process.

Question 7: Provision of equipment

Should the employer bear the cost of providing all equipment for a remote working arrangement as well as covering the cost of maintenance? [It should be noted that the employer cannot require the employee to install programmes or applications on devices owned by the employee, or to use these devices for remote services.]

SUBMISSION

The Safety, Health and Welfare at Work Act 2005 places an obligation on employers to ensure that their workers operate in a physiologically, psychologically, and environmentally safe workspace. The Data Protection Acts 1988 – 2018 places an obligation on employers to ensure that their workers have all the necessary procedures and restrictions in place to avoid a data breach. The protection of workers privacy and workplace confidentiality are often implied or expressed terms in a worker's contract of employment.

To ensure that these rights and obligations are met and protected, it is an implied best practice for an employer to provide a worker with (and bear the cost of purchase and replacement of) the necessary equipment to fulfil their role while working from home.

However, the result of SIPTU's survey referenced above in SIPTU's answer at Question 2 highlighted that 40% of the participants still required the provision of broadband and general office supplies while 55% of the participants still required the provision of office equipment in August 2020. Several members are using their personal office equipment since the start of the Covid 19 pandemic, and several others have not been provided with any allowance to buy the appropriate working equipment that they require. The lack of support and provision of equipment by employers throughout the Covid 19 pandemic has caused workers significant stress and is an issue which SIPTU continues to raise with employers on our members behalf.

SIPTU therefore submits that to ensure the concerns surrounding workplace safety, data protection, worker privacy and the confidentiality of workplace communications does not become a hindrance to the effectiveness of the implementation of the proposed remote working framework, the proposed legislation should make further provision for the cost and maintenance of office equipment to be an obligation of employers.

Separately but akin to the issue of the cost of working from home, SIPTU requests that the Government considers two further issues that are significantly impacting workers and SIPTU members:

1. The available working from home tax relief which an employer is not obliged to pay to a worker and results in it having to be claimed by the worker from Revenue at the end of the tax year; and
2. The increase in the monthly costs of home gas, electric, telephone and broadband bills that workers have been experiencing throughout the Covid 19 pandemic.

SIPTU will be addressing these issues in their budgetary submissions for 2022.

Question 8: Monitoring of activity

Should the employer have entitlement to monitor the activity of the employee? [It is proposed that the employer should have entitlement to monitor only to the extent necessary to verify the compliance of labour obligations and duties.]

SUBMISSION

As set out above, worker privacy is legally protected and when storing a worker's data, employers must ensure that their practices and procedures are in line with their obligations under the Data Protection Act 1988 – 2018.

SIPTU acknowledges that a worker's privacy can be balanced with an employer's right to sufficiently operate their business. However, SIPTU have an established practice with employers in this regard. When an employer is seeking to implement a new monitoring mechanism into the workplace, a privacy impact assessment and a data protection impact assessment must be carried out in consultation with staff and their union representatives. This is to determine whether the mechanism is strictly necessary for compliance with labour obligations and duties and if the mechanism proposed is a proportionate way of achieving that legitimate aim. Alternative, less invasive ways of achieving that same aim, must be explored before any mechanism is finally implemented.

Once the assessments are complete, SIPTU recommends that as with all workplace practices, a policy detailing the monitoring mechanism is negotiated with staff and their union representatives. SIPTU objects to excessive monitoring and surveillance of workers and the use of this information being used in misconduct investigations and / or disciplinarys.

SIPTU submits that the above practice should remain the same for remote workers and would welcome a provision to this effect in the proposed legislation.

Any other comments:

SIPTU submits that in addition to the above submissions, the following provisions should be included into the proposed legislation to ensure the effective protection of remote workers:

1. An anti-penalisation provision in line with s. 26 the Organisation of Working Time Act 1997.
2. An equal treatment provision in line with s.6 of the Protection of Employment (Fixed Term Workers) Act 2003 and s. 14 the Protection of Employment (Temporary Agency Workers) Act 2012 which ensures that a remote worker can be treated no less favourably than onsite workers.
3. A provision providing for employers and Trade Unions to enter into collective bargaining arrangements on remote working;
4. A definition of 'employee' which includes all employees with a contract of service (i.e. temporary, agency, fixed-term and part-time employees as well as full-time and permanent employees) within the scope of the proposed legislation; and
5. A prohibition provision on the issuing of a new contract and / or the alteration of an existing contract (written or verbal, express or implied) due to a remote working request being accepted.