

Rejection of remote working requests will see a rise in tribunal cases

Employers are anticipating a flood of employment law cases resulting from 'willy-nilly' rejection of remote working requests.

HR Team Director, Martina McAuley, said employers who are not adequately prepared to deal with remote working requests - even post Covid-19 - run the risk of serious financial penalties.

Unfair dismissal following the refusal of a remote working request

Ms McAuley made the comments after the Workplace Relations Commission ordered an employer to compensate a worker for unfair dismissal following the refusal of a request for remote working.

Ms McAuley said: "Case law now exists which shows that a willy-nilly or blanket approach to dealing with remote working requests in Ireland exposes employers to high risk.

"And with legislation due later this year to make remote working a permanent option for Irish employees, employers are best advised to be properly prepared to address such requests.

National remote work strategy

"On publishing Ireland's first National Remote Work Strategy recently, the Tánaiste Leo Varadkar said where employees have the right to request remote working, the onus is on the employer to either say yes or explain why not, giving valid reasons. That means employers need to get their policy on



remote working in order right now to ensure they are protected as employees seek more permanent remote working arrangements going forward.

How employers can compliantly accommodate remote work requests

"As a first step, it's important that each role is assessed on its merits for home or remote working - a haphazard 'one rule fits all' approach will not work. The WRC ruling in this case is early evidence of this and there will be many more similar cases coming down the line," she said.

Ms McAuley outlined steps that employers can take to avoid risk when handling remote working requests.

She said: "We are advising employers to act urgently to ensure they can react appropriately and compliantly to remote working requests.

Steps to take in dealing with remote working requests from employees include:

1. Ensure your organisation has a robust remote working policy in place.
2. Communicate the policy clearly to all employees to ensure it is fully understood.
3. Assess each job role on its merits for home or remote working - avoid a blanket approach to employee requests from across the organisation.
4. Consider alternatives if a job role cannot be carried out in a fully remote capacity, such as whether the job role can be partially performed remotely.
5. Ensure there is valid business rationale on why particular job roles cannot be performed from home or remotely. This should be clearly explained to the employee(s) with valid reasons given for the position taken by the employer.

HR Q&A

Can employers insist that employees have the Covid-19 vaccine?

Employers should suggest and recommend a vaccine but not mandate it, given the uncertainty over potential long-term side effects.

If there is no above-average risk to your staff or the public, you cannot expect your employees to take the vaccine. Instead, it's best to simply encourage your staff to consider it. Sharing trustworthy resources about the vaccine can help them make an informed choice.



Can I implement an invasive form of surveillance to monitor my employees working from home?

Spyware technology may seem sneaky, but it is not prevented from being permissible in Irish law. It is legal for employers to track employees work – monitoring staff is a complex area, and there are various legal rules that deal with this.

Employees are entitled to a right to privacy, and employers also owe a duty of trust to their staff. This means that it can be more difficult for management to justify the use of surveillance, such as keystroke and screen monitoring. However, these are generally still allowed.

As a basic, employees must be aware of any surveillance and it should not be intrusive. A policy should be in place and the monitoring should be in-line with data protection legislation.



PERFORMANCE MANAGEMENT

Effective performance management is essential to any business, as it increases employee engagement and productivity.

Performance management is an essential part of your overall strategy – team goals need to be set and communicated, and performance progress still needs to be measured. HR Team Director, Breda Cullen, says: “Good performance management is built on clearly setting expectations, ensuring employee accountability and providing regular feedback to staff. Communication is key – daily

team briefings, regular management meetings and one to one meetings with employees should be implemented. “Establishing an employee’s skill or will; the establishment of basic standards, expectations and targets (BET); adopting appropriate management style and clear communication are the four integral parts to address and improve an employee’s performance,” Ms Cullen explains.

Ms Cullen added: “Unique to HR Team is our tried and tested BET system, which clearly outlines how to achieve efficiency and improve performance in the workforce.”

HR Team’s BET system is broken down as follows:

Basic standards for employees
An organisation’s basic standards must be clearly outlined from day one and are non-negotiable. These standards may include matters such as time keeping, code of conduct, social media policy, mobile-phone policy, sickness protocols, employee presentation/ appearance, etc.

Expectations of employees
Job descriptions outline clear roles and responsibilities for employees. These must be communicated clearly to ensure that every employee understands what is expected and required of them in the organisation.

Targets for employees
A lack of clearly defined goals or key performance indicators can severely affect your organisation. Hold regular team briefings to determine deadlines, financial targets,

UNDERPERFORMING EMPLOYEES

“When it comes to underperforming employees, nine out of ten times the issue at hand is a result of the inability to communicate clearly with staff rather than outside influences.

“An employee left to his or her own devices and not made fully aware of the requirements of a role will likely underachieve in terms of performance. More often than not, a lack of clarity

signals an imminent failure to deliver. “Written communication is vitally important in every operation but in the absence of face to face briefings, the message can very often get lost and or forgotten – so it is important have regular face to face meetings whether online (in light of current restrictions) or in-person,” says Ms Cullen.

REASONS AN EMPLOYEE MAY BE UNDERPERFORMING:

1. The wrong person was hired for the role.
2. No clear expectations of the employee were established.
3. Poor job role design.
4. Ineffective induction and training.
5. Ineffective working environment.
6. Unsuitable organisational structure.
7. Ineffective or no communication.
8. Lack of rewards or motivation.
9. Insufficient performance feedback.
10. Outside influences.



HR TEAM'S UPCOMING PERFORMANCE MANAGEMENT WEBINAR



When is the webinar?

The webinar will take place on February 23, 2021 from 11am-12pm.

What will you learn from the webinar?

You will be equipped to effectively manage the performance of your staff using structured feedback. You will also be knowledgeable on the systems required to do this. You will also be able to identify the risks in managing staff performance so that your business is protected from costly tribunal claims.

This session will focus on the following elements:

- How to set basic standards.
- How to provide clarity to staff on their own job role.
- How to set targets.
- Defining underperformance and how to address this effectively.
- How to give constructive and structured feedback.
- How to implement a Performance Improvement Plan.

Please register for the webinar [here](#).

FORTHCOMING HR AND EMPLOYMENT LAW WEBINARS

HR Team has a number of free employment law and HR webinars planned throughout 2021.

Whether you have a specific HR question related to Covid-19 or you want to keep up with the ever-evolving developments, we invite you to join our experts as they discuss the key areas that are affecting employers right now.

Registration is free, and the list of upcoming webinars, along with a link to this month's webinar is below.

Thursday, February 25 Performance Management

Time: 11am-12pm.

Join the webinar [here](#).

Thursday, March 25 The Performance Appraisal

Join the webinar [here](#).

Thursday, April 29 Managing Sickness Absence

Join the webinar [here](#).

Thursday, May 27 The Disciplinary Process

Join the webinar [here](#).

Thursday, June 25 The Grievance Process

Join the webinar [here](#).

Thursday, September 23 Recruitment and Selection

Join the webinar [here](#).

Thursday, October 28 Managing Social Media in the Workplace

Join the webinar [here](#).

Thursday, November 25 Managing the Probationary Period

Join the webinar [here](#).

Thursday, December 16 Setting Employee Targets for the Year Ahead

Join the webinar [here](#).

Cost of Webinars: Complimentary

Who should participate?

Line Managers, Supervisors/Team leaders, middle/senior managers, HR personnel and Business Owners.

Do you have an employment law question?

We help business start-ups, SMEs and large multinational organisations. Call to speak to us today on any aspect of employment law or strategic human resource services.

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