Employment &Business*Brief*

January 2025

Homeworking and Hybrid Working:

What's right for YOUR BUSINESS?

A number of businesses and especially larger central London firms have begun ending their working from home arrangements, or have introduced new hybrid working policies, restricting working from home to just one or two days per week. Recent research by the Centre for Cities highlighted that on the global stage, the return to the office in London has been much slower than in other major global cities.

Whilst the downside for employees might be a return to an off-putting, often crowded and expensive commute, a lack of desk space when they get to the office and the distraction of working in a busy office versus the ability to work undisturbed at home, it looks as if the home-working trend which began five years ago during the pandemic is finally coming to an end for many.

Many employers argue that a return to work is beneficial as staff will perform better and there is more engagement in the office setting. Younger team members will also benefit as many have been struggling with working from home as they don't have the same access to more experienced colleagues.

Many firms have chosen now to ask teams to return to the office as they are less worried than they were a couple of years ago that it will make them less attractive from a recruitment and retention perspective.

One of the main issues for many employers has been that they have found it difficult to monitor productivity of employees and working from home policies were often poorly thought out and implemented.

So, what challenges will employers who are keen to see a return to the office going to face?

Where the working from home arrangement has been satisfactory to date then requiring employees to return to the workplace permanently could amount to a breach of the implied term of mutual trust and confidence. Any decision to require them to return to the office permanently should therefore be based on a sound business case along with an open and transparent consultation process. Employees should be provided with reasonable notice of the change taking place rather than being expected to alter their working arrangements with immediate effect.

Another risk for employers is that the working from home arrangement may have become an implied term of their employment contract through custom and practice. The risk is higher where employers have not drafted relevant policies or not expressed those policies to be non-contractual.

Where an employer previously made clear that its policy was discretionary and may be revoked at any time, this will help to rebut any argument that the arrangements were ever intended to be permanent. However, for those recruited after the introduction of the practice it might be harder for the employer to argue that it wasn't. Depending on the duration, arrangements which were expressed to be discretionary may still become implied terms where they subsist for long enough.

The same principles also apply to employers changing their hybrid working arrangements. Where they have in practice allowed employees to work from home more regularly than their policy permits, those employees may be able to argue that their current working pattern has become an implied term through custom or practice.

Employers should ensure that they accurately monitor how regularly staff are working from home and actively enforce their policies where they are being overstretched.

Individual employees can make flexible working requests from day one of their employment and request permanent flexible working arrangements. Employers will need to consider whether homeworking or hybrid working arrangements may amount to a reasonable adjustment where the employee is disabled, otherwise they risk indirect discrimination if they are denied.

Ultimately whatever a business decides to do there is still a risk that there will be pushback from employees. As more and more employers however look to review and change hybrid and working from home then employers that do offer much greater flexibility may stand out and attract a higher calibre of employee and retain staff for longer.

Settlement Agreements

Following on from the October 2024 budget and the increase announced to Employer's National Insurance contributions which begins 5 April 2025, many business owners are currently reviewing staffing levels and individual performance with a view to reducing headcount and costs.

Depending on the number of positions they are looking to remove, employers need to consider the best route to end an employment relationship and legal advice should be sought.

Employers engaging in redundancy settlements do not need a Settlement Agreement, but they may want to consider having them to control the prospect of any future Employment Tribunal claims and it gives certainty to the terms as well as being legally binding between the employer and the employee if drafted correctly. It is usually entered into shortly before or after the termination of the employee's contract of employment.

The benefit of using this type of agreement is that it provides a clean break with the employee agreeing to waive their rights to make a claim, instead receiving an agreed amount of financial compensation. It can also include agreed references, extra protection on confidentiality and warranties from the employee.

Each employee must obtain independent legal advice before entering into a Settlement Agreement if it is to be binding, which the employer usually contributes a fixed sum towards the cost of. It can be a more cost effective and a faster, more efficient process for all employees to be offered one independent legal advisor to do this work.

Where one law firm is appointed to sign off multiple Settlement Agreements it will be a faster and more efficient service, and it can be cheaper for the employer rather than dealing with several lawyers. Employees do still have the right to choose their own solicitor if they decide to do so.

We have regularly acted as sole independent legal advisor to a group of employees being offered settlement agreements. This recently included acting for a group of employees who were being made redundant and who had been offered a

Settlement Agreement by their employer. After speaking to each employee individually and making sure they understood the terms of the agreement, they were all signed, and the process concluded swiftly.

Not only did this help to reduce costs for the employer, it allowed for the faster conclusion of the matter for all parties, allowing employees to seek alternative employment opportunities and the employer to progress with their future plans for the business.

If you would like to discuss drafting a Settlement Agreement or for legal advice on offering Settlement Agreement assistance to your employees, please get in touch today.

Amanda Finn can be contacted on
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Redundancy

Is there an alternative to redundancy for your business and if not, how to make sure you get the process right.

Many businesses are looking for ways to reduce costs following on from the October 2024 budget and the increase announced to Employer's National Insurance contributions which begins 5 April. Reducing staffing levels is one way of achieving this, but is this a good enough reason to make redundancies within your business?

It is important to note the difference between redundancy and dismissal. Redundancy takes place when a position is no longer required due to changes in the business such as restructuring, a change or reduction in workload or closure. Dismissal is where the employment relationship is ended because of the individual, which could include issues around poor performance, breaches of employment contract or serious issues of misconduct.

Before making any compulsory redundancies, employers are expected to consider whether there might be other options to protect employees. This can include:

A freeze on hiring new staff.

Looking to retrain staff for new positions within the business.

Offering voluntary redundancy and early retirement.

Offering changes to working conditions such as reducing hours and pay.

Ending the use of non-employees such as contractors and freelancers.

If you are considering making any redundancies within your business then it will be important to consider the size of your business, the number of redundancies you are considering and how to run a fair and compliant process. There are differences where there are a handful of positions as opposed to 20 or more and it is important to take legal advice at a very early stage.

When entering a redundancy process it is important to:

Review employment contracts and the employee handbook and check any contractual redundancy process is up to date. If there is no internal process seek guidance on the right way to proceed or check with ACAS.

Confirm that there is a legitimate reason for redundancy and how that decision was reached.

Identify redundant roles and how they may be at risk.

Develop objective redundancy selection criteria to select employees for redundancy which might include:

- Skills and performance
- Qualifications

- Attendance records
- Disciplinary history
- Length of service

Consult with employees in either case but where there are 20 or more redundancies or more planned within a 90-day period this has a more prescriptive set of rules.

Explore alternative employment opportunities within the organisation for those at risk. If an employee accepts an alternative position, then they are not entitled to statutory redundancy payments.

Remember to research and understand trial periods of any new role.

Communicate clearly so inform employees who have been provisionally selected for redundancy at a face-to-face meeting and follow up in writing with details of the right to appeal, notice period and what payments will be made to them.

If an appeal is made, then there should be a clear process for handling them in place which is adhered to and a final decision clearly communicated.

Make sure redundancy payments are calculated correctly as those who have worked for the business for two years will be entitled to statutory redundancy pay which is based on age, weekly pay and length of service. Remember to add on service where employees have transferred to the business under TUPE.

Support those being made redundant with access to support services and information.

If redundancy is unavoidable, it should be handled correctly and sensitively to reduce the financial risks as well as damage to the business's reputation.

To discuss your options and legal obligations, get in touch with our team today.

Partnership disputes

Nobody goes into business expecting that the business relationship will sour, but sadly there are often disagreements which at first blush may seem intractable.

Partnerships are a common business structure especially amongst small and medium sized businesses, but some are set up without formal or indeed any written documentation which means as they grow and if there is a dispute, then there might not be any agreed procedure as to how to resolve it.

Partnerships are governed by The Partnership Act 1890 and Limited Liability Partnerships are regulated by the Limited Liability Partnership Act 2000.

Often it is changes over time and personality differences that lead to a partnership dispute. Where there is a written partnership agreement which isn't followed or where one partner leaves and another takes over their role, then disagreements might happen over roles, responsibilities and the direction of the business.

Over time the scope of the work of the business may also change into something which is very different from what the business was set up to deliver which again can lead to disagreements.

Where there isn't a written or oral agreement then when it comes to finances and profits, the presumption is that all partners will be entitled to share the profits equally. This is often where disputes can occur where partners may have joined at different times in a financial year or may have made different financial contributions to set the business up or to help it grow.

Partners also owe each other fiduciary duties which means they should act in good faith and the best interests of the partnership. Sometimes there might be issues around misconduct, conflicts of interest or dishonesty which understandably can all damage trust.

Another area which commonly causes a dispute is where one partner wants to retire or leave and where there hasn't been a conversation regarding succession planning and what happens to their
share of the business.

Where a new partner is joining then they usually do not take on any liability prior to them becoming a partner and an existing partner/partners might find this frustrating if they have ongoing liabilities to
deal with.

Whatever the cause, a dispute can escalate quickly, and this may affect day to day operations or lead to the dissolution of the business. It is important to take early professional advice which sets out your options which may include entering negotiations or using mediation, as resolving disputes early and effectively might be key to the business surviving.

For more information about resolving a dispute contact the Litigation team at Gullands led by Philip Grylls, p.grylls@gullands.com

Quick reference section

Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each complete year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

	From April 24	From April 25
Apprentices	£6.40	£7.55
16-17	£6.40	£7.55
18-20	£8.60	£10.00
National living wage 21+	£11.44	£12.21

Statutory Sick Pay

Per week £116.75 (From April 2024)
Per week £118.75 (From April 2025)

Statutory Shared Parental/Maternity/Paternity/Adoption Pay (basic rate)

£184.03 (From April 2024)
£187.18 (From April 2025)

Statutory Holiday

5.6 weeks for a full time employee.
This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year
of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22
or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41
and over.

Calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme for dismissals after 6th April 2024 at £700. A new figure from April 2025 is still awaited.