



**Hybrid working – Will
businesses see a rise or fall
in claims against them?**

Hybrid-working

One change in working life post pandemic has been truly embraced: home working. Only 5% of the working population considered 'home' to be their main office before the pandemic, with 70% of workers having no prior experience of working from home. Since the outbreak, 37% reported to have done some work from home, a 10% increase on the previous year, following the government's guidance to work from home where possible.

One in four businesses intend to use increased homeworking going forward, with the highest proportion (one in two) in the Information and Communication sectors. With many businesses adapting to a hybrid model, there will be fewer employees in offices on any given day. Arguably, a reduced commute could lead to a better work/life balance for many, but will this ultimately lead to issues for employees and their employer?

Employment Disputes Claims

Discrimination claims within the workplace predominantly arise from home workers who are overlooked for career opportunities. But with hybrid working becoming more common, will this lead to a rise or fall in claims?

Previous ONS data showed that employees who mainly worked from home were less than half as likely to be promoted than all other workers between 2012 and 2017. Also, people who mainly worked from home were around 38% less likely to have received a bonus compared with those who never worked from home. This seems unfair, given research has found those working from home are 13% more productive than their office-based counterparts. Regardless of performance, office presence can lead to reward as the manager can see an employee's struggle, not just their output.

With women and disabled people more likely to work from home, the discrepancies in promotions and bonuses have led to discrimination claims. Higher levels of homeworking augment the risk of discrimination claims from employees who feel they're missing out. If they want to avoid that, businesses need to act responsibly. It's crucial that organisations don't quantify 'time in office' as a level of commitment to the job.

In addition, we could see a rise in claims from staff who feel they are being unfairly treated in not being allowed to work more from home who subsequently leave and claim discrimination and/or constructive dismissal.

There may also be employees who remain nervous and stressed over their risk in the workplace and commuting, who may refuse to work in the office and take long term sick, resulting in employers taking action to dismiss them.

Claims may arise from differential treatment of vaccinated or unvaccinated employees or from a failure to differentiate.

Insurance

Employment Practices Liability insurance can cover such claims if included as part of a businesses Management Liability policy and there are a number of mitigation strategies employers can use.

Employers' Liability Claims

Home Working

Home workers are entitled to the same level of care as those on the employer's premises. Offices have traditionally been a fairly low risk environment. The home may not be as safe.

Ensuring home workers are properly equipped to fulfil the tasks expected of them is important as are risk assessments of home workplaces as they become a shared workplace with the office.

Because of COVID-19 many employees sent to work from home faced difficulties adapting to the home working environment. There may not have been time to supply the right desks, chairs and IT equipment and staff may be in homes where, due to limited space or family issues working conditions were very difficult.

The HSE recognised the reality of these difficult conditions and was sympathetic to employers who had not been able to ensure the right environment for home workers.

However, as a temporary fix becomes a permanent solution there will be an expectation that the needs of workers are properly addressed.

The reasonable employer will consider issues such as:

- ✔ The right equipment combined with Workstation Assessments to reduce the risk of musculoskeletal disorder and appropriate advice and support in those circumstances.
- ✔ Assessing potential increased stress on employees attempting to work from home in sub-optimal circumstances.
- ✔ Portable equipment supplied to employees will still require PAT Testing.

Their Days in the Office - Vaccination Status and Hybrid Working

The Government's latest guidance on working safely during coronavirus sets out the self-isolation rules but does not provide employers with any guidance on employee vaccination status.

Double Jabbed employees no longer need to self-isolate but what if they want to? They are not entitled to statutory sick pay, and you may force them to come in and other employees may become ill.

While employers need to tread carefully it is becoming accepted that:

- ✔ Employers can actively encourage vaccination – give paid time off to attend etc (this may also be useful for flu jabs this autumn)
- ✔ Potentially you can ask employees for their vaccination status if you are able to demonstrate a strong basis for doing so – preventing the spread of the virus and complying with your duty of care to your employees. As the information is sensitive you will be required to abide strictly to GDPR. The safest route would be to ask employees to volunteer such information rather than insisting on it.

- ▽ Again, you could potentially restrict returning employees to those who have been double jabbed. While this is possibly discriminatory you may be able to justify such a decision on the basis of your risk assessment.

Your potential Vicarious Liability if you ignore the issue

Employers are vicariously liable for the negligence of their employees, and this is well accepted in the courts.

It is possible to envisage claims arising from, for example those infected as a consequence of the decision of an infected employee to continue interacting with customers or colleagues, contrary to government and employer advice to self-isolate.

Insurance

Employers' Liability covers both your direct and vicarious liability but clearly it is wise to use as many mitigation strategies as are feasible in your individual circumstances.

Conclusion

It is so difficult to know exactly what to do to best protect your business against claims. We can certainly help, but you will certainly never satisfy everyone and may not keep everyone safe.

A combination of good quality insurance coverage and the right risk assessments and mitigation strategies will soften the financial impact, but we believe that the existing period of uncertainty is something that will eventually manifest itself in a greater likelihood of claims.

If you would like to know more on how hybrid working could affect your insurance and your potential claims, please don't hesitate to contact us, we are here to help protect your future today.

Nothing in this document constitutes legal advice. Please speak with your Legal/HR team for further guidance



Vista Insurance Brokers Ltd

National House, 6th Floor, 36 St Ann Street, Manchester, M2 7LE +44 (0) 161 393
7111

33 Cavendish Square, London, W1G 0PW +44 (0) 203 764 0833
2 Snow Hill, Queensway, Birmingham, B4 6GA +44 (0) 121 752 8139

Vista Insurance Brokers are authorised and regulated by the Financial Conduct Authority (FRN: 717743).