



STATUTORY INSTRUMENTS.

S.I. No. 92 of 2024

WORK LIFE BALANCE AND MISCELLANEOUS PROVISIONS ACT
2023 (WORKPLACE RELATIONS COMMISSION CODE OF PRACTICE
ON THE RIGHT TO REQUEST FLEXIBLE WORKING AND THE RIGHT
TO REQUEST REMOTE WORKING) ORDER 2024

WORK LIFE BALANCE AND MISCELLANEOUS PROVISIONS ACT
2023 (WORKPLACE RELATIONS COMMISSION CODE OF PRACTICE
ON THE RIGHT TO REQUEST FLEXIBLE WORKING AND THE RIGHT
TO REQUEST REMOTE WORKING) ORDER 2024

WHEREAS the Workplace Relations Commission has, under subsection (2) of section 31 of the Work Life Balance and Miscellaneous Provisions Act 2023 (No. 8 of 2023), having received a direction from the Minister for Enterprise, Trade and Employment, and following consultation with the Minister for Children, Equality, Disability, Integration and Youth, under subsection (1) of that section, prepared a draft code of practice on the Right to Request Flexible Working and the Right to Request Remote Working.

AND WHEREAS the Workplace Relations Commission has complied with subsection (3) of that section, and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment.

NOW I, SIMON COVENEY, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsection (5) of section 31 of the Work Life Balance and Miscellaneous Provisions Act 2023 (No. 8 of 2023), and following consultation with the Minister for Children, Equality, Disability, Integration and Youth, hereby order as follows:

1. This Order may be cited as the Work Life Balance and Miscellaneous Provisions Act 2023 (Workplace Relations Commission Code of Practice on the Right to Request Flexible Working and the Right to Request Remote Working) Order 2024.
2. It is hereby declared that the code of practice set out in the Schedule shall be an approved code of practice for the purposes of Part 3 of the Work Life Balance and Miscellaneous Provisions Act 2023 (No. 8 of 2023) and Part IIA of the Parental Leave Act 1998 (No. 30 of 1998).

SCHEDULE

Workplace Relations Commission
Code of Practice for Employers and Employees
Right to Request Flexible Working and Right to Request Remote Working

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1. Foreword

Responding to a request from the Minister for Enterprise, Trade and Employment, the Workplace Relations Commission (WRC) has prepared a Code of Practice (the Code) to give guidance on best practice to employers and employees on the right to request flexible working arrangements for caring purposes for certain categories of worker, and the right to request remote working for all workers. These statutory rights are set out in the Work Life Balance and Miscellaneous Provisions Act 2023 and Parental Leave Acts 1998-2023.

The way in which many of us work has seen profound changes in recent years and there has been an increased focus on fostering participation in the labour force through flexible working solutions. Such solutions are increasingly a priority for society from a range of perspectives, from sustainability and positive environmental impacts, to increasing participation amongst women, older people and people with disabilities and all those with caring responsibilities.

At European level Directive 2019/1158 on Work Life Balance for Parents and Carers transposed in Ireland by the Work Life Balance and Miscellaneous Provision Act 2023 aimed to increase the participation of women in the labour market and the shared take-up of family-related leave and flexible working. This development in tandem with the advent of Covid 19 and the rapid transition to remote working has transformed the way many of us work.

The knock-on effects of flexible and remote working arrangements can be far reaching. Parents and carers can benefit from better work life balance which can improve retention of experienced staff. Companies can benefit from a wider talent pool and employees have the opportunity to fit other commitments and activities around work. This can all lead to greater job satisfaction and better staff morale. At the same time, these types of arrangements can pose challenges, particularly in terms of collaboration, integration, team management and communication. These are areas which will require attention as the workplace evolves.

In the context of these new statutory rights, it was considered by Government that a Code of Practice to assist employees and employers to navigate the complexities of requests for flexible and remote working arrangements would be beneficial.

I would like to acknowledge the input of all those who made submissions as part of the consultation process on this Code and the work of the representatives of the Irish Business and Employers Confederation (Ibec)

and the Irish Congress of Trade Unions (ICTU) who assisted the Commission in bringing this Code to fruition.

Anna Perry
Acting Director General
Workplace Relations Commission

2. Legislative Basis

Section 31(1) of the Work Life Balance and Miscellaneous Provisions Act 2023 provides that the Minister For Enterprise, Trade and Employment may, following consultation with the Minister for Children, Equality, Disability, Integration and Youth, give a direction to the Commission to prepare and submit a Code of Practice for the purpose of practical guidance to employers, employees and any other persons as to the steps that may be taken for complying with the provisions of Part 11A of the Parental Leave Acts, 1998-2023, or Part 3 of the Work Life Balance and Miscellaneous Provisions Act 2023.

Before submitting a draft Code of Practice to the Minister, the Commission shall request any person that it considers appropriate, including trade unions and employer representative bodies and the Irish Human Rights and Equality Commission, to make representations to it in relation to the draft Code of Practice, and the Commission shall consider any such representations made.

Section 20(2) of the Workplace Relations Act, 2015 provides, at the request of the Minister, for the preparation of draft codes of practice by the WRC for submission to the Minister for Enterprise, Trade and Employment. Codes of practice are written guidelines, agreed in a consultative process, setting out guidance and best practice for employers and employees with respect to compliance with employment legislation.

These statutory functions fit within the WRC's overall remit of promoting improvement and maintenance of good workplace relations; promoting and encouraging compliance with relevant employment, equality and equal status legislation and codes of practice; providing information to the public; and conducting reviews of, and monitoring developments in workplace relations generally.

While failure to follow a code is not an offence in itself, both section 20(9) Workplace Relations Act, 2015 and section 31(9) of the Work Life Balance and Miscellaneous Provisions Act, 2023 provides that in any proceedings before a Court, the Labour Court or an Adjudication Officer of the WRC, a Code of Practice shall be admissible in evidence. Any provision of the Code which appears to the Court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

In accordance with the statutory requirements, the WRC carried out a public consultation and received over 50 submissions which were fully considered in the development of this Code. In finalising the Code, the WRC engaged with representatives of employers and employees, including Ibec and ICTU.

3. Purpose of the Code of Practice

The purpose of this Code is to provide guidance to employers and employees in relation to how requests for flexible and remote working arrangements are made and handled. It is designed to support employers, employees and/or their representatives in understanding the rights and obligations set out in the Parental Leave Acts, 1998-2023 as amended by the Work Life Balance and Miscellaneous Provisions Act, 2023 in relation to requests for Flexible Working (FW) and the Work Life Balance and Miscellaneous Provisions Act, 2023 in relation to requests for Remote Working (RW). It aims to give guidance on best practice principles throughout these processes, including the decision-making process when considering requests and any changes that may be sought or made to an arrangement.

Specifically, the purpose of the Code is to:

- set out the detail of the processes regarding making and managing requests for FW and RW including when changes are sought or made to the agreed arrangement;
- support employers in objective, fair and reasonable decision-making when considering requests for FW or RW;
- offer practical guidance on best practice to employers, employees and/or their representatives to ensure compliance with the legislation;
- assist in developing workplace policies and procedures for dealing with flexible working and remote working requests so as to provide clarity, transparency and consistency for both employees and employers;
- provide guidance for the resolution of disputes in relation to requests for FW or RW insofar as it relates to the processing of the requests;
- provide information to the public in relation to the relevant enactments.

Nothing in this Code of Practice shall prevent the inclusion in an agreement of a provision more favourable to an employee than an entitlement set out in the legislation. The Code below should be read in conjunction with existing employment and equality law obligations.

Whilst every care has been taken in the preparation of this Code, the WRC can assume no responsibility for and gives no guarantees or undertakings concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions arising. The Code aims to simplify matters but please refer back to the legislation for the binding legal text.

Part 1

Flexible Working

4. What is Flexible Working?

For the purposes of the Parental Leave Acts, 1998-2023, FW is a working arrangement where an employee's working hours or working patterns are adjusted, including through the use of remote working arrangements, flexible working schedules or reduced working hours.

FW, depending on the nature of the role and/or business, can take different forms, including:

Types of Flexible Working	Description
Part-time work	Where an employee works fewer hours than full-time employees.
Term-time work	Where an employee can take unpaid leave for a certain period of the year, most typically summertime.
Job-sharing	Where a full-time post is divided into two part-time roles and both employees share the overall duties and responsibilities for the role. Pay and benefits are shared in proportion to the hours each employee works.
Flexitime	Where an employee can vary their start and finish times outside of core hours while completing the required hours of work each week/month as specified in their contract.
Compressed working hours	Where an employee works their full-time hours in fewer days by extending their working day in longer blocks of time. An example of this is a five-day week that is compressed into four days.
Remote Working	Where an employee works all or part of their working week at a location remote from the employer's workplace, which may be the employee's home.

Table 1. Flexible Working Arrangements

5. Right to Request Flexible Working

To make a statutory request for FW under the Act an employee must be:

- the parent or acting in *loco parentis* to a child under 12 years of age or under 16 years if the child has a disability or illness and who is or will be providing care to the child, or
- providing or will provide personal care or support to a specified person namely the employee's child, spouse or civil partner, cohabitant, parent or grandparent, sibling or a person other than one in the categories already specified who lives in the same household as the employee. The person must also be in need of significant care or support for a serious medical reason.

An employee can request FW from their first day at a new job, but they must complete a minimum of 6 months continuous employment with their employer before an approved arrangement can start. A gap in service of less than 26 weeks with the relevant employer will be discounted for the purpose of assessing whether the employee has the required 6 months continuous service before a FW arrangement can start.

6. Making a Flexible Working Request

An employee must submit their request for FW to their employer as soon as is reasonably practicable but not later than 8 weeks before the proposed starting date.

A request for FW must be in writing and signed by the employee. For the purpose of this Code an online application satisfies this requirement. The written or online request form must include the information set out below.

A request for FW for caring purposes must include the following information to help the employer with the decision-making process:

- the form of FW being requested;
- the proposed starting date; and
- proposed duration of the FW arrangement.

As an employer can ask an employee for any additional information that they may reasonably require about the person in need of care, employees are

encouraged to include the following relevant documents and/or information with their original application so as to expedite the process:

- details of whom the request for FW for caring purposes is in respect of i.e. a child or a specified person as provided for under the Act which could be a parent, spouse, civil partner, grandparent, cohabitant, brother or sister of the employee;
- in the case of a child, a copy of the child's birth certificate or certificate of placement from a registered adoption agency or Tusla (the Child and Family Agency);
- in the case of a specified person in need of significant care or support for a serious medical reason:
 - the employee's relationship to the person, and
 - the nature of the significant care or support, and relevant evidence of the need for significant care or support, that is;
- a medical certificate;
 - stating that the person named in the certificate is in need of significant care or support for a serious medical reason, and
 - signed by a registered medical practitioner
 or
 - in the absence of a medical certificate, such evidence the employer may reasonably require in order to show that the person concerned is in need of significant care or support for a serious medical reason.

Both employers and employees should be mindful of their obligations under the GDPR in relation to such sensitive personal data.

An employee can withdraw their request for FW, up to when an approved arrangement is signed by the employee and employer. Notice to withdraw a request must be in writing and signed by the employee and given to the employer.

7. Right to a Response to a Flexible Working Request

An employer who receives a request for FW must respond as soon as is reasonably practicable, but not later than 4 weeks after receiving the request. If an employer experiences difficulty assessing the viability of the request, they can extend the 4-week period for a further period not exceeding 8 weeks.

Within 4 weeks of receiving the request, the employer must:

- approve the request and include an agreement prepared and signed by the employer and employee which sets out the details of the agreed arrangement, the start date and duration, of the arrangement, or
- provide notice in writing informing the employee that the request has been refused and the reasons for the refusal, or
- provide notice in writing informing the employee that more time is needed to assess the request and set out the length of the extension.

When the agreement is signed by the employer and the employee, the employer must retain the agreement and provide a copy of the agreement to the employee.

8. Considering a Flexible Working Request

An employer who receives a request for FW must consider the request, having regard to:

- their own needs, i.e. the needs of the business;
- the employee's needs, i.e. the reasons why the employee is requesting the FW.

When considering a request for FW, employers may wish to refer to the guidance set out in Part 2 of this Code in relation to considering a request for RW.

9. Changes to a Flexible Working Arrangement

An employer and an employee can agree, in writing, a change to a FW arrangement which has already been signed, before or after it has started.

A change to an arrangement can be:

- postponing the arrangement or part of it to an agreed date; or
- curtailing the period of the arrangement in a way and to the extent agreed; or
- varying the arrangement in an agreed way.

Where an approved FW arrangement has not yet commenced and the employee becomes ill or incapacitated and is unable to undertake the care in relation to which the FW arrangement is based, the employee can give notice to the employer postponing the arrangement until the employee has recovered.

This notice must be in writing and be given as soon as is reasonably practicable and include a medical certificate or such evidence that the employer may reasonably require showing that the employee is unable to care for the person concerned.

10. Termination of a Flexible Working Arrangement

An employer can terminate an approved FW arrangement in certain circumstances, before or after it has started if the employer is satisfied that the FW arrangement would have, or is having, a substantial adverse effect on the operation of their business, profession or occupation because of:

- seasonal variations in the volume of the work concerned, or
- the unavailability of a person to carry out the duties of the employee in the employment, or
- the nature of the duties of the employee in the employment, or
- the number of employees in the employment, or
- the number of employees in the employment whose periods of approved FW arrangement overlap in whole or in part with the period specified in the employee's FW arrangement, or
- any other matters relevant to the substantial adverse effect on the operation of the employer's business, profession or occupation.

In such circumstances, the employer can, give an employee written notice of termination of an arrangement, having considered the following;

- their own needs, i.e. the needs of the business;
- the employee's needs, i.e. the employee's reasons for requesting FW; and
- the requirements of this Code of Practice in relation to considering termination.

The notice must set out the reasons for termination and specify the date on which the employee must return to their original working arrangement. This date must not be earlier than 4 weeks from the date of receipt of the notice of termination unless the date the approved FW arrangement comes to an end is less than 4 weeks from the date of receipt of the notice.

An employer who proposes to give notice of termination must first:

- notify the employee in writing of the proposal to terminate the arrangement, and
- include details of the grounds for terminating the arrangement, and
- give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal, and
- consider any representations made by an employee before deciding whether to give notice of termination.

When considering termination of a FW arrangement an employer should consider if their reasons for terminating the arrangement are objective, fair and reasonable. The grounds for the decision should be set out in a clear manner in the notice to help the employee to understand why the arrangement is being terminated and that the decision has been given consideration. Where the employee receives the notice, the employer should also consider in an objective, fair and reasonable manner any representations that have been made by the employee. The parties should consider whether any alternative arrangement may be feasible other than termination depending on the particular circumstances of each individual case.

If an employer decides to proceed with terminating the arrangement, the employee must return to their original working arrangement on the date stated in the notice.

11. Return to Previous Working Arrangement

An employee can request by written notice, to return to their original working arrangements earlier than had been approved by providing reasons and a proposed date of return. An employer must consider and give notice within 4 weeks of receipt as to whether the request has been approved or refused and the reasons for any refusal. When considering the request, the employer must have regard to:

- their own needs, i.e. the needs of the business; and
- the employee's needs i.e. the reasons the employee made the request to return early.

If the employer agrees to an early return, they can propose an alternative date for return to the original working arrangement.

On the expiration of an employee's FW arrangement, the employee is entitled to return to the original working arrangement that they held immediately before the approval of the FW arrangement.

12. Abuse of a Flexible Working Arrangement

An employee must use the approved FW arrangement for the purpose for which it was approved.

If an employer has reasonable grounds for believing that the FW arrangement is not being used for that purpose, they can give an employee written notice of termination setting out the reasons for the termination and specifying the date on which the employee must return to their original working arrangement.

An employer who proposes to give notice of termination on these grounds must first:

- notify the employee in writing of the proposal to terminate the arrangement; and
- include details of the grounds for terminating the arrangement; and
- give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal; and
- consider any representations made by an employee before deciding whether to give notice of termination.

An employee is required to return to their original working arrangement 7 days after receiving notice of termination for abuse of an arrangement.

13. Protection of Employees from Penalisation

An employer must not penalise an employee for proposing to or having exercised their rights to make a request for FW or a request to return to a previous working arrangement.

14. Raising Concerns

Situations may arise where an employee feels that the FW request has not been considered in line with the legislation and/or with this Code of Practice. We would encourage employers and employees to try to resolve any issues at local

level. Where there is a collective agreement between a trade union and an employer, the parties should refer to those terms for raising grievances.

Larger organisations with discrete HR units could consider designating a member of the HR team to be the point of contact for FW issues.

If an informal process has not been successful in resolving the issue, then the formal company grievance procedure may be utilised.

Notwithstanding that a breach of the Act may be referred to the WRC at any point, if the matter is addressed through the company grievance procedure and remains unresolved on completion, the employee may refer it to the WRC citing this Code.

A specific breach of the Act may be referred to the WRC, within 6 months of the date of the breach. This time can be extended by an Adjudication Officer (AO) of the WRC to a maximum of 12 months where the AO is satisfied that the failure to refer the complaint within the initial 6-month period was due to reasonable cause.

Under the Act, neither an AO of the WRC nor the Labour Court have the legal power to assess the merits of any decision made by an employer in relation to FW. This means that they cannot look behind the merits of the decision, they can only look at the process which led to the employer's decision.

The AO, or the Labour Court on appeal, may direct the employer to comply with specific sections of the Act and/or award compensation to the employee, not exceeding 20 weeks' remuneration to be paid by the employer.

Complaints referred to the WRC and Labour Court are usually heard in public and parties are named in decisions except in special circumstances.

15. Record Keeping

An employer must keep a record of approved FW arrangements taken by their employees. An employer who fails to retain records is liable on summary conviction to a fine of up to €2,500. The record must be kept for three years and must include:

- the period of employment of each employee; and
- the dates on which each employee was on an approved FW arrangement; and
- the number of times each employee was on an approved FW arrangement.

All notices, or copies of notices given or received by an employer or employee must also be retained by the employer and employee for one year.

Part 2 **Remote Working**

16. What is Remote Working

For the purposes of the Work Life Balance and Miscellaneous Provisions Act, 2023 (the 2023 Act) Remote Working (RW) is an arrangement whereby some or all of the work ordinarily carried out by an employee at an employer's place of business under a contract of employment is provided at a location other than at the employer's place of business without change to the employee's ordinary working hours or duties.

17. Right to Request Remote Working

All employees have the right to make a statutory request for RW. An employee can request RW from their first day at a new job, but they must complete a minimum of 6 months continuous employment with their employer before an approved arrangement can start. A gap in service of less than 26 weeks with the relevant employer will be discounted for the purpose of assessing whether the employee has the required 6 months continuous service before a RW arrangement can start.

18. Making a Remote Working Request

An employee must submit their request for RW to their employer as soon as is reasonably practicable but not later than 8 weeks before the proposed starting date.

A request for RW must be in writing and signed by the employee. For the purpose of this Code an online application satisfies this requirement. The written or online request form must include the following information to help the employer with the decision-making process:

- details of the RW arrangement i.e. how many days and which days requested; and
- the proposed starting and end date of the arrangement, if relevant; and
- the reasons for requesting RW.

This is the employee's chance to set out to their employer how they are confident that they can continue to perform their role remotely to the required

standard and their individual specific reasons for making the request for RW. Examples of reasons for requesting RW could include, but are not limited to:

- reducing the daily commute and carbon foot-print;
- optimising quality of life outside normal working hours;
- personal or domestic circumstances;
- neurodiversity or special medical needs or circumstances which could favour a quiet working environment or facilities not always available in the office.

The application must also include:

- details of the proposed RW location (e.g. at home, a work hub) and,
- information on the suitability of the proposed location which should include information on the following, where relevant:
 - the workstation is suitably equipped and configured to enable the employee to perform their role and duties effectively to the required standard;
 - the distance of the proposed remote workplace to the employer's on-site place of work is agreeable to the employer;
 - a suitable workstation that provides adequate privacy;
 - a commitment to ensuring that company data and intellectual property is secure and protected in accordance with employer policies;
 - an agreement to complying with employee obligations, and to cooperating with employer obligations in ensuring compliance with the Safety, Health and Welfare at Work Act 2005;
 - an agreement to a risk assessment and, if approved, to make no subsequent substantive changes to the workstation without authorisation;
 - an agreement to demonstrate compliance with, but not limited to, data protection, data security, confidentiality, IT, social media, email, protection of intellectual property company policies and measures;
 - the availability of relevant equipment and technology at the proposed location and agreement to ensuring that equipment is used appropriately;
 - confirmation of adequate and secure internet connection to perform the role which may need to be assessed by the company's IT department.

Having submitted their request, an employee must, if asked by their employer, submit any additional information the employer may reasonably require in relation to the request.

Both employers and employees should be mindful of their obligations under GDPR in relation to sensitive personal data which may be involved in RW applications.

An employee can withdraw a request for RW by giving written notice to their employer.

19. Right to a Response to a Remote Working Request

An employer who receives a request for RW must respond as soon as is reasonably practicable, but not later than 4 weeks after receiving the request. If an employer experiences difficulty assessing the viability of the request, they can extend the 4-week period for a further period not exceeding 8 weeks.

Within 4 weeks of first receiving the request, the employer must:

- approve the request and this approval must include an agreement prepared and signed by the employer and employee setting out the details of the agreed arrangement, the start and end date, if any, of the arrangement; or
- refuse the request by written notice informing the employee that the request has been refused and the reasons for the refusal; or
- provide notice in writing informing the employee that more time is needed to assess the viability of the request setting out the length of the extension.

When the agreement is signed by the employer and the employee, the employer must retain the agreement and provide a copy of the agreement to the employee.

20. Considering a Remote Working Request

An employer who receives a request for RW must consider the request, having regard to:

- their own needs, i.e. the business needs; and
- the employee's needs, i.e. their reasons for requesting RW; and
- the requirements of this Code of Practice in relation to considering a request.

An employer should consider a request for RW in an objective, fair and reasonable manner. An employer may consider both the suitability of the role for RW as well as the employee's suitability to work remotely. In reviewing whether a role or an individual employee is suitable for RW, it is important that both are reviewed in an objective, fair and reasonable manner.

In reviewing whether a role is suitable for RW the following questions could be considered by an employer. This is a non-exhaustive list and these matters may not be relevant in all situations:

- What type of work does the role entail?
- What are the employee's key duties?
- Can any of the duties which make up the role be undertaken remotely?
- Does the role require a high degree of manual work?
- Does the role include tasks that must be performed or are more efficiently performed on-site?
- Does the role require access to equipment/technologies or data that are only available on-site?
- Does the role require face-to-face engagement with clients, customers or other employees on-site or at other locations?
- Would remote working affect the service quality or organisational operations taking into account the number of employees currently on approved leave and/or on approved remote working or flexible working arrangements?
- Are there technological solutions to mitigate issues arising from remote working?
- Do any health and safety issues arise if activities are undertaken remotely?

In considering a request for RW, an employer may consider the suitability of the employee. The following questions may be considered by an employer. This is a non-exhaustive list and these matters may not be relevant in all situations.

- Does the employee have the necessary IT skills to complete their required job functions outside of the office?
- Does the employee understand their role and require minimal supervision to complete their tasks?
- Has the employee met the performance standards and requirements of the role?
- Is the employee subject to an extended probation period?
- Is the employee subject to an active performance improvement plan?
- Is the employee involved in an ongoing disciplinary process or is there a live record of disciplinary action?
- Is the employee subject to a training programme or apprenticeship which requires supervision?

- Has the employee demonstrated an ability to meet deadlines or any other business requirements?
- Does the employee understand the need to demonstrate flexibility when required to attend on-site outside of their agreed arrangement in order to meet business needs?
- Does the employee understand that there may be a requirement to participate in team meetings/training/one-to-ones online while working remotely?
- Has the employee maintained a satisfactory attendance record and complied with the company's attendance policy?
- Does the employee need to be on-site for learning, development or mentoring purposes?
- Does the employee need to be on-site to collaborate with colleagues in a team environment in a face-to-face setting?

In a situation where an employer cannot approve the RW arrangement sought by an employee in their request, the parties should consider an alternative arrangement, where this is feasible. The employer and employee should be open to exploring and agreeing an alternative arrangement, where feasible, taking into account the specific circumstances of each individual case.

Where agreement is reached on RW the signed agreement by the employee and the employer should be appended to an employee's contract of employment and a copy should be retained by both parties. Employers should be mindful that a RW arrangement may lead to changes to the employee's terms and conditions in line with the Terms of Employment (Information) Act 1994 as amended.

21. Changes to a Remote Working Arrangement

An employer and an employee can agree, in writing, a change to a RW arrangement which has already been signed, before or after it has started.

A change to an arrangement can be:

- postponing the arrangement or part of it to an agreed date; or
- curtailing the period of the arrangement; or
- varying the arrangement in an agreed way.

22. Termination of a Remote Working Arrangement

An employer can terminate an approved RW arrangement in certain circumstances, before or after it has started if the employer is satisfied that the RW would have, or is having, a substantial adverse effect on the operation of their business, profession or occupation because of:

- seasonal variations in the volume of the work concerned, or
- the unavailability of a person to carry out the duties of the employee in the employer's place of business, or
- the nature of the duties of the employee in the employment, or
- any other matters relevant to the substantial adverse effect on the operation of the employer's business, profession or occupation,

In such circumstances an employer can give an employee written notice of termination of an arrangement after considering the following:

- their own needs, i.e. the needs of the business;
- the employee's needs, i.e. the employees reasons for applying for RW; and
- the requirements of this Code of Practice in relation to considering termination.

The notice must set out the reasons for termination and specify the date on which the employee must return to their original working arrangement. This date must not be earlier than 4 weeks from the date of receipt of the notice of termination unless the date the approved RW arrangement comes to an end, is less than 4 weeks from the date of receipt of the notice.

An employer who proposes to give notice of termination, must:

- notify the employee in writing of the proposal to terminate the arrangement, and
- include details of the grounds for terminating the arrangement, and
- give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal, and
- consider any representations made by an employee before deciding whether to give notice of termination.

When considering termination of a RW arrangement an employer should consider if their reasons for terminating the arrangement are objective, fair and reasonable. The grounds for the decision should be set out in a clear manner in the notice to help the employee to understand why the arrangement is being terminated and that the decision has been given consideration. The employer should also consider in an objective, fair and reasonable manner any representations made by the employee who has received the notice. The parties should consider whether any alternative arrangements other than termination may be feasible depending on the particular circumstances of each individual case.

If an employer decides to proceed with terminating the arrangement, the employee must return to their original working arrangement on the date stated in the notice.

23. Return to Previous Working Arrangement

An employee can request by written notice, to return to their original working arrangement earlier than had been approved by providing reasons and a proposed date of return. An employer must consider and give notice within 4 weeks of receipt as to whether the request has been approved or refused and the reasons for any refusal. When considering the request, the employer must have regard to:

- their own needs, i.e. the needs of the business;
- the employee's needs i.e. the reasons the employee made the request to return; and
- this Code of Practice relating to considering a request to return.

An employer should consider any applicable legal or contractual obligations owed by either party before approving or refusing the employee's request to return to their original work arrangement. If the employer agrees to the early return, they can propose an alternative date for the employee to return to their original working arrangement.

On the expiration of an employee's RW arrangement, the employee is entitled to return to the original working arrangement that they held immediately before the approval of the RW arrangement.

24. Abuse of Remote Working Arrangement

An employee must continue to meet all the requirements of their role while they are working remotely. If an employer has reasonable grounds for believing that an employee is not fulfilling all of the requirements of their role, they can give an employee notice of termination of an arrangement setting out the reasons for termination and specifying the date on which the employee must return to their original working arrangement.

An employer who proposes to give notice of termination on these grounds must first:

- notify the employee in writing of the proposal to terminate the arrangement; and
- include details of the grounds for terminating the arrangement; and
- give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal; and
- consider any representations made by an employee before deciding whether to give notice of termination.

An employee is required to return to their original working arrangement 7 days after receiving notice of termination for abuse of an arrangement.

25. Protection of Employees from Penalisation

An employer must not penalise an employee for proposing to or having exercised their rights to make a request for RW or a request to return to a previous working arrangement.

26. Raising Concerns

Situations may arise where an employee feels that the RW request has not been considered in line with the legislation and/or with this Code of Practice. We would encourage employers and employees to try to resolve any issues at local level. Where there is a collective agreement between a trade union and an employer, the parties should refer to those terms for raising grievances.

Larger organisations with discrete HR units could consider designating a member of the HR team to be the point of contact for RW issues.

If an informal process has not been successful in resolving the issue, then the formal company grievance procedure may be utilised.

Notwithstanding that a breach of the Act may be referred to the WRC at any point, if the matter is addressed through the company grievance procedure and remains unresolved on completion, the employee may refer it to the WRC citing this Code.

A specific breach of the Act may be referred to the WRC, within 6 months of the date of the breach. This time can be extended by an Adjudication Officer (AO) of the WRC to a maximum of 12 months where the AO is satisfied that the failure to refer the complaint within the initial 6-month period was due to reasonable cause.

Under the Act, neither an AO of the WRC nor the Labour Court have the legal power to assess the merits of any decision made by an employer in relation to RW. This means that they cannot look behind the merits of the decision, they can only look at the process which led to the employer's decision.

The AO, or the Labour Court on appeal, may direct the employer to comply with specific sections of the Act and/or award compensation to the employee, not exceeding 4 weeks' remuneration to be paid by the employer.

Complaints referred to the WRC and Labour Court are usually heard in public and parties are named in decisions except in special circumstances.

27. Record Keeping

An employer must keep a record of approved RW arrangements taken by their employees. An employer who fails to retain records is liable on summary conviction to a fine of up to €2,500. The record must be kept for three years and must include:

- the period of employment of each employee; and
- the dates on which each employee was on an approved RW arrangement; and
- the number of times each employee was on an approved RW arrangement.

All notices, or copies of notices, given or received by an employer or employee must also be retained by the employer and employee for one year.

28. Developing a Work-Life Balance Policy

This template should be considered a starting point for developing a Work Life Balance Policy for your organisation.

If employers engage with their employees and or their representatives when drafting a work-life balance policy for their organisation, this process can provide an opportunity for employers to set out the parameters for how FW and/or RW may operate in their organisation. It can be an opportunity for employees to have input and have their views heard. A robust policy should set out any specific requirements of that employment or particular considerations that will be taken into account in assessing applications for FW and RW.

It is acknowledged that workplaces differ and there is no standard policy on Work-Life Balance. It is acknowledged that not all workplaces will be conducive to remote working. A policy should best reflect the workplace and be proportionate to the size and resources of the organisation.

1. Introduction

Set out your commitment to facilitating work life balance, and if there has been prior consultation set out who the policy has been agreed with – for example, in consultation with a trade union or group of employee representatives. Sample opening:

This organisation is committed to supporting work-life balance working arrangements for our staff bearing in mind that there is no automatic right to flexible or remote working and any arrangement entered into must work both for the business and the employee.

We are committed to ensuring compliance with the provisions of the Parental Leave Acts, 1998-2023 and the Work Life Balance and Miscellaneous Provisions Act 2023. These should be read in line with employment equality and other existing employee rights and responsibilities.

This policy sets out the arrangements that will apply for flexible and remote working in this organisation.

This organisation will deal with each application objectively, fairly and reasonably, in line with the legislation, the procedures set out in the WRC Code of Practice on Flexible and Remote Working and this policy.

2. Role Eligibility

Set out who the policy applies to e.g.

This policy applies to all employees who meet the eligibility criteria for remote or flexible working as set out in the Parental Leave Acts, 1998 - 2023 and the Work Life Balance and Miscellaneous Provisions Act 2023. Requests for flexible or remote working will be agreed on a case-by-case basis based on objective criteria and according to the policy. Agreeing to or refusing one request will not set a precedent or create the right for another employee to be granted or refused a similar change to their working pattern. Employees and management

are required to be realistic and recognise that not all flexible and/or remote working arrangements will be appropriate for all roles.

In considering any application for flexible and remote working the suitability of the applicant's role for the working arrangement requested will be considered taking into account the relevant legislation and the WRC Code of Practice on Flexible and Remote Working.

3. Employee Eligibility

The policy should set out any suitability requirements that the employee must meet to be considered for flexible and remote working arrangements and could reference the guidelines set out on assessing employee eligibility when considering a request, in the WRC Code of Practice on Flexible and Remote Work.

The policy should set out the service requirement, if any, e.g.

While an employee can apply for a flexible or remote working arrangement at any time, they must have 6 months continuous employment with the employer before an approved arrangement can commence.

4. Health and Safety

The policy should set out the employer's commitment to ensuring compliance with obligations under the Safety, Health and Welfare at Work Act, 2005 and providing a safe place and safe system of work. Employees should be reminded of their obligations in ensuring their own safety and that of others while at work.

The Health and Safety Authority Occupational Safety & Health Guidance on Remote Working provides guidance for employers and employees on roles and responsibilities in relation to remote working, and the remote working risk assessment process. The HSA is clear that responsibility for health and safety rests with the employer whether or not work is being done remotely. Employers and employees should refer to, and familiarise themselves with this guidance in the context of applying for and assessing applications for remote working.

5. Working Arrangements

Set out what types of remote working arrangements will be considered in your organisation e.g.

- home as the main place of work.
- splitting work between home and the office.
- the office as the main place of work, with occasional working from home.
- hub working.

You may also wish to clarify in the policy:

- where an employee can work if working remotely, including any limits on jurisdiction or any time-zone differences if outside the jurisdiction.
- where and when they might need to attend on-site – how frequently, for how long, and for what reasons e.g. induction or mandatory training.

Explain that these are guidelines that you will generally follow, but that you may consider requests outside of these limits depending on an employee's circumstances.

Set out what other types of flexible working arrangements will be considered in your organisation e.g.:

- Part-time work.
- Term-time work.
- Job-sharing.
- Flexitime.
- Compressed working hours.

6. Flexibility

The policy may set out that the employer expects employees to be flexible to meet business needs. This could include for example an employee who is working in a hybrid manner still being expected to attend training, customer meetings, events etc if they fell on the normal working from home day.

7. Anchor/On-site days

If your organisation requires fixed days on-site where employees working remotely must attend the office, sometimes referred to as ‘anchor days’, these should be set out clearly in your policy e.g.

- *All teams agree a weekly anchor day(s) based on the needs of the unit/section, and/or*
- *Company/divisions are also expected to hold a weekly/monthly anchor day.*

8. Other Company Policies

The policy should set out the company’s position in relation to how other company policies will continue to operate in the context of flexible and remote working or if they are to be modified including but in no way limited to e.g.

- *While an employee is availing of flexible or remote working performance management will continue to be handled in line with the existing performance management policy, or a policy might be adapted for remote working performance management so that both sides are clear as to how this would operate.*
- *The sickness and absence policy will continue to apply.*
- *Training and professional development will continue to be available as outlined in the organisation policy.*
- *Availing of flexible or remote working will not limit promotional opportunities within the organisation.*
- *Grievance and disciplinary policies will continue to apply.*
- *Security and data protection, IP and privacy policies will continue to apply.*
- *GDPR and record retention policies will continue to apply.*
- *Time management, punctuality and right to disconnect policies will continue to apply.*
- *Equality, diversity and inclusion policies will continue to apply.*
- *Domestic violence policies will also apply.*
- *Social media, email and internet policies will continue to apply.*
- *Anti-Bullying policies also continue to apply.*
- *Occupational health and safety (safety statements), incident and accident reporting will continue to apply.*

9. Working Hours

The policy should set out the working hours that apply in the working relationship e.g.

- *In this company standard working hours are 9am – 5pm. Unless other working hours are agreed as part of your individual work-life balance working arrangement, employees are expected to be available during these hours. If alternative hours are agreed, this agreement will be appended to your contract of employment.*
- *Employees working remotely are still expected to maintain the same working hours and observe the same break and rest entitlements as if they were in the office and should record hours in the same way as per the designated procedures.*

Employees should also be made aware that if working remotely, it is important to remember to disconnect from work outside of working hours e.g.

Employees are not expected to work outside their contracted hours when they are working remotely and are encouraged to familiarise themselves with the WRC Code of Practice for Employers and Employees on the Right to Disconnect.

10. Working Environment

An employer should indicate to employees whether there will be an assessment of the remote working location as regards its suitability for work. An employer should set out the matters that will be the focus of the assessment e.g. health and safety, security and privacy, a suitable internet connection. Explain how the assessment will be undertaken i.e. who will do it, how it will be done, if or when access will be needed etc.

11. Set up Costs and Expenses

Employers will want to consider what costs, if any, arise from work-life balance working arrangements other than the provision and maintenance of work-related equipment and the policy should set out clearly for employees any specific arrangements for reimbursement.

12. Tax

The policy should set out how remote working might affect your employees' tax liabilities e.g.

- *You may be able to claim tax relief on additional utility costs when working from home, including electricity, heating and broadband. Employees should refer to the Revenue website for information. Remotely working from home (revenue.ie)*
- *There may be income tax implications if working outside the country for more than 183 days.*

13. Jurisdiction

The policy should set out the geographical/jurisdictional scope of the flexible and remote working arrangements so as to manage employee expectations and in light of the employment rights and tax implications.

14. Review

Policy Review

An employer may wish to build in a review date so that their company's work-life balance policy can evolve taking on board learnings from how arrangements work out over time for employees and the business. The review might include an equality impact assessment of how the policy is working on a broader level.

Individual Review

The company policy may also build in a trial period and/or review(s) of an employee's flexible or remote working arrangement. The policy should set out clearly what this will involve.

This type of review should be based on an existing clear job description so that any conversation about performance refers to clear indicators and both sides understand what is expected from them. Day to day issues arising with the flexible or remote working arrangement should be raised and resolved informally and there should be 'no surprises' when the formal review meeting takes place at the end of the trial period e.g.

- *Every remote or flexible working arrangement is subject to an initial trial period of xx months. The trial period will allow time for both employees and managers to assess how the arrangement is working. Any issues should be raised/discussed and dealt with at an early stage through ongoing engagement with the manager. A formal review meeting will take place between the manager and the employee at the end of the trial period and any issues arising can be discussed with a view to resolving them. A further trial period or termination may be considered if necessary or if no issues have arisen the arrangement can be signed off on.*

29. Templates

Template Application for Flexible Working

I wish to apply for flexible working arrangements under section 13B of the Parental Leave Acts, 1998-2023 for caring purposes. I confirm that I (insert name)

- I have or will have completed 6 months continuous employment with (insert name of employer) on or before the proposed commencement date of the requested flexible working arrangement.
- Am an employee who is a parent or guardian of a child and who is or will be providing care to that child

Or

- Am an employee who is or will be providing personal care or support to a person in need of significant care or support for a serious medical reason.
- Please select the criteria which applies to the person for whom you are intending to provide care:

- your child;
- your spouse or civil partner;
- your cohabitant;
- your parent or grandparent;
- your brother or sister;
- a person, other than one specified above, who lives with you

and the person I intend to care for is

- in need of significant care or support for a serious medical reason.

The type of flexible arrangement I am seeking is as follows:

Please note that if the form of flexible working sought is remote working then the location requirements under the legislation and the WRC Code of Practice

on Flexible and Remote Working apply. Please include details of the remote working location below.

The proposed location for my remote working is _____.
I believe this location is suitable for remote working under the WRC Code of Practice on Flexible and Remote Working for the following reasons

I wish to commence the flexible arrangement on xxxx. (This date should be at least 8 weeks after the application is submitted). I wish to avail of this flexible working arrangement until xxxxx.

I am enclosing the following in support of my application:

- My child's birth certificate or a certificate of placement in the case of an adopted child;
- or
- Details of my relationship with the person who is in need of care.
- The nature of the significant care or support that is required.
- Relevant evidence relating to the need of the person for significant care i.e. a medical certificate stating that the person is in need of significant care for a serious medical reason and signed by a doctor or other suitable evidence.

Signed

Date

Template Application for Remote Working

I wish to apply for remote working as provided for under section 20 of the Work Life Balance and Miscellaneous Provisions Act, 2023. I confirm that I (insert name)

I confirm that I have or will have completed 6 months continuous employment with (insert employer) on or before the commencement of the requested remote working arrangement.

I am seeking remote working commencing on xxxxxx. (this date should be at least 8 weeks after the date of application). Insert expiry date if applicable.

The following sets out my reasons for requesting remote working.

Please Note: This is your opportunity to explain your individual specific reasons for requesting remote working. This will be used to help us fully consider your work-life balance needs and your request to work remotely.

The proposed location for my remote working is _____

I believe this location is suitable for remote working under the WRC Code of Practice on Flexible and Remote Working for the following reasons.

I will comply with the relevant company policies such as ICT Usage, Data Protection and Privacy, Diversity and Equality, Grievance and Disciplinary, Health and Safety, protecting confidential company information and IP etc.

Employees are encouraged to provide as much relevant information as possible with their request so that it can be fully considered.

Signed

Date

GIVEN under my Official Seal,
6 March, 2024.



L.S.

SIMON COVENEY,
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of this Order is to declare the Code of Practice, set out in the Schedule, to be an approved Code of Practice for the purposes of the Work Life Balance and Miscellaneous Provisions Act 2023 (No. 8 of 2023). The Code of Practice is for the purpose of practical guidance to employers, employees and any other persons as to the steps that may be taken for complying with one or more provisions of Part 2, in relation to flexible working arrangements, and Part 3, in relation to requests for remote working arrangements.

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