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REMOTE WORK DURING THE COVID-19 PANDEMIC AND BEYOND: WHERE DO WE GO FROM HERE?

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Businesses and employees have shown remarkable energy and adaptability in the sudden shift of entire workplaces to remote work, which was made necessary by the COVID-19 pandemic and the associated declaration of public emergencies. Two and a half months later, it appears that the pandemic may leave a mark on the way we work that is longer-lasting than we expected. The re-opening of the economy and relaxation of physical distancing measures will be gradual, so many employees may continue to work remotely for months. In addition, an increasing number of employers and employees are now open to permanent remote work arrangements after seeing how well it has worked.

Although employers and employees have managed to “make it work” so far, and valuable lessons were learned from the remote work arrangements during the pandemic, the current state may not be sustainable and employers must take positive steps to ensure the continued success of remote work arrangements. In this COVID-19 Employment Update, we review the key considerations for employers who are considering a transition to longer term or permanent remote work arrangements.

Occupational Health and Safety Obligations

With remote work, the workplace has shifted from employers’ premises to employees’ homes. Employers should not assume that they are relieved from the obligation to take all reasonable steps to provide a safe workplace just because employees are working from their own homes. Advice should be sought regarding the obligation imposed by the applicable provincial or federal occupational health and safety legislation and regulation. For instance, the B.C. Occupational Health and Safety Regulation defines “workplace” broadly enough to include employees’ homes if work is performed there.

Whether required by legislation to do so, it would be prudent for employers to review and amend their existing health and safety policies to address the following issues arising from remote work:

- Requirement that employees conduct their own assessment of the workplace and report any hazards to their managers;
- Ergonomic considerations for the employees’ work areas;
- Protocols for contacting the employer and evacuating the home or other remote work site to a safe location in the case of emergency;
- How to report any work-related incidents or injuries;

- A regular “check-in” process at the beginning and end of each workday or shift, particularly when the employee working remotely is working alone;
- An emergency procedure in the event that the employee cannot be contacted; and
- Appropriate training for managers and employees.

Health and safety authorities across Canada have published guidelines to assist workplaces to adapt their health and safety policies to remote work arrangements. See, for example, those published by authorities in [British Columbia](#), [Alberta](#), [Saskatchewan](#), and [the Federal Government’s Canadian Centre for Occupational Health and Safety \(CCOHS\)](#).

Human Rights and Accommodation Obligations

The pandemic has brought the issue of accommodation of employees’ disabilities and family care responsibilities to the forefront even more prominently than before:

- Employees with young children must balance full-time jobs with child care and educational responsibilities without the normal support provided by child care centres, schools, housekeepers etc.;
- Some employees may need time off because they are ill themselves or because they need to care for family members who are ill;
- Other employees may wish to work remotely out of concern for household members who have existing medical conditions or are elderly, which may make them more vulnerable to COVID-19.

Where employees request leaves or modified work arrangements to enable them to fulfill their family care obligations, employers must bear in mind the following principles:

- Employment standards legislation in many jurisdictions has been recently amended to provide for job-protected leaves for employees for COVID-19 related reasons. Legal advice should be sought regarding whether such leaves apply to employees seeking time off for COVID-19 related reasons and employers’ obligations during such leaves.
- Human rights law requires employers to adopt individualized approaches to employees’ requests for accommodation. Thus, there is no standard answer to such requests and each request must be determined on the basis of the relevant circumstances affecting the individual employee and the employer.
- What employers are obligated to do may be different depending on whether the accommodations requested are short-term, medium-term, or permanent. It is important to note that requests for permanent accommodation should not be rejected simply because they are “permanent,” as employers may be obligated to provide permanent accommodation if doing so falls short of “undue hardship.” When in doubt, legal advice should be sought in order to mitigate the risk of liability to the company.

Workplace Bullying and Harassment

Harassment, bullying and discrimination can and does take place virtually and between employees working remotely. Employers are required to take reasonable steps to prevent and address such conduct under applicable human rights and occupational health and safety legislation.

Therefore, employers should ensure that their workplace violence, bullying and harassment policies address “virtual” conduct and include a process for complaints and investigations that can take place outside of the regular workplace setting.

Remote Work Policy

Employers who are looking to extend remote work arrangements into the medium-term or permanently should establish a policy that sets out expectations and practices for:

- The current state;
- When schools and child care centres re-open;

- When physical distancing measures are relaxed; and
- Post-pandemic, when restrictions no longer exist.

Although it may not be possible to determine in advance what the precise arrangements would be when the economy re-opens gradually, it is important to set expectations that the current arrangements may not continue and that the employer reserves the right to determine how work will be performed in the future. It would be prudent for employers not to make decisions regarding permanent remote work policies solely on the basis of the experience during the first few weeks of the pandemic because employees' and managers' initial response to the emergency situation may not be sustainable in the longer term.

Further, the decision whether to adopt remote work on a permanent basis should be made having regard to the business and operational needs post-pandemic, not prior to the current crisis, in order to support the business' recovery and future growth.

If a decision is made to adopt remote work on a permanent basis, it will be critical to its success to develop, implement and communicate a Remote Work Policy. While there is no one size fits all model, here are some components (in addition to the ones set out in the sections above) to consider when preparing the policy that is right for your business:

- Define what is meant by "remote work";
- Confirm that the employer's organizational policies, rules and practices apply to remote work employees;
- Eligibility, approval and duration of a remote work arrangement;
- Confirm that any remote work arrangement must include a separate written remote work agreement between the employee and the employer;
- Set out the responsibilities of the Manager or Supervisor who will be supervising the remote employee;
- Highlight any remote work training that is either recommended or required before a remote work arrangement can begin and/or continue;
- Performance reviews and evaluations;
- Technology and communications;
- Work hours and schedule;
- Overtime processes;
- Emergency operations;
- Performance, work quality and professional standards;
- Remote workplace and equipment;
- Information security; and
- Prohibition or restrictions on conducting personal business during the work day.

For additional guidance in developing a remote work policy for your business, please reach out to your Fasken lawyer contacts or the authors.

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