

## Insights

# UK COVID-19: THE IMPORTANCE OF BEING ADAPTABLE WHEN IMPLEMENTING HYBRID OR BLENDED WORKING POLICIES

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## SUMMARY

Now that the government is no longer instructing people to work from home if they can, many employers are pressing ahead with the implementation of hybrid or blended working arrangements. This article highlights the importance of being adaptable when implementing such arrangements, especially in respect of discrimination risks.

Many employers are now adopting policies which mandate that employees need to attend the office for a specific duration i.e. 3 days a week at home and 2 in the office. When implementing such policies, it may be tempting (and administratively easier) to apply them across the entire workforce without making exceptions based on individual circumstances. However, employers should be careful about adopting such an approach without considering the risk of discrimination claims. For example, employees with underlying health conditions may allege disability discrimination if they are subject to a detriment due to a failure to obey an instruction to return to the workplace. Employers should also be aware that the Employment Rights Act 1996 provides protection for employees who raise health and safety concerns or refuse to attend work where they have a reasonable belief that there is a serious and imminent danger to health.

Whilst not as common, some employers may be implementing a full-time work from home mandate for some or all of their employees, especially if remote working was successfully implemented during the pandemic. Employers should be aware that it is feasible that indirect age and/or race discrimination claims could arise in respect of such an approach if it is applied inflexibly. The rationale for such a claim being brought is that research has shown that younger people and BAME communities statistically have less space in which to carry out their duties when working from home, and are therefore potentially disadvantaged. That puts the onus on employers to show that such practice can be objectively justified, which will be increasingly difficult now the government has lifted the work from home guidance previously in place.

As a result, employers need to ensure that they remain adaptable to individual circumstances when implementing hybrid or blended working policies. This will often involve discussions with employees and making alterations if and when required.

## **TIPS FOR EMPLOYERS**

- Communicate with your employees and address any concerns they have in respect of hybrid or blended working policies. This will help reduce the risk of discrimination issues arising.
- Consider requests in respect of the policy on a case by case basis. Particular attention should be given to those suffering from health conditions which may impact their ability to comply with the proposed policy.
- When implementing a full-time work from home mandate, consider making arrangements for those that would benefit from working in an office environment. This may be through making space available in an office occupied by another team, or considering flexible office facilities were required.
- Employers should continue to follow government guidance to ensure that employees and visitors are kept safe at work.

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BCLP has assembled a COVID-19 Employment & Labor taskforce to assist clients with employment law issues across various jurisdictions. You can contact the taskforce at: [COVID-19HRLabour&EmploymentIssues@bclplaw.com](mailto:COVID-19HRLabour&EmploymentIssues@bclplaw.com)

## **RELATED PRACTICE AREAS**

- Employment & Labor

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