



## Public Consultation on the Introduction of a Right to Request Remote Working

The purpose of this consultation is to seek your views on the introduction of a statutory right for employees to request remote working. The background to this initiative is set out in the attached consultation paper, which also provides you with an opportunity to provide your views on important relevant issues including: reasonable grounds for refusing a remote working request; the right of complaint; provision of necessary equipment; and monitoring of activity by employers.

The document provides space for your responses to the questions set out.

Your Name: **Dr Laura Bambrick**

Organisation (if applicable): **Irish Congress of Trade Unions**

Telephone Number: **086 814 23 58**

E-mail: **[laura.bambrick@ictu.ie](mailto:laura.bambrick@ictu.ie)**

Please indicate if this submission is made in a personal/employee capacity, an employer capacity or on behalf of your institution, organisation or group.

**On behalf of an organisation**

Name of company, institution, organisation or group covered by this submission:

**Irish Congress of Trade Unions (Congress)**

Respondents are requested to make their submissions by email to:

[Remoteworkingrequest@enterprise.gov.ie](mailto:Remoteworkingrequest@enterprise.gov.ie)

**The closing date for submissions is Friday 7<sup>th</sup> May at 3pm.**

**For telephone queries please contact John Simmons on 087 4351917.**

## Question 1: Timeframe for employer to respond

a. **What timeframe for response should apply to employers on receipt of an employee's complete request to work remotely;**

- **1 month**
- **2 months**
- **other?**

Unions reps find that access to flexible and remote working arrangements is difficult, with members waiting weeks and even months for a response from their employer.

Currently only parents returning from parental leave have a statutory right to request flexible working, include remote working, for a set period of time. Under the Parental Leave Act, the employer must respond to the request within four weeks. Congress recommends the new legislation improves on this by requiring employers to respond within 21 days of receiving a request, in line with Australian Fair Work Act.

The employer must be required to then either approve the request and confirm this in writing or arrange a meeting to discuss the request further. If the employer refuses the request they must be required to confirm that in writing giving clear reasons for the refusal (discussed further later) and set out the internal appeal process that allows the worker and their union representative to scrutinise and challenge the reasons given for refusing the request, as well as the worker's right to refer the dispute to the WRC and to Labour Court (discussed further later).

Congress calls on Government to further strengthen the legislation by inserting a provision that when an employer recruits to a post they must consider which flexible and remote working arrangements are available in the role and publish these in the job advertisement. The new postholder would have a statutory right to take up the advertised flexibility from day one (discussed further later).

## Question 2: Length of service before having entitlement

- a) **What minimum length of service is appropriate for an employee to have served in the employment of the employer before having an entitlement to make a request for remote work?**
  
- b) **After what duration can another request be submitted if the first request was declined?**

It is standard practice in collective agreements on flexible working arrangements that workers can exercise their right to request as soon as they have completed their probation period.

However, for many workers flexible and remote working is not just an optional 'nice to have' perk of the job. Access to flexible arrangements is vital to be able to enter employment or remain in the workplace. Congress, therefore, recommends the legislation requires employers to publish flexible and remote working options in job adverts and gives the new postholder the right to take up the advertised flexibility from day one.

Congress believes that flexible working should become the default position. A significant barrier to pay parity is a lack of flexible work arrangements. Restricting opportunities to work flexibly beyond the point of hire, limits people's, mostly women, ability to enter employment or traps them in low-paid, part-time or insecure work as they try to find the flexibility they need to balance work with other aspect of their lives. This perpetuates gender inequalities in the workplace and exacerbates the gender pay gap.

Furthermore, as well as offering benefits to workers across the workforce to achieve a work-life balance, normalising flexible working would be a catalyst for promoting greater gender equality within families by giving both parents greater control over how they share caring.

Giving new postholders the right to take up advertised flexibility from day one of employment would also help to address some of the barriers people with a disability face accessing employment.

This one simple step will increase the talent pool from which employers can recruit, and the diversity of those candidates.

It is not uncommon in other jurisdictions with a statutory right to request flexible working for workers to be limited to one flexi-work request in a set time frame, locking them out from further requests for a period if they are rejected. This is in stark contrast to the flexibility demanded by employers', with sometimes weekly variations in working hours needing to be accommodated by workers.

### Question 3: Risk assessment of a proposed remote workplace

**As an employer, how confident would you currently be in carrying out a risk assessment of an employees' proposed remote workplace? What, if any, additional information, guidance or assistance might you require?**

Safety at work is a right, not a privilege. Trade unions play an essential role in protecting workers' physical and mental health at work by ensuring employers meet their regulatory health and safety obligations, and by ensuring effective enforcement of those obligations.

Congress acknowledges that within the principles applying to the new statutory right to request remote work in Ireland - "It is intended that an employer should conduct an Initial Risk Evaluation and a Risk Prevention Plan with regard to the proposed remote working location intended to be used."

Congress recommends it is further stressed that employers are also required to complete the risk assessment of the home environment from time to time.

## Question 4: Remote work policy requirement

**Should there be a provision inserted in the legislation that employers must have a policy on remote work which can be inspected by employees and the Workplace Relations Commission?**

**(The policy could set out details such as the type of work that may be suitable for consideration of remote work and equally work that is not appropriate or suitable for remote work. In some companies the potential for remote work may be zero or extremely limited.)**

**This type of provision is already in use. For example, Section 20 of the Safety, Health and Welfare at Work Act 2005 requires employers to prepare, or cause to be prepared, a written “safety statement” and a copy of a safety statement, or relevant extract of it, shall be kept available for inspection.**

Congress recommends that all employers be required to publish their flexible working and family related leave policies no matter the size of the organisation on their website. Greater transparency benefits both prospective and existing employees.

The information should be published in a way that is easy to access and understand. One straightforward way of ensuring ease of access for job applicants would be to include a web link to the remote working and other relevant policies in job adverts. For current staff steps could include information being posted on a company intranet, on staff notice boards or included in company newsletters. This information should be emphasised during any induction process and sent to new starters along with employment contract and written statement of terms and conditions. Congress also recommends employers should also be required to send this information to representatives of a recognised trade union.

In addition, Congress recommends the Department of Employment replicate the UK government’s flexible working taskforce ‘happy to talk flexible working’ initiative – a strapline for employers to include in job adverts, on careers website and through any recruitment agencies they use to show they are ready to discuss flexible working arrangements.



## Question 5: Reasonable grounds for refusal

- a) **What are reasonable grounds for refusing a remote working request? Please list.**
- b) **Is it acceptable that an employer offers an alternative hybrid working pattern with a combination of remote work and onsite work, in response to any request for remote working? (For example, if an employee is requesting 50% remote working and an employer wishes to offer 20% or a lower percentage than the amount requested.)**

Congress recognises that there are jobs that require a physical presence and cannot be done remotely.

In the UK, since 2014, a request for flexible and remote working arrangements can only be turned down for one of eight statutory 'business reasons.' However, Congress affiliated unions in Northern Ireland and our sister trade union federation in the UK, the TUC, found the breadth of the eight reasons gives employers an almost unfettered ability to justify a refusal. New guidance to be published by the UK government's flexible working taskforce in the coming weeks is expected to strengthening flexible working rights. Similarly, from last year, workers in Finland have the right to decide where they work for at least half of their contracted hours and to independently decide on when - the time and the day, they do their work, within agreed limits.

Ireland has long been a laggard on workers' rights to work flexibly. Congress believes that flexible working should become the default position and available to all workers, in all but the most exceptional of circumstances. Importantly, a request must never be refused on any of the nine grounds prohibited under the Equality Act e.g. because of the worker's age or family status, etc.

Before refusing a request, employers must be required to meet with the worker and their representative to discuss options and look for an arrangement that will work for everyone. If the request is ultimately turned down, the right to scrutinise and challenge an employers' reason for rejecting the request must not be optional. Employers must be required to consider appeals to requests. So far as is reasonably practicable, the appeal should *not* be conducted by those involved in the initial rejection of the request. The legislation must also give workers' the right to refer it to the WRC.

## Question 6: Withdrawal of remote working

It is intended that any accepted remote working arrangement will be granted subject to ongoing review by the employer.

- a) If an employer seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?
- b) If an employee seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?
- c) If an employer seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?
- d) If an employee seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?

The place of work and working hours are specified in the statement of an employee's main terms and conditions of employment which an employer is legally required to provide on the commencement of employment.

After agreeing to a remote working arrangement an employer is required to give the details of the changes to the contractual terms and conditions of employment in a revised statement with one month of bringing the new working arrangement into operation.

Employers do not have the right to change the terms and conditions without the employee's consent in general unless there is a flexibility clause. Any unilateral imposition of different working pattern by an employer would become a breach of the employee's contract. If the employer changes the contract without consent, the employee will have a potential claim for breach of contract and, possibly, unfair constructive dismissal. Equally, there is also no automatic right for an employee to change back to their previous working arrangements if their circumstances change. This, again, would need to be the result of a new arrangement between the worker and their employer.

Congress recommends employers must be required to meet with the worker and their representative to discuss options and look for an arrangement that will work for everyone. The legislation must give workers' the right to refer a dispute to the WRC and to the Labour Court.

## Question 7: Provision of equipment

**Should the employer bear the cost of providing all equipment for a remote working arrangement as well as covering the cost of maintenance?**

**[It should be noted that the employer cannot require the employee to install programmes or applications on devices owned by the employee, or to use these devices for remote services.]**

An employer is responsible for providing a working environment that is safe and without risk to their workers' health and wellbeing. This duty of care extends to locations other than the employer's premises, including a worker's home when working remotely.

An employer is also responsible for providing, installing and maintaining the tools workers need to do their job, and any specialised equipment to prevent a work-related injury, such as a suitable desk and chair.

Congress has led the way in highlighting how the current methods for reimbursing expenses are not fit for purpose. Remote workers must not be left to carry the cost of doing business, whether in the form of higher utility bills, the cost of providing and maintain equipment, or the daily desk charge at a digital hub. Congress acknowledges the subsequent commitment in the National Remote Working Strategy to review the available financial supports for remote workers and their employers, ahead of Budget 2022.

Workers' hard-won rights must be preserved when working remotely. Congress and trade union reps around the country will ensure that any attempt to dilute workers' rights will be vigorously resisted.

## Question 8: Monitoring of activity

**Should the employer have entitlement to monitor the activity of the employee?**

**[It is proposed that the employer should have entitlement to monitor only to the extent necessary to verify the compliance of labour obligations and duties.]**

Trust is crucial for remote working arrangements to be effective. Employers, remote workers and their office-based colleagues need to trust each other that work will be completed in a timely and effective manner and that productivity does not suffer because of remote working.

An employer is already permitted to monitor activities, *within limits*. For example, monitoring use of the company's phone and email, and social media activity. However, all monitoring must be necessary, legitimate and proportionate to workers' right to privacy. An employer's ICT policy must clearly make workers aware of any monitoring and must set out why monitoring may take place, the nature of the monitoring, how information will be used and who will have access to it. Covert surveillance is only permitted in extreme cases, such as if there are grounds to suspect criminal activity or serious malpractice, and only for a limited period.

Congress is concerned by the general trend towards the use of AI-powered technologies and software products by employers for a variety of purposes, including candidate selection, performance evaluation (who gets a bonus/ promoted), redundancy decisions etc. AI-driven technology used to monitor employee activity while working from home can count the number of mouse clicks, keystrokes, emails in an hour, record time spent on social media sites, and take photographic 'timecards' every 10 minutes via a webcam. In the EU draft regulations on the use of AI applications, published last week, AI systems used in employment, worker management, and access to platform work were classed as high-risk.

Employers are required by law to keep a record of the hours worked by all staff. This information includes starting and finishing times, rest breaks, daily breaks and weekly breaks. Trade unions were to the fore in highlighting the blurring of the boundaries between professional and private lives, the need for a right to disconnect and we played an active role in developing the new WRC Code of Practice. Congress is however concerned that some employers will use their obligations under the Organisation of Working Time Act as justification to introduce technology to surveil remote workers beyond regulatory compliance. The power imbalance between workers and employers, especially in non-unionised workplaces, allows management to force the use of invasive monitoring technologies with little resistance - if a worker wants to get or keep a job, they tend to agree to things they wouldn't otherwise be comfortable with. Congress calls for clear guidance around how employers can safely monitor and record remote workers' working time. The mechanisms permitted for use by employers must be proportionate and not breach workers' right to privacy.

Congress further recommends social dialogue on regulating the use of AI in the labour market. Although GDPR contains a number of transparency provisions, they don't help a worker who has been discriminated against by an algorithm. Rights must keep pace with technological change in the new world of work.

## Any other comments:

Congress views the new legislation as a missed opportunity to extend the right to all types of flexible working arrangements, such as flexi-time, part-time hours, split-shifts, job-share.

Currently, only workers returning from parental leave have a statutory right to request flexible arrangements for a limited period under the Parental Leave Act. A new EU Directive on Work-Life Balance will give carers and parents with children up to eight years old a right to request flexible and remote working by 2022. Congress has been to the fore in calling on Government to go beyond the minimum requirements of the Directive and to extend the right to all workers, bringing us into line with other wealthy European countries.

In our evidence to the Citizens' Assembly, we outlined our concerns that limitations on flexible working rights limits people's, mostly women, ability to enter employment or traps them in low-paid, part-time or insecure work as they try to find the flexibility they need to balance work with caring. This perpetuates gender inequalities in the workplace and exacerbates the gender pay gap. We welcome the Assembly adopting our recommendation to "Introduce a statutory right to reasonable access to flexible working."

Congress has also been to the fore in highlighting the 'Zoom Divide' between workers in jobs that can be done remotely and workers in jobs requiring a physical presence. Access to flexi-time, part-time hours, job shares etc for all workers must be made a workers' right if we are to close this emerging privilege gap and the potential for a two-tier workforce between the flexible working haves and have-nots.