

MAKE REMOTE WORK!

The Trade Union Response to the Right to Request Remote Work Bill



FOREWORD

While many jobs require a physical presence in the workplace, remote working is far from a niche issue.

During the first lockdown one in four workers in employment worked from home.

For the vast majority of these workers and their employers this was their first experience of remote working and while it was challenging for some, for most it has proven to be a success.

On a daily basis our members tell us how working from home has improved their wellbeing and quality of life. Freed up from their long commutes, they have had more time for family, friends, hobbies, sport and involvement in their community.

Remote working makes good business and economic sense too. Studies repeatedly find that most employers report that productivity either increased or stayed the same when they introduced remote working over the past two years. It can open up employment opportunities for people with a disability, carers and older workers, widening the talent pool, improving workforce diversity, narrowing the gender pay gap and income inequality between households.

It can also benefit the environment and rural regeneration.

That is why the Irish Congress of Trade Unions and its affiliates were first to call for legislation on requesting remote work, bringing us into line with long-established employment law in most EU member states and the UK.

Our calls were heard and legislating for the right to request remote working arrangements was one of the actions contained in the National Strategy on Remote Work.

However, as we show in this review of the bill, the proposed legislation published by Government is fundamentally flawed and stacked in favour of the employer. It is in clear conflict with national policy to facilitate remote working and current labour market realities.

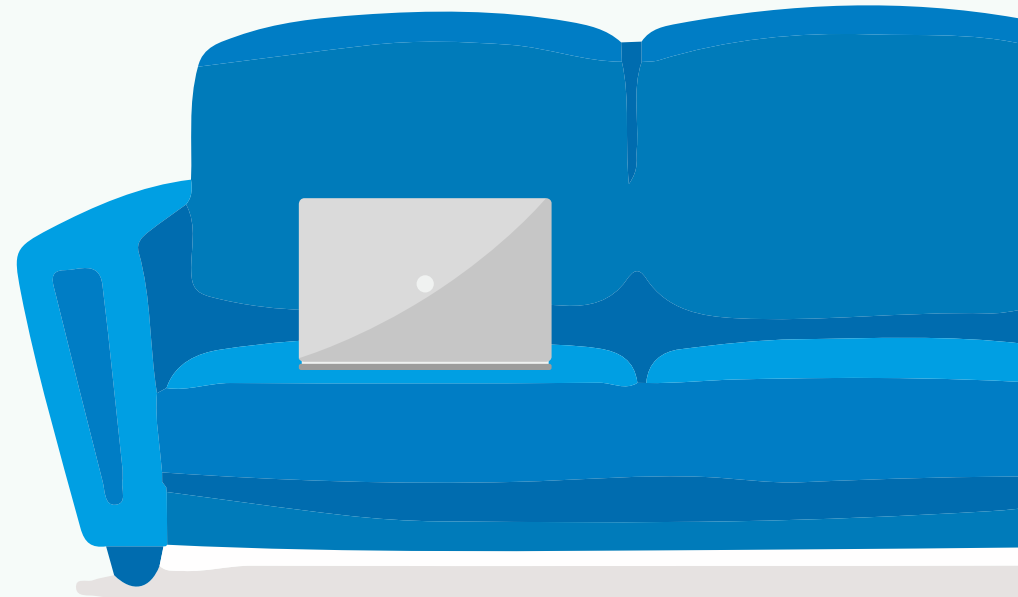
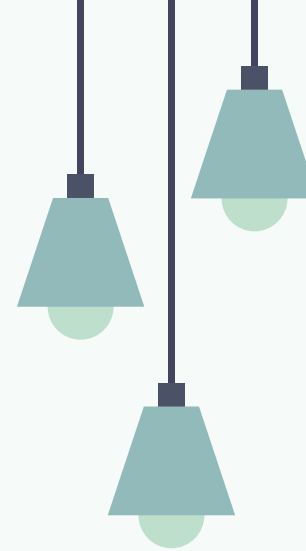
Unions successfully won the commitment from Government to introduce remote working legislation. Our priority now is to ensure that the bill is amended and made fit for purpose as it makes its way through the Oireachtas into law, and that remote working does not come at the expense of hard-won worker's rights or lead to greater casualisation and outsourcing.



Patricia King
General Secretary

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BACKGROUND

Developments in technology and its widespread availability have made it possible for a great many jobs to be performed outside of the employer's premises. However, it took a pandemic to fully awaken us to the potential for remote working.

Pre-pandemic one in 20 workers (4.9%) regularly worked remote. With the arrival of Covid, remote working went mainstream within a matter of days.

Almost 40% of paid hours worked in the economy during the first lockdown were performed from homes around the country as the number of remote workers skyrocketed to more than one in four (27.6%) of those in employment.

For some workers and businesses working from home has been challenging.

But for the vast majority it has been a positive experience and there is now a big demand to make permanent this temporary arrangement, with the overwhelming preference being for the working week to be split between days in the office and remote from home or a hub close to home.

Remote working has been shown to improve workers' quality of life, make them happier and more productive.

It can reduce commuting time and pollution and revitalise our towns and villages. It makes good business and economic sense too.

That is why the Irish Congress of Trade Unions and its affiliates were first to call for legislation on requesting remote work in summer 2020 to bring worker's rights in line with other rich countries.

Government agreed and has now published proposed legislation.

However, **if enacted in its current form, the Right to Request Remote Work Bill will not deliver what we campaigned for and what the bill is intended to provide - robust legislation guaranteeing fair procedure and balancing the employer and employee needs.**



POLICY CONTEXT

12 EU member states already have legislative provisions governing remote working and a further six are in the process of introducing legislation.

In the UK all employees have had the legal right to request remote work since 2014. This is known as 'making a statutory application'. An employer can turn down an application on 8 business grounds. There is an appeal process for employees to appeal the employer's decision to refuse a request, including the option to take a case to an employment tribunal.

Here in Ireland only workers returning from parental leave have a statutory right to request remote and other flexible working arrangements for a limited period under the Parental Leave Act. Later this year, an EU Directive on Work-Life Balance will extend this right to carers and parents with children up to eight years old for caring purposes.

Following a successful campaign by the Irish Congress of Trade Unions and its affiliates for all workers to be given a legal right to request remote work, the proposed legislation has been published.

The Right to Request Remote Work Bill 2022 provides a legal framework around which an employee's request to work remotely is to be dealt with by the employer.

Put simply, **while employees have always been able to ask their employer to work remotely, they have no right to be listened to or for their request to given reasonable consideration or to appeal a decision. This legislation is intended to end the situation were a worker's request is ignored or dismissed out of hand for no good reason by an employer.**

However, as outlined in this review, the proposed legislation as currently drafted is fundamentally flawed, stacked in favour of the employer and unfit for purpose. It must be radically amended before becoming law if it is to deliver a new worker's right.



RIGHT TO REQUEST

The proposed law confines the right to request remote work to workers –

- 1) employed on a contract of employment as defined in the Terms of Employment Information Act 1994.
- 2) who have worked for the employer for at least six months continuous.
- 3) who have not submitted a request in the previous 12 months.

ICTU recommend that the law should –

- 1) take the definition of a contract of employment from the National Minimum Wage Act 2000 or the Payment of Wages Act 1991. This will extend the right to request to workers on atypical working arrangements, such as agency workers and temps.
- 2) in the case of workers on successive short-term contracts (i.e. under six months) with the same employer, take the sum of those contracts in to account when calculating the length of service.

- 3) recognise that the circumstances of either the employee or the employer may change after the initial request is refused and where that is the case, the employee should not be precluded by an unduly long period from renewing their application. The restriction period for submitting a new request should therefore be 13 weeks rather than 12 months.



MAKING A REQUEST

The proposed law requires the employee to make the request in writing.

The request must include, but not to be limited to, five details of the arrangement being requested to inform the employer's decision-making process –

- 1) proposed remote working location.
- 2) proposed starting date.
- 3) proposed number of working days to be worked remotely.
- 4) the date of the most recent previous request to the employer, if any.
- 5) a self-assessment of the suitability of the proposed remote working locations for carrying out the job such as data protection and confidentiality, minimum levels of internet connectivity, ergonomic suitability of proposed workspace and any equipment or furniture requirements.

If the employee fails to provide additional details sought by the employer, the employer can consider the request withdrawn.



ICTU recommend that the law should –

recognise the potential for a self-assessment requirement to be unduly onerous on the employee and effectively act as a barrier to exercising their entitlement to request remote working, and that responsibility ultimately lies with the employer for health and safety and data protection.

The WRC code of practice on remote working should include a checklist or an initial risk assessment form for the employee or hub management to complete of the proposed remote working location.

Where an employer seeks further information from the employee a time-limit for a response should be specified to avoid a situation where the employee who does not respond immediately could be deemed to have withdrawn the request.

RIGHT TO A RESPONSE

The proposed law requires the employer to –

- 1) consult with the employee and/ or their trade union before making a decision.
- 2) notify the employee within 12 weeks on whether the request is wholly or partially approved or declined.
- 3) provide the employee with the reason for refusal when returning a decision.

ICTU recommend that the law should –

require that a decision be returned to the employee within 4 weeks, not 12 weeks.

Already under the Parental Leave Act the employer is required to respond to a request for flexible working arrangements within 4 weeks.

Before turning down a request, the employer should be required to set up a meeting with the worker and their representative within 2 weeks of receiving the request to discuss options and look for an arrangement that will work for everyone.

A final decision in writing with explanation should be communicated to the worker within 2 weeks of the meeting.

Therefore, the whole process would take a maximum of 4 weeks.



GROUNDS FOR REFUSAL

The proposed law empowers the employer to decline a request for remote working if they are satisfied there is a business reason for doing so.

13 examples of grounds the employer may rely on for turning down a request are provided-

- 1) the nature of the work not allowing for the work to be done remotely.
- 2) cannot reorganise work among existing staff.
- 3) potential negative impact on quality of business product or service.
- 4) potential negative impact on performance of employee or other employees.
- 5) burden of additional costs.
- 6) concerns for the protection of business confidentiality or intellectual property.
- 7) concerns for the suitability of the proposed workspace on health and safety grounds.
- 8) concerns for the suitability of the proposed workspace on data protection grounds.
- 9) concerns for the internet connectivity of the proposed remote working location.
- 10) concerns for the commute between the proposed remote working location and employer's on-site location.

- 11) the proposed remote working arrangement conflicts with the provisions of an applicable collective agreement.
- 12) planned structural changes.
- 13) employee is the subject of ongoing or recently concluded formal disciplinary process.

ICTU recommend that the law should -

provide that the reason relied upon by the employer to refuse a request must be justified on objective grounds that relate to the real needs of the business and are appropriate and proportionate having regard to all the circumstances of the business and the employee.

As currently drafted, **the 13 considerations an employer may cite as a reason for declining a request are extremely broad. The list is not exhaustive. In practice, the employer continues to have almost unfettered ability to turn down a request. The interests of the employee are not referred to. This is neither fair nor reasonable by any standard.**

In the UK, the Department of Business, Enterprise and Industrial Strategy is in the process of completing a review of their flexible working legislation, including whether the 8 business reasons an employer can reject a request remain valid (6 of these 8 reasons are included in the 13 examples cited in the Bill).

Despite legislation having been in place in the UK since 2014, it has not brought about the changes intended. The proportion of employees doing no form of flexible working has changed by a mere 4 percentage points, from 74% to 70% between 2013 and 2020.

We must learn from the UK's policy mistake and grasp our late mover advantage.

A refusal must be objectively justified.



RIGHT TO APPEAL

The proposed law gives an employee the right to appeal against a refusal.

An employee may make a complaint to the WRC where their employer has failed to:

- 1) return a decision on the request within the 12-week time period.
- 2) provide the grounds for refusal.
- 3) accept a request after 30 days from an employee who withdraws an earlier request.

The compensatory redress an employee is entitled to will not exceed 4 weeks' remuneration.

ICTU recommend that the law should -

provide for an appeal to the WRC on the grounds that the a request was unreasonable or was not objectively justified.

As currently written, the Bill only allows for a complaint to the WRC on technical grounds, such as the decision was late. It doesn't allow an employee to appeal the reason for refusing the request. This significantly impairs the usefulness and effectiveness of the proposed legislation.

An appeal to the WRC taking issue with the substantive decision of the employer must be provided.

If our proposed amendment that the decision of the employer must be objectively justified on business grounds were to be included, an appeal to the WRC could be grounded on an absence of objective justification for the refusal.

Further, there must be provision for an appeal to the WRC for an employee penalised, victimised or discriminated against as a result of having requested, appealed or engaged in remote working.

The limit of 4 weeks pay, by way of compensation, is wholly inadequate and out of line with the limit of 104 weeks pay that is available under existing legislation.



WHERE YOU CAN GET FURTHER ADVICE

For free and confidential advice on remote working and all your employment rights contact:

- your workplace union rep or union head office
- the Irish Congress of Trade Unions at 01 889 7777 or congress@ictu.ie

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