# New guidance for employers on implementing hybrid working

As the country emerges from months of lockdown restrictions, a new **survey** commissioned by Acas reports that around half of British employers expect to see a rise in staff working from home for some or all of the time. Another survey by EY suggests this expectation is well-founded. The **Work Reimagined Employee Survey** found that 80% of workers surveyed wanted flexibility in their job, with 40% wanting flexibility about where they worked for at least part of the week. In the light of this, Acas' new guidance on hybrid working is well-timed and covers a wide range of issues for employers to consider. The guidance is split into five sections, each of which is discussed below.

**Considering hybrid working for your organisation**

The guidance notes that employers may be considering introducing permanent hybrid working of their own volition, or in response to an employee's flexible working request. It points out the many positives of hybrid working including helping to:

- increase job satisfaction;
- attract and retain a more diverse workforce; and
- improve trust and working relationships.

However, the guidance stresses the need for employers to give careful thought to where, when and how work could be done before making any decisions.

In terms of the "where", consideration should be given to the use of technology, how teams will stay in touch, health and safety concerns and why certain tasks have to be carried out in the workplace. In terms of the "when" thought should be given to how important it is for work to be done at a specific

time.  And in terms of the "how" a checklist of different issues to think about is provided, including things like how new employees will be onboarded and how the workplace will be configured.

Employers are also urged to discuss their employees' needs before making any changes.  This includes things like their home working environment, whether any reasonable adjustments are required and whether they have caring responsibilities. Essentially, employers need to avoid a "one size fits all" approach – different arrangements might be needed for different job roles and different employees.

It is suggested that hybrid working arrangements are trialled for a short period to judge how they work.  Where such arrangements are not possible (for some or all), employers are urged to discuss alternative flexible working options with employees and keep the position under review.

**Consulting and preparing to introduce hybrid working**

Before bringing in hybrid working arrangements, the guidance points out that employers may be obliged to consult with staff.  This may be necessary to secure an employee's agreement to vary certain terms of their employment contract (such as place of work or hours of work clauses). Additionally, the employment contract, or non-contractual policy, may state that the employer will consult with staff about organisational changes.

Employers may also have statutory obligations to consult with employee representatives where:

- the proposals affect health and safety;
- require changes to 20 or more employment contracts;
- where the employer is party to a collective agreement with a trade union; and/or
- the employer is party to an information and consultation agreement.

The consultation process involves explaining what the proposals are and inviting employees to provide feedback and raise any concerns. There are different ways of doing this, including face-to-face meetings and staff surveys. Employers should listen to any concerns and try to resolve them before introducing the changes.

**Creating a hybrid working policy**

There is no obligation to introduce a specific hybrid working policy and employers may feel that they can address hybrid working within an existing flexible working policy. However, the guidance indicates that it is a good idea to have a stand-alone policy since it can address in detail how hybrid working will operate and specify any limitations.

In terms of outlining how things will work, the policy could, for example, explain:

- how someone may request hybrid working and how that request will be dealt with;
- what equipment will be provided and how it will be set up (and, interestingly, the EY survey revealed almost 43% of workers wanted their employer to upgrade at-home hardware);
- how health and safety risks will be assessed and addressed;
- what, if any, insurance is needed; and
- how staff will be trained and performance managed.

The policy could also set out any limitations such as any roles or tasks that cannot be performed at home and any restrictions on where homeworking can take place (e.g. not in a public place or overseas if this may trigger tax and immigration issues).

**Treating staff fairly in hybrid working**

Wherever staff are working they should be given access to the

same work, support and opportunities for training, development and promotion. Line managers should communicate regularly with all of their reports, regardless of where they are located, and work should be allocated fairly and not according to location.

The guidance highlights the risks of directly or indirectly discriminating against people with certain protected characteristics. For example, it could be directly discriminatory not to allow a mother to work at home because of a concern that she will be distracted by her children, whilst allowing a father to work from home. Refusing hybrid working for certain roles could amount to indirect discrimination, for example, against disabled people who find it difficult to attend the workplace every day or against women who bear the primary childcare burden and have a greater need for flexibility.

In addition, employers must ensure that they proactively make reasonable adjustments for disabled staff where required, regardless of where they are working. For example, if an employee has a physical disability which is exacerbated by sitting down all day, it may be necessary for the employer to pay for a sit/stand desk to be installed at the employee's home.

**Supporting and managing staff in hybrid working**

The guidance underlines that employers have responsibility for staff wherever they are working. This encompasses things like:

- health, safety and wellbeing;
- supporting mental health;
- managing performance; and
- providing training for hybrid working practices and more generally.

As far as performance management is concerned, it suggests

that employers discuss with staff whether there is a need to monitor performance and how this could be done in a consistent manner when working in the workplace and/or remotely.

**Comment**

It seems inevitable that we will see a permanent shift towards hybrid working given the experience of homeworking over the last 16 months. As with anything in life, homeworking has its pros and cons, but most employers and employees would now acknowledge the benefits of some degree of homeworking. Yet the shift to hybrid working on a permanent basis is not without its challenges. Employers must ensure that not only do they meet their legal obligations, but that they make hybrid working a positive experience for staff. This guidance, together with our recent **FAQs on hybrid working**, gives employers a good grounding in the issues they need to grapple with in order to achieve this.

**Acas Guide to Hybrid Working**

**BDBF is currently advising many employers and employees on the challenges presented by the coronavirus pandemic, including preparing for the return to the workplace. If you or your business needs advice on any coronavirus-related matter please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.**

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