

# CIPD Coronavirus webinar series

Homeworking long-term

06 October 2020

# Welcome

Katie Jacobs, Senior Stakeholder Lead, CIPD

**CIPD**



# Today's speakers

Katie Jacobs

Senior Stakeholder  
Lead,  
CIPD

Jonny Gifford

Senior Adviser on  
Organisational  
Behaviour,  
CIPD

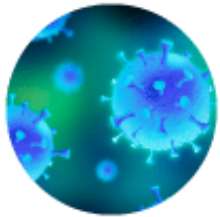
Alan Price

Chief Executive  
Officer, Bright HR

Leigh Lafever-Ayer

Vice-President  
Human Resources,  
Enterprise

# #StrongerWithCIPD



**Covid-19  
resources**



**NEW Well-  
being helpline**



**Employment  
Law helpline**



**Communities  
and branches**



***People  
Management***



**Knowledge  
and content**



**Free learning**



**Careers  
support**



**Professional  
credibility**



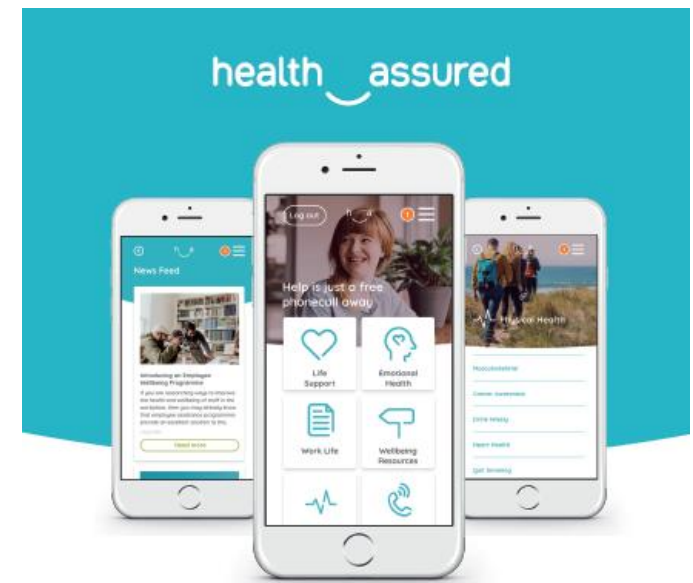
**Financial  
support**

[\*\*cipd.co.uk/memberbenefits\*\*](https://cipd.co.uk/memberbenefits)



## \*New\* Wellbeing Resources

- We've partnered with **Health Assured** to support members mental health and wellbeing
- Unlimited free 24/7 confidential telephone helpline, online portal & Health e-Hub app
- The resource provides:
  - Legal information
  - Debt and financial information
  - Manager consultancy and support
  - Information on work and home issues
  - Factsheets, advice, information and self-help tools
  - Links to specialist support organisations
  - A resources area with; programmes, videos, webinars, medical information and mini health checks.



Health e-Hub from Health Assured  
Support in the palm of your hand

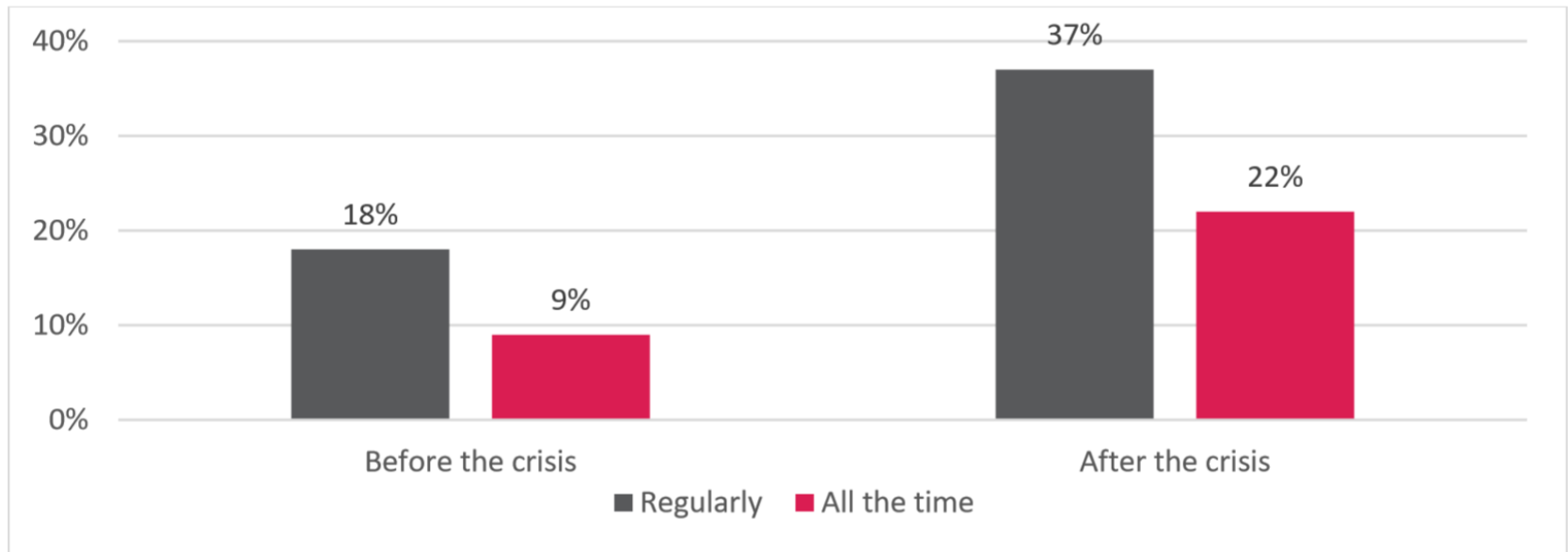
[Download the Health e-Hub now](#)



**Homeworking:**  
**The future of work?**

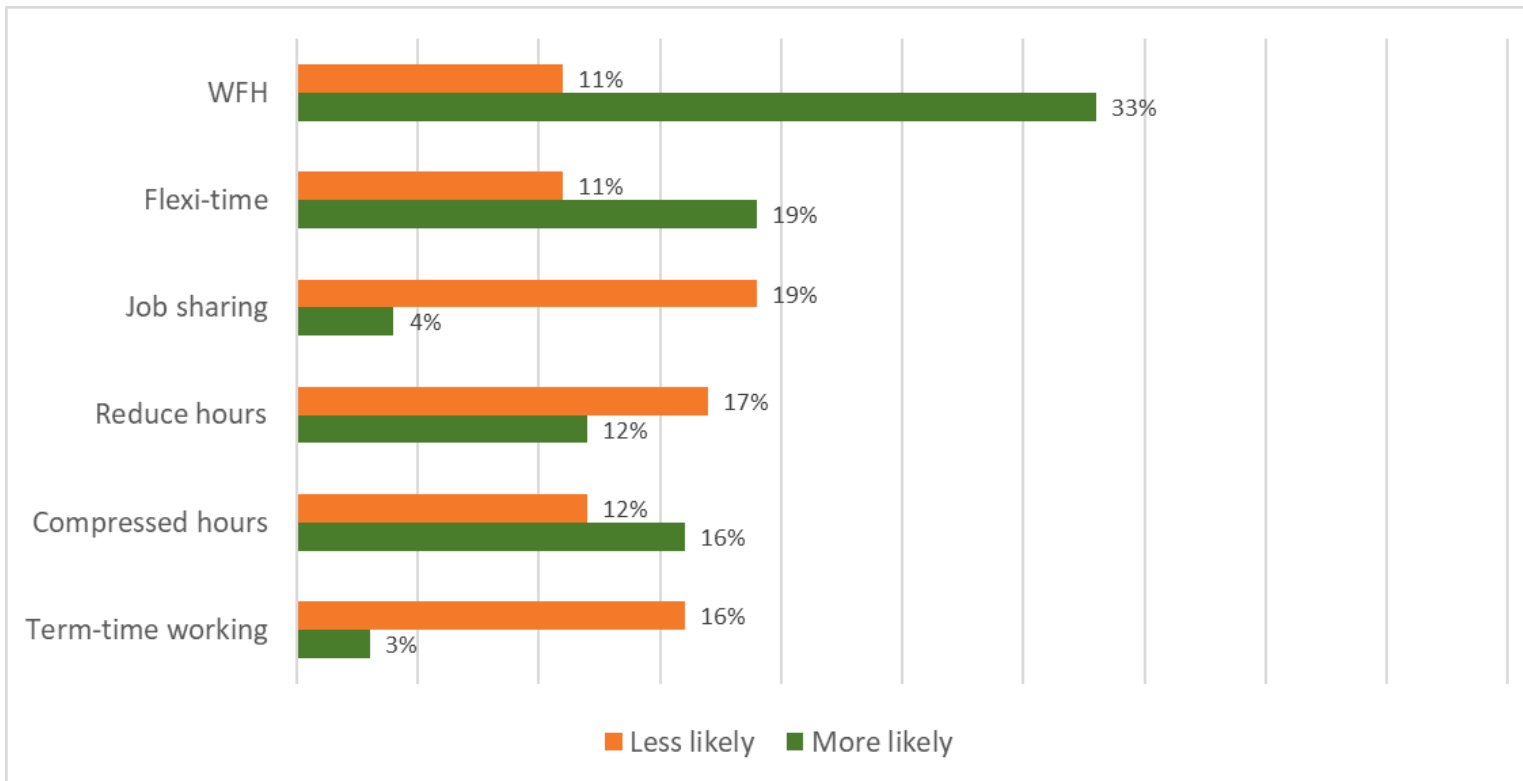
**Jonny Gifford, CIPD**  
**@jonnygiff**

# What % of workers will WFH post-COVID?



**Average expectations of UK employers, June 2020**  
(n=1,046; 'regularly' = 1 day a week)

# Requests to work flexibly post-COVID



**Proportion of UK workers less / more likely to request flexible working**  
(July 2020; n= 1,671 to 1,747)



# Work-life balance (ranking)

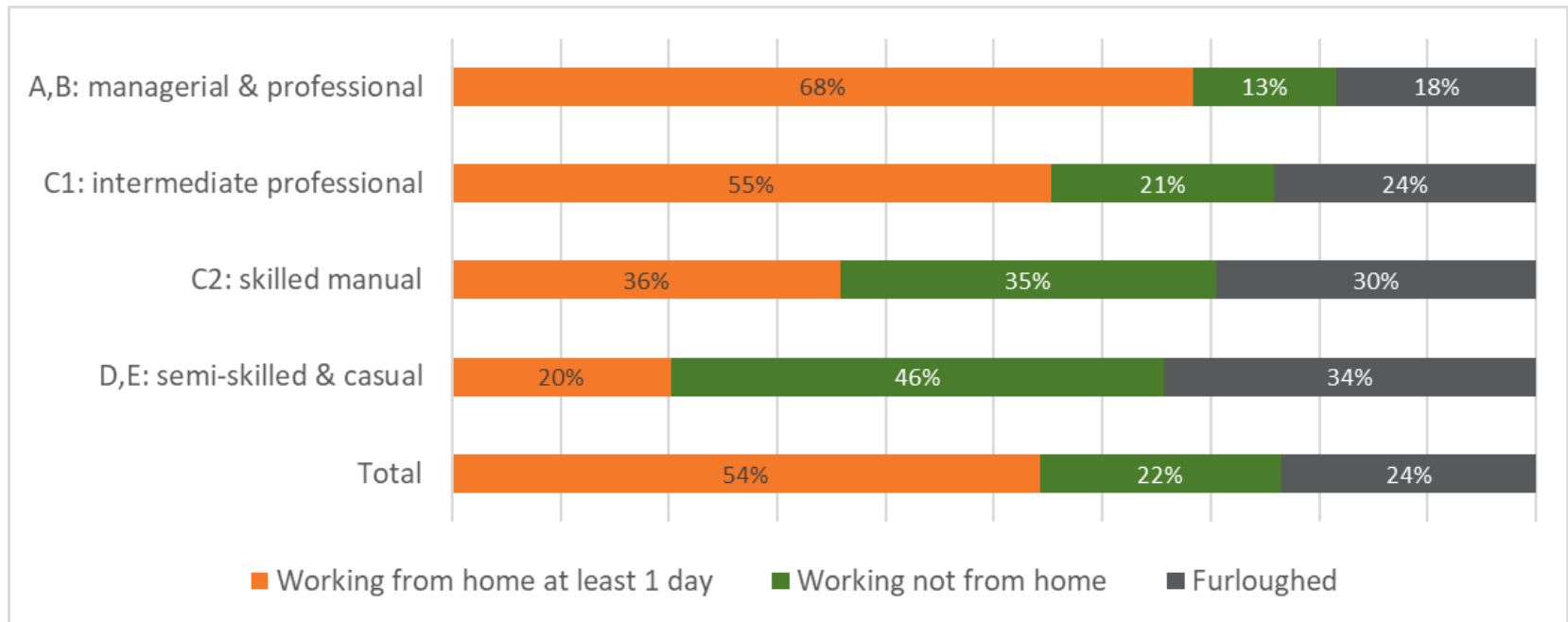


1 Hungary	10 Iceland	19 Germany
2 Estonia	11 Switzerland	20 France
3 Austria	12 Norway	21 New Zealand
4 Latvia	13 Czech Republic	22 Sweden
5 Lithuania	14 Mexico	23 Belgium
6 Israel	15 Finland	<b>24 United Kingdom</b>
7 Chile	16 United States	25 Australia
8 Japan	17 Denmark	
9 Slovenia	18 Spain	

**How often demands of job interfere with family life**

International Social Survey Programme (ISSP) 2015

# Who has been WFH or furloughed?



UK workers, Apr-June 2020 (Total n=3,050)

**What makes for  
effective virtual  
teams?**



# DEVELOPING EFFECTIVE VIRTUAL TEAMS

Lessons from  
research

Evidence review  
May 2020

# ATTRIBUTES OF EFFECTIVE VIRTUAL TEAMS

Rapid evidence  
assessment of  
scientific literature

Technical report  
May 2020

- **Return to Work:** essential, safe & mutually agreed
- **Day 1 rights** to request flexible working



# Homeworking long-term: Legal considerations

Alan Price, CEO of BrightHR  
6 October 2020



# Homeworking long-term: Context

- There are several things employers need to think about:
  - Legal right to work from home
  - Homeworker agreement
  - Working hours
  - Changing pay
  - Monitoring staff who work from home
  - Misconduct while working from home
  - Bringing staff back to the workplace

# Legal right to work from home

- Usually, employees do not have the automatic right to work from home, however, they can make a flexible working request.
- All employees with at least 26 weeks of service can make one request every 12 months to change their hours/working conditions, which can include homeworking.
- Employers do not have to agree to this but need to provide sound business reasons for their refusal.
- It may be more difficult to argue that jobs cannot effectively be done from home if employees have been doing so through lockdown.



# Legal right to work from home – procedure

- Acas Code of Practice on ‘Handling in a reasonable manner requests to work flexibly’ sets out the procedure for dealing with a request
- The Code says requests should be dealt with within three months in total, including the appeal, unless an extension to this timeframe is agreed with the employee.
- It sets out that the employee’s request should include:
  - the date of their application, the change to working conditions they are seeking and when they would like the change to come into effect
  - what effect, if any, they think the requested change would have on you as the employer and how, in their opinion, any such effect might be dealt with
  - a statement that this is a statutory request and if and when they have made a previous application for flexible working

## Legal right to work from home – procedure

- When a request is made, you must consider it which includes discussing the request with the employee, unless you know without a discussion that you will approve the request
- If the employee fails to attend a pre-arranged meeting, and then the re-arranged meeting, without good reason, you can consider the claim as withdrawn
- When considering the request, you should think about the benefits it would bring and also any adverse effects on the business
- You should inform the employee as soon as possible of the decision in writing
- The employee should be allowed to appeal a rejection
- There is no statutory right for the employee to be accompanied at either the initial meeting or the appeal but the Code says the employee “should” be allowed to have a work colleague with them

# Legal right to work from home – reasons for refusal

- The burden of additional costs
- An inability to reorganise work amongst existing staff
- An inability to recruit additional staff
- A detrimental impact on quality
- A detrimental impact on performance
- A detrimental effect on ability to meet customer demand
- Insufficient work for the periods the employee proposes to work
- A planned structural change to your business

# Legal right to work from home – tribunal claims

An employee can make a claim to employment tribunal if the employer:

- fails to deal with their application in a reasonable manner
- fails to notify them of the decision on their application within the decision period
- fails to rely on one of the statutory grounds when refusing their application
- bases its decision on incorrect facts or
- treats the application as withdrawn when the grounds entitling the employer to do so do not apply.

# Homeworker agreement

- Working from home will represent a change to the T&Cs of an employee's contract as it dictates where they will be working from.
- To keep things clear, employers should draft a homeworker agreement and ask employees to review and sign it.
- The first thing this agreement should specify is how long the period of homeworking will last; is it indefinite, ongoing subject to the coronavirus situation improving, or set to end on a specific date? This should clearly be set out.
- It should also be specified that the employer reserves the right to terminate the agreement at any point if they deem the homeworking arrangement not to be working.
- Employees should be reminded about the expectations of the company, such as disciplinary procedures, and how these still apply even during a period of homeworking.
- All health and safety requirements should be covered too.

# Working hours

- Homeworking agreements should also specify the hours the employee is to work; employers may simply want them to work the same hours as before or ask them to change these.
- Employees should agree to any change in their working hours and signing the homeworker agreement with these hours specified proves that they have agreed.
- The agreement should also specify that staff should not work for longer than their usual hours, in line with the Working Time Regulations 1998.
- At no point should employers encourage them to do so if such a provision is going to mean they are working for longer than 48 hours per week and they have not signed an opt-out agreement.

# Working hours – keeping records

- Employees may feel under pressure to show their commitment when working from home, and this may result in excessive working hours
- It is important for employers to take measures to prevent this and recording working hours is the first step
- ‘Clocking in and out’ is key for homeworkers from a health and safety and a lone-working perspective – employer’s duty of care
- This is becoming the norm – BrightHR’s clocking in and out technology has been used 1.6 million times in the UK since March 2020, and 2.3 million times globally
- Keeping track of hours may also help to avoid animosity between home workers and office workers – home workers may feel they are expected to put more in than office workers.

## Changing pay

- Employers may believe that, as homeworkers do not need to pay for commuting costs, their pay can be reduced to reflect this.
- Companies with London weighting, in particular, may feel this is no longer necessary as the employee does not need to commute into the city centre.
- Again, employees need to agree to a reduction in their pay – this should be specified on the homeworker agreement.
- Employers should take time to discuss this with their employees first; it should not be automatically assumed that home workers should be paid less.
- This should also be rolled out across the board; one employee should not feel they are being mistreated in comparison to another.



# Monitoring staff who work from home

- Technically, it is legal for employers to monitor computer usage of employees in order to keep track of productivity and protect legitimate businesses interests.
- However, workplace monitoring can engage both human rights and data protection law, so it must be implemented with thought.
- Employees should be informed the form of monitoring that will take place and rules on unacceptable conduct must be made clear so that they know where they stand.
- Utilising monitoring software may make employees feel untrusted, especially if they are getting work done and there haven't been previous productivity issues. If poorly managed, this could be very damaging to the employment relationship.

# Misconduct while working from home

- Monitoring employee performance levels through targets should help employers to identify if employees are using homeworking as an excuse to do less work or abusing the fact they're not in the office.
- All staff should be reminded of the conduct expected of them while working from home and that they are expected to maintain certain standards of behaviour during working hours regardless of where they are working from.
- Employers may consider implementing a disciplinary procedure in this situation; however, it may be difficult to prove that the employee has been operating whilst under the influence of a substance.
- In this situation, they should carefully monitor the employee's performance, alongside their conduct while on a call.

# Bringing staff back to the workplace

- The homeworker agreement should specify how long the arrangement is going to last and that the employer reserves the right to terminate it.
- If the employer believes the situation simply is not working, and the agreement permits them to do this, they can ask the employee to return to the workplace.
- If the employee refuses, they can treat it as a disciplinary matter.

# Challenges and benefits

## Challenges:

- Remote management of employees.
- Dealing with employment investigations remotely, including:
  - Fair procedures for remote meetings
  - Employee right to representation
  - Refusal to participate
- Home working and health & safety.
- Data protection and confidentiality.
- Lower productivity from some staff.
- Engagement and employee wellbeing.

## Benefits:

- Play your part in preventing the spread of coronavirus.
- Protect your people from the risks of coronavirus.
- Work/life balance.
- Money-saving.
- Positive environmental impact from lower numbers commuting.
- Increased productivity from some.
- Engagement and employee wellbeing.

## Appendix: Case law

### ***FLEXIBLE WORKING: Whiteman v CPS Interiors (Employment Tribunal)***

- A request to work from home was rejected for an employee who worked as a designer for a company that refurbishes commercial property.
- The reason given by the employer was that the changes would affect the quality of the work done. Specifically, it said that the nature of the work meant that a team of designers had to work collaboratively on designs; and sometimes designs need to be changed at short notice which would be difficult if the employee worked at home.
- The employment tribunal decided that the employer's position was justified and the potential disadvantage caused by the requested adjustments was outweighed by the needs of the business. The Judge said that employers are able to refuse a request provided that the refusal is on one of the specified grounds. The Judge also said that "although it may....be uncharitable to do so, it is not unreasonable for an employer to put its own interests above those of the employee"

## Appendix - case law

### ***FLEXIBLE WORKING: Webster v Princes Soft Drinks (Employment Tribunal)***

- An employee claimed that their employer's decision to refuse their request was based on incorrect facts and that the employer's reason did not properly fall within the permitted reasons.
- ET said “It is not the function of the ET to impose its own view as to whether the Respondents evaluated each of the issues and it is a management decision for them to make”

### ***FLEXIBLE WORKING: Commotion v Ruddy (Employment Appeal Tribunal)***

- A similar claim was made here – the claimant said the refusal was based on incorrect facts.
- ET said the respondent’s reasons for refusal were not made out and there was not a “shred of evidence that proper enquiry and proper investigation” has been carried out

## Appendix - case law

### ***EXCESSIVE WORKING HOURS: Kepak Convenience Foods v O'Hara (Labour Court (Ireland))***

- The “right to switch off” was made out in this case by an employee who regularly had to reply to work-related emails outside of working hours which resulted in a breach of working time law.
- The employer had failed to monitor pattern of work or keep proper records of working time
- Because of the time stamp of emails sent, the employer was aware of the employee’s working hours and took no steps to curtail it

### ***EMPLOYEE MONITORING: Barbulescu v Romania (European Court of Human Rights (Grand Chamber))***

- The employee claimed that the employers’ monitoring of his emails breached his privacy
- Grand Chamber found that privacy had been breached in this particular case
- Employers can monitor but balance must be achieved – what is the least invasive method?
- An employer cannot grant itself absolute power to invade privacy by having a draconian monitoring policy.
- Grand Chamber placed significance on advance notification to employees about their monitoring.



 **bright<sup>hr</sup>**

# Transform your people management





# Case Study

Leigh Lafever-Ayer, Vice-President Human Resources,  
Enterprise



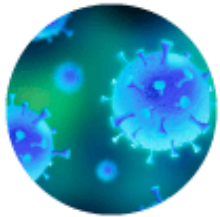
# Questions

Please submit your questions for:

- Jonny Gifford, Senior Adviser on Organisational Behaviour, CIPD
- Alan Price, Chief Executive Officer, Bright HR
- Leigh Lafever-Ayer, Vice-President Human Resources, Enterprise

Please use the Q&A function to submit your questions

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# Further information

[NEW wellbeing helpline for CIPD members](#)

[CIPD coronavirus hub](#)

[Developing effective virtual teams](#)

[CIPD community](#)

[Acas Code of Practice on flexible working requests](#)

[Gov.uk/coronavirus](#)

