

Can Employers Legally Say “Back to the Office”? What Employers Must Know.

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INTRODUCTION

The work environment has experienced significant evolution in recent years. Remote working, which was and still is a flexible arrangement granted to employees, has become a norm both nationally and internationally. However, as businesses stabilise and operations normalise, many employers are attempting to restore traditional in-office work arrangements.

This has sparked widespread debate and, in some cases, legal uncertainty about whether employers can lawfully compel employees to return to office work.

FROM OFFICE TO ANYWHERE: THE RISE OF REMOTE WORK

Although remote work was already in existence before the COVID-19 pandemic, this global health crisis accelerated its adoption. This led to many organisations being compelled to allow employees to work from home.

After the pandemic, employers have begun emphasising the importance of in-person collaboration, productivity oversight, and organisational culture, leading to a growing demand for employees to return to the office.

While employers do possess managerial powers to regulate the workplace, such decisions must comply with applicable employment laws and the specific terms of the employment contract.

REMOTE WORKING AS PART OF THE EMPLOYMENT CONTRACT

The employment contract is the cornerstone for the employer-employee relationship. If a contract explicitly states that an employee's place of work is remote or office based, both parties are bound by that agreement as it forms part of the employee's employment conditions. Any deviation from the contractual terms unilaterally may constitute a breach of contract, unless the correct procedure is followed to vary the express

terms of the contract.

If the employment contract is silent on work location, or specifies remote work but the employer wishes to changes that, then to avoid an unfair labour practice, the employer should: -

1. inform employees of the intended change in advance.
2. provide reasons for the intended change, such as business or operational needs.
3. engage in consultation with affected employees and/or their representatives.

If the employer and employee cannot reach consensus, the employer may embark on a retrenchment process, if justified.

REMOTE WORKING BY AGREEMENT AND/OR COVID-19

Remote working that arises from informal arrangements or temporary measures, such as those introduced during the COVID-19 pandemic, must be distinguished from remote working that forms part of an employee's contract or formal conditions of employment.

Where remote work is not contractually agreed to, it remains a discretionary operational arrangement that an employer may vary or withdraw, if it is reasonable to do so.

Although there are no formal legal requirements governing the withdrawal of an informal remote-working arrangement, an employer should, to ensure the variation or withdrawal is reasonable, conduct at least an informal consultation and notify employees of the intended change before implementing it.

This does not mean that employees must agree to the change; rather, the employer must act reasonably and provide adequate notice before altering the arrangement.

CONCLUSION

Whether employees can be required to return to the office ultimately depends on the basis of the remote-working arrangement. If working from home is recorded in the employment contract, the employer cannot change it unilaterally and must follow the appropriate consultation and, if necessary, retrenchment processes. Where the arrangement was informal or temporary, the employer may change or withdraw it, but the decision must still be reasonable and communicated to employees with sufficient notice.

A clear explanation of the operational reasons for the change, coupled with early engagement with employees, helps ensure that any adjustment to working arrangements is lawful, fair, and easier to implement in practice.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis and you should consult an attorney before taking any action contemplated herein.



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