

Opinion **Working from home**

The looming legal minefield of working from home

Today's employment laws were written for a world of work that may never be the same again

PILITA CLARK



Workers are free to smoke from home again, as demonstrated by Humphrey Bogart and Lauren Bacall © Masheter Movie Archive/Alamy

Pilita Clark YESTERDAY

Last week, a well-known London council sent its staff an arresting bit of [news](#): it is OK to smoke at work.

To be more precise, Hammersmith and Fulham council said it was OK for employees to smoke if they were working at home, as many have been thanks to Covid-19.

To be even more precise, the council sent the message because it wanted to hose down [news reports](#) that it had banned employees from having a fag at their keyboards — even if they were at home. “We would never instruct people about smoking in their own homes,” it huffed.

Does this matter? In a normal year, not much. In the new world of remote working though, the question of what an employer can and cannot require of its staff has suddenly become much more complicated.

Today's employment laws were drawn up at a time when the typical worker slogged in to the same building each day and headed back home at night. That time may never return.

A [poll](#) of more than 750 European employers published last week showed 41 per cent have plans to make it easier for staff to keep working remotely once offices reopen. They may not give a fig if their staff are lighting up at home, but they do care about much else, such as how much work is being done.

That is already raising potential legal headaches, as I discovered after calling UK employment lawyers last week.

I was expecting to hear about the tracking software, reportedly [flourishing](#) in the pandemic, that can count every keystroke on a company laptop, or take random screenshots of a monitor. But it turns out some of the worst problems are less high-tech, and more human.

At one company, staff at home were told to keep a video conference call open all day so a manager could watch what they were doing and issue any orders that popped into his head, as he always did in the office.

“I think that level of intrusion on an employee’s working from home day is quite excessive,” says Sinead Casey, a Linklaters employment lawyer.

Businesses commonly had some sort of monitoring in place before the pandemic, she told me, and they need to think carefully about whether they really need more for staff at home.

That makes sense, though not if you work on a trading floor or in a newsroom, where minute-by-minute decisions are needed.

Another big legal question hovers over the extent to which a business is obliged to supply an ergonomically safe desk, a decent computer, fast broadband and even heating, cooling and lighting. Could they face legal claims for leaving home workers adrift?

Potentially yes, says Peter Daly of Slater and Gordon.

An employment contract might not specifically mention electricity bills or broadband, but case law implies an obligation to provide a suitable working environment for employees, which could extend to paying for these costs.

He says he is hearing from “an awful lot of people” who have been told to work from home but on their own computer — a tough ask for those with one old laptop the whole family shares, or no home computer at all.

Yet those stories underline an even more significant fact of working life today: Covid-19 has swung the balance of power in favour of employers in dozens of industries.

The precarious employment situation hardly encourages workers to take on a company, no matter how egregious.

And those who decide to fight face a long wait for a day in court. In the UK, social distancing rules have compounded a backlog of unheard employment complaints that by August had risen [to 39,000](#).

If you lodge a claim today, it might not be heard until 2022, by which time your employer could have gone bust.

This does not apply to all sectors, let alone all businesses in all countries. But as virus infection rates climb and the threat of stricter lockdown rules looms, it remains a bleak reality.

When it's all added up, whether you are working at home or not, I'm afraid there is ample reason to at least think about taking up smoking.

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