

# Stress at Work: Identifying and Assessing the Risks of Working From Home

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## WFH: The New Normal

'Lockdown' was, unsurprisingly, word of the year for 2020 according to the editors of Collins' dictionary. The editors of the Oxford English Dictionary, however, identified this as just one in a list that included a 300% increase in the use of the words 'remote' and 'remotely', as working habits changed to reflect the response to the pandemic (Oxford Dictionaries: 2020 has too many Words of the Year to name just one, Alison Flood, The Guardian, 23 November 2020).

Remote, or home working is nothing new: this occurred prior to the industrial revolution; although the modern home worker is more likely to be a service sector employee with a headset and computer rather than a textile worker with shears or a spinning wheel.

Attitudes to mental well-being have also changed including the realisation that work can at times be stressful to the point of being unhealthy. Years ago, the working day was limited by the hours of daylight and observance of the Sabbath. This is incomparable to a world where Amazon can service your every need at any time of day or night.

The distinction between work and home has become blurred by the pandemic. Working from home ('WFH') involves a different range of interruptions and no opportunity to 'decompress' on the journey home. The working day now also involves juggling family life and accommodating homeschooling or shift workers who were previously left to catch up on their sleep in silence. Work-related video calls are joined by carefree toddlers or attention-grabbing pets and are interrupted by deliveries and the noise of tradesmen. The result: a working day that is inevitably extended. Never has the phrase 'flexible working' been more apt.

Although the experience of working from home in lockdown has been trivialised by countless memes, it requires resilience to sustain any kind of work/life balance when the two collide.

We are unlikely to see any legislation like the El Khomri Law passed by the French Government in 2016 creating the 'right to disconnect', which states that in organisations with more than fifty employees, the employee has a "right...not to be connected to a digital professional tool during off-duty and vacation time"

For more on the above legislation, please [click here](#).

So how does an employer continue to satisfy its obligations about the psychological wellbeing of its workforce when they are no longer under one roof and are facing what may be once-in-a-lifetime anxieties?

Given that working from home is likely to remain part of the post-COVID 'new normal', how does the reasonable employer prepare for the switch of staff from offices to homes and still maintain effective risk analysis?

## WFH: Identifying and Assessing the Risks

The HSE document ['Work-related stress, anxiety or depression statistics in Great Britain, 2020'](#) refers to the 2019/20 Labour Force Survey, which found that 828,000 workers were suffering from work-related stress, depression or anxiety and that 17.9 million working days were lost as a result. Although published in November 2020 the data was up to date, as of March 2020, showing stress at work was already problematic before the pandemic. The impact of COVID is currently difficult to gauge, however it is likely that the situation has deteriorated since March 2020.

The HSE identifies "six main areas of work design which can affect stress levels":

- Demands
- Control
- Support
- Relationships
- Role
- Change

Have you assessed the risk to your workforce by these measures whilst they have been working from home? Have you reviewed this in light of the Government's changing advice and controls?

Where restrictions have prevented seeing employees in person, what steps have been taken by video platform? Is having an employer on video in your living room or bedroom an additional concern for employees?

Although concerned with front line medical staff, have you considered the need for what was recently described as "psychological PPE" ('Psychological PPE' is what Britain's health professionals urgently need now - Clare Gerada, The Guardian 16 October 2020)? Have you educated your workforce in the strategies needed to maintain resilience in the current circumstances?

The cases of *Koonjul v Thameslink Healthcare Services* [2000] PIQR 123 and *Allison v London Underground Limited* [2008] ICR 719 make it clear that risk assessment is the essential starting point for any well-informed attitude to the safety of employees.

It is obvious that families and individuals are living with increased isolation, financial worries, grief and the need to balance their home and work lives in a very precarious employment market. Does the reasonable employer have to take account of the domestic stresses and strains in addition to those that come with the work?

Have you noticed employees emailing late into the night and earlier and earlier in the morning so they can also educate their children?

In *Hatton v Sutherland* [2002] ICR 613 Hale LJ said this at 624 [22]:

*"There are, therefore, no special control mechanisms applying to claims for psychiatric (or physical) injury or illness arising from the stress of doing the work which the employee is required to do."*

Hale LJ also cited with approval Simon Brown LJ's judgment in the case of *Garrett v Camden London Borough Council* [2001] EWCA Civ 395:

*"Many, alas, suffer breakdowns and depressive illnesses and a significant proportion could doubtless ascribe some at least of their problems to the strains and stresses of their work situation: be it simply overworking, the tensions of difficult relationships, career prospect worries, fears or feelings of discrimination or harassment, to take just some examples. Unless, however, there was a real risk of breakdown which the claimant's employers ought reasonably to have foreseen and which they ought properly to have averted, there can be no liability."* (Emphasis supplied)

## Practical Tips

- Make sure you have assessed the risk to your workforce whilst they are WFH and that your employees have seen the risk assessment.
- Keep these assessments under regular review.
- Monitor workloads and working hours and make sure you keep any record created of hours worked.
- Have regular check-ins with your employees, by video if possible, to discuss any issues they are facing and how you can assist. If you are asking whether an employee is experiencing a problem then a group call is clearly not the right forum.

- Make sure employees know where to access help and support if required and that you can prove that they do.
- Keep any eye out for changes in or unusual behaviour and follow up any concerns. Remember to record the positive responses as well! Q: How are you? A: Fine is something too many do not bother to record.
- Consider what you can offer your employees to promote their well-being.

Ultimately the question is if you face a claim for workplace stress once the vaccine begins to turn COVID from pandemic to endemic, will you be able to say that you could not have foreseen the impact on your workforce? Will you be able to demonstrate that you did all you reasonably could to avert it?



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