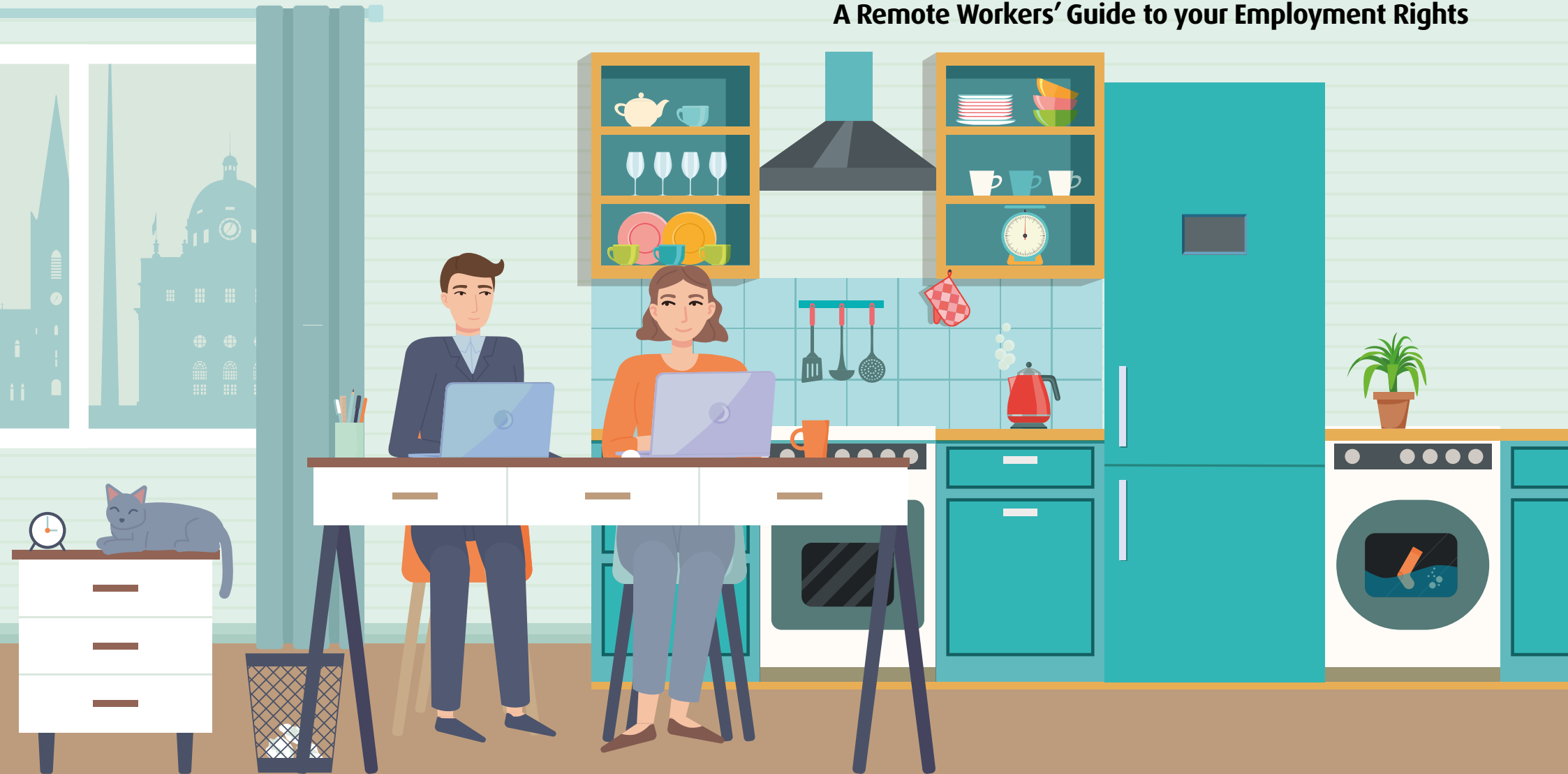


When your Home is your Workplace

A Remote Workers' Guide to your Employment Rights



FORWARD

Developments in technology and its availability have made it possible for many desk jobs to be performed outside of an employer's premises, for part or all of the working week.

Over a matter of days, tens of thousands of businesses moved their staff to work remotely from home during the Covid-19 pandemic to help slow the spread of the virus. For the vast majority of these workers and their employers this was their first experience of working from home, and many have expressed an interest to continue this type of working arrangement on a permanent basis.

Working from home or remotely from another location close to home, such as a digital hub or co-working space, has many advantages for workers. It can, for instance, improve your work-life balance, reduce your commuting time and carbon footprint, and save you money. However, in the absence of a collectively agreed company policy on homeworking, workers can face challenges too, such as working longer hours, feeling lonely and stressed, and slower progress up the career ladder.

While successive governments since the 1990s have supported a switch from office-based to remote working, there is still no national guidance for workers or employers engaging in remote working.

This worker's guide to your employment rights when your home is your workplace has been developed by the Private Sector Committee of the Irish Congress of Trade Unions.

In September 2019, ICTU was appointed by the Government as one of 12 SDG champions from across society to drive Ireland's progress towards achieving the UN 17 Sustainable Development Goals. This guide, in promoting good employment conditions where an employee works from home, supports SDG Goal 8 which emphasises the importance of decent work.

The trade union movement is fully committed to ensuring workers' hard-won rights are preserved when working from home, that protections are fit for purpose and that the post Covid-19 world of homeworking does not lead to greater work precarity and casualisation.



Patricia King
General Secretary

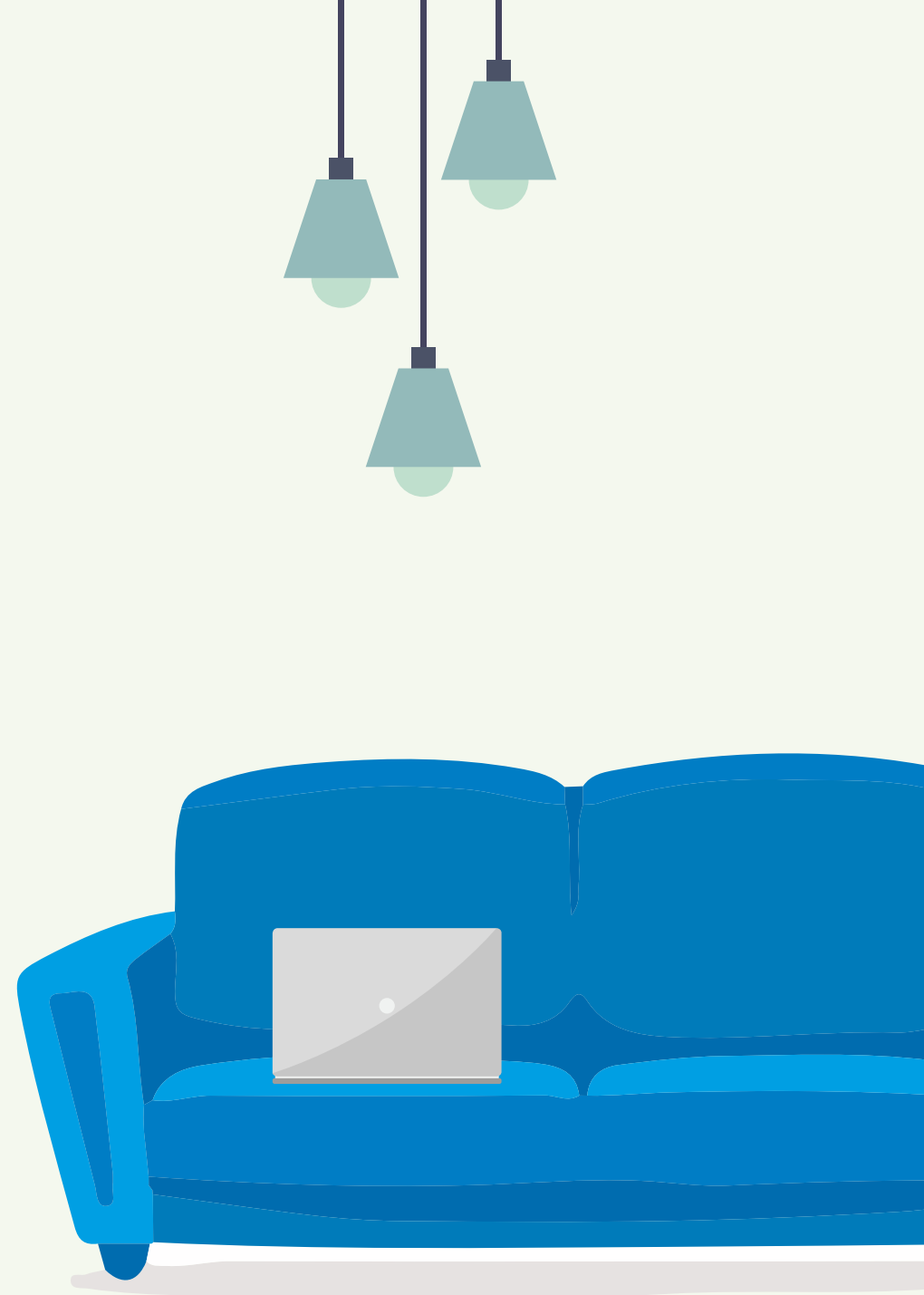


IN THIS GUIDE

	Page
Forward	2
Your Right to Work from Home	4
Employment Contract	5
Health and Safety	6
Mental Health and Wellbeing	7
Sickness	8
Working Time	9
Right to Disconnect	10
Data Protection	11
Monitoring and Privacy	12
Surveillance	13
Equipment	13
Expenses	14
Training and Promotion	15
Where you can get further advice	16



Where you see this icon, click on it to be taken to more detailed information on the internet or a download.



YOUR RIGHT TO WORK FROM HOME

There is nothing in Irish law that gives workers a right to work from home. In other European countries, workers who have completed their six-month probation have a statutory right to request flexible working arrangements and their employer has a legal obligation to give their request serious consideration. Here in Ireland, flexible working including **your right to work from home is solely at the discretion of your employer.**

A 2019 EU Directive on Work-Life Balance gives carers and working parents with children up to eight years old a right to request flexible work arrangements.¹ However, there is no obligation on your employer to agree to your request. Not all jobs can be completed remotely. Ireland must make the requirements of the directive national law by August 2022. ICTU is lobbying Government to go beyond the minimum requirements and to extend the right to request flexible working arrangements to all workers.

If your employer allows some staff to work from home the right to request this arrangement must be open to all staff. Your employer's refusal of your request must be based on fair and objective criteria. Remember, there are jobs that

require a physical presence and cannot be done successfully from home. Importantly, your request cannot be refused on any of the nine grounds prohibited under the Equality Act e.g. because of your age or family status, etc.

If your employer wants you to switch from office-based working to working from home, under contract law they cannot unilaterally decide to change your contract of employment. You or your trade union representative and your employer must agree to this change in terms.

For more detailed information see: EU Directive on work-life balance for parents and carers.



¹ Working parents returning from parental leave have a right to request flexible work arrangements under the Parental Leave Act, however any arrangement agreed by their employer is for a time limited period.

EMPLOYMENT CONTRACT

Your place of work and working day are specified in the statement of your main terms and conditions of employment which your employer is legally obliged to give you when you commence employment.

After reaching an agreement with your employer to switch to working from home for all or a substantial part of the working week on a permanent basis, your employer must give you the details of the changes to your contractual terms and conditions of employment in a revised statement within one month of bringing the new working arrangement into operation. If you are occasionally working from home, such as one day per week, this should also be reflected in a revised statement.

If your working hours are changing from fixed periods to a flexible starting and finishing time this should also be specified in the revised statement.

It is recommended that you and your employer undertake a trial period in order to see how the new working arrangement would work in practice before a final decision is made and for the arrangement to be reviewed at regular periods. It is common for employers to retain the right to terminate the arrangement if it is appropriate to the business needs. You should also have the right to opt-out if your circumstances change.

For more detailed information see: Terms of Employment (Information) Act 1994.



HEALTH AND SAFETY

Your employer has a legal duty of care for their staff and needs to provide a working environment that is safe and without risk to your health, as far as is reasonable possibly. This duty of care extends to locations other than the employer's premises, including your home when remote working.

Your employer must carry out a health and safety risk assessment to determine that your work can be safely performed from home. To fulfil this obligation, your employer will require you to complete a checklist or risk assessment form of your home environment when you begin working from home and from time to time.

Specialised equipment and any PPE needed to carry out your work safely from home, such as a proper chair to prevent a work-related injury, should be provided by your employer.

You too are responsible for taking reasonable care of your own safety and maintaining a safe working environment. You have a duty to follow all instructions provided by your employer on safe work practices to reduce risk to yourself and others who may be affected by the work you are doing.

You are responsible for notifying your employer of any risks or hazards and work related accidents immediately. Your employer should have a system for reporting and investigating accidents and injuries incurred during work hours and arising from or while performing work activities in your home.

For more detailed information see: Safety, Health and Welfare at Work Act 2005.



MENTAL HEALTH AND WELLBEING

Your employer also has a duty of care for your mental health and wellbeing at work.

Workers working from home are at greater risk of experiencing loneliness, feeling socially and professionally isolated and more stressed compared to workers in an office setting.

Employers should check-in frequently, monitor workloads and keep an eye out for signs of underlying stress. Some employers put in place virtual social events such as online fitness sessions, relaxation webinars and virtual coffee breaks. These team-building types of events can promote regular contact and interaction between colleagues, a sense of belonging, reduce stress and heighten productivity while remote working. However, they can feel manufactured or “force fun” for some people. While all workers should be invited to take part, your employer should not make participation mandatory or “strongly encouraged”, especially if the activity is happening during your breaks or outside work hours.

It is recommended that you work on-site for one or more days weekly/ monthly (as appropriate) to protect against a sense of disconnection from the organisation and isolation from colleagues arising.

If your work-related stress is as a result of bullying or sexual harassment, your employer’s anti-bullying policy should offer you the option of resolving the matter informally through a trusted person, such as your trade union representative or specified person.

For more detailed information see: Safety, Health and Welfare at Work Act 2005.



SICKNESS

Workers working from home are more reluctant to call in sick when they are feeling unwell because they fear they will appear to be taking advantage and so are more likely to keep working whilst sick or injured. **If you are unwell, you should take sick leave to give yourself some work-free time to recover.**

When working from home the normal sick leave notification procedures and entitlements apply. Your employment contract should clearly state these rules e.g. state the specified person you must contact if you are sick and unavailable for work, if your employer provides sick pay and the length of time you can get sick pay.

If you have sufficient PRSI contributions, you can apply to the Department of Social Protection for Illness Benefit.

For more detailed information see: Citizens Information Guidance on Sick Leave and Sick Pay.



WORKING TIME

Working from home arrangements often include flexible starting and finishing times outside of standard business hours to accommodate the worker, such as to allow for school drop offs.

However, **flexi-working arrangements must be in compliance with working time legislation.** Your employer is required to keep a record of the hours worked by all staff, even when you are working from home. This information includes your starting and finishing times, rest breaks, daily breaks and weekly breaks.

At a minimum, you are entitled to a daily rest period of 11 consecutive hours per 24-hour period. A weekly rest period of 24 consecutive hours per seven days, following a daily rest period. A 15-minute break where more than 4.5 hours have been worked and a 30-minute break where more than six hours have been worked, which may include the first break.

When working from home you are responsible for assisting your employer in complying with their obligations. Your employer may ask you to record your starting and finishing times and breaks. You should cooperate in keeping these records and return them to your employer on a weekly basis. Be self-disciplined, work only your contracted hours, take your breaks and rest periods.

Annual leave entitlements remain unaffected and normal notification procedures should apply.

For more detailed information see: The Organisation of Working Time Act.



RIGHT TO DISCONNECT

Much of the same technology that enables us to work remotely also makes us reachable outside of work hours.

Workers regularly report answering out-of-hours telephone calls, emails and to other electronic messages. This is particularly common among remote workers who can feel under pressure to appear to be constantly available for fear of being judged negatively.

When the occasional intrusion on your personal time becomes constant this becomes a health and safety issue.

If you are overtired, you are a danger to yourself and others.

While a right to disconnect is not in Irish law, your employer has a legal duty to curtail your working pattern if it results in you breaching the maximum working hours.

To further help tackle the always-on culture, if your working flexi-hours outside of standard business hours when working from home bear that in mind when contacting others. Consider including a note within your email signature that you are not expecting a response outside of their working day.



DATA PROTECTION

The risk of cyberattacks and confidentiality breaches are heightened when workers work remotely.

Your employer should take extra measures, such as ongoing staff ICT training and providing virus-protected and encrypted laptops with the proper software installed, to ensure data security outside of their premises is in line with GDPR. Secure shredding will also need to be facilitated.

You need to make yourself fully familiar with your employer's data protection policy which should clearly define confidential information and set out your duties as an employee to protect that information and specific guidance on how to maintain confidentiality while working from home, such as safely storing your laptop and files, making sure that any visitors to your home don't see any sensitive material you are working with, and ensuring your wifi is password protected.

For more detailed information see: Data Protection Commission Guidance Note for Controllers on Data Security.



MONITORING AND PRIVACY

Trust is crucial for working from home arrangements to be effective. Employers, remote workers and their office-based colleagues need to trust each other that work will be completed in a timely and effective manner and that productivity does not suffer because of remote working.

To build mutual trust it is important that your employer sets and communicates clearly defined expectations, goals and deadlines. Protocols around your performance indicators, a straightforward way to monitor performance and times and methods for maintaining contact should be discussed and agreed between you or your trade union representative and your employer.

Your employer is entitled to monitor your activities, within limits. For example, monitoring your use of the company's phone and email, and your social media activity.

However, **all monitoring must be necessary, legitimate and proportionate** to your right to privacy. That is, while your privacy at work is protected by law this right is balanced against the right of your employer to protect their business's reputation and appropriate use of resources.

Your employer's ICT policy should clearly make you aware of any monitoring and should set out why monitoring may take place, the nature of the monitoring, how information will be used and who will have access to it.

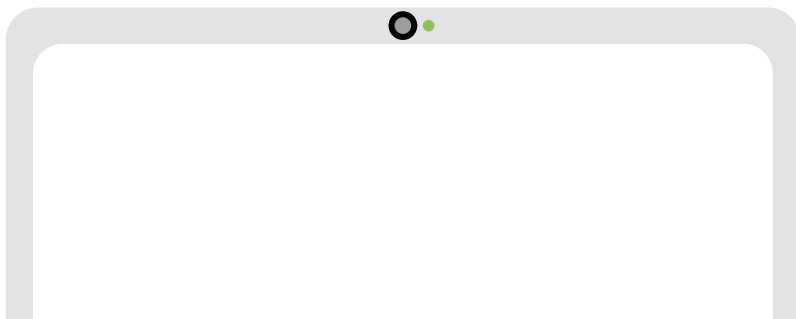


SURVEILLANCE

Software products are increasingly being used by employers to measure workers keyboard and mouse usage, web browsing activity and to monitor for keywords or topics in workplace chat channels. Practices that facilitate employers to watch over remote workers, such as requiring a laptop camera and microphone to be always on and at the ready for supervisors spontaneously checking-in that they are actively working, are also not uncommon.

The use of surveillance products and practices must comply with the transparency requirements of data protection law and not breach your right to privacy in the workplace. Covert workplace surveillance should only happen in extreme cases, such as if there are grounds to suspect criminal activity or serious malpractice, and only for a limited period of time.

For more detailed information see: Citizens Information Guidance on Surveillance in the Workplace.



EQUIPMENT

Your employer is responsible for providing, installing and maintaining the tools you need to do your job from home, and any specialised equipment to prevent a work-related injury.

For desk work, your employer should supply you with a computer or laptop, software, a suitable desk and chair as well as a business telephone and broadband. Certain workers will also require stationery, printer, scanner and other materials.

Your employer should put in place a point of contact for repairs, tech support and other issues arising with business equipment.

Revenue do not consider equipment you receive from your employer as a benefit in kind, that is you are *not* liable to pay any tax, where private use is minimal. You are responsible for making yourself fully familiar with your employer's ICT policy on the use of company equipment.

Your home insurance provider is unlikely to cover business equipment supplied by your employer. Your employer will have to extend their business insurance to cover their property used by you in your home.

EXPENSES

Your employer can reimburse you a daily allowance of €3.20 tax-free to cover the business costs from working from home, such as higher heating and electricity bills. For five days working from home this amounts to €16 per week, up to €64 per month, and up to €768 net for the year. However, payment of this allowance is at the discretion of your employer, it is **not** mandatory.

If your employer does not reimburse you the €3.20 daily allowance you are **not** entitled to claim this flat-rate sum from Revenue. Instead, a claim for actual incurred costs can be made. Any claim you make to Revenue must be supported by receipts such as utility bills. Revenue will accept that 10 per cent of the household expenditure is business related.

If your expenses are higher than a €3.20 daily allowance paid to you by your employer, they can repay you these additional expenses, but the extra amount is subject to PAYE, PRSI and USC.

ICTU is lobbying Government to make payment of the daily allowance by employers to workers mandatory, and to review the adequacy of the amount.

If you use only part of your home for remote working, your home remains your Principal Private Residence there is no liability for Capital Gain Taxes when you sell.

For more detailed information see: Revenue guidance for employees working from home.



TRAINING AND PROMOTION

Remote workers are at risk of being overlooked for training and promotion opportunities compared to their office-based colleagues. Research has been shown this to happen more frequently when their manager does not work from home.

You should have the same access to training and career development and be subject to the same appraisal policies as comparable colleagues working in the office.

It is recommended your employer should provide training to develop the skills needed for remote working, such as self-management, online presentations, video conference meetings, and protecting data and maintain confidentiality while working your home.



WHERE YOU CAN GET FURTHER ADVICE


For free and confidential advice on working from home and all employment rights issues:

- Trade union members can contact your workplace union rep or union's head office.
- Members and non-members can contact the Irish Congress of Trade Unions at 01 889 7777 or congress@ictu.ie

Irish Congress of Trade Unions
31/32 Parnell Square
Dublin 1
Ireland

Tel: +353 1 8897777 Email: congress@ictu.ie

www.ictu.ie

 @irishcongress