



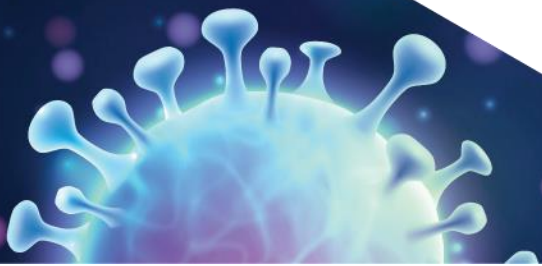
International
Labour
Organization



Namibian Employers' Federation



► **An employers' guide on
working from home
in response to the
outbreak of COVID-19**



How to use this guide

This guide has been developed by the Namibian Employers' Federation (NEF) in collaboration with the International Labour Organization Bureau for Employers' Activities (ILO-ACTEMP) to provide practical guidance to member companies that have implemented "working from home" protocols for their staff in 2020 as an alternative temporary arrangement during the COVID-19 crisis. It has been specifically adapted and customised from "Employer's guide on working from home in response to the outbreak of COVID-19" published by the ILO-ACTEMP, with reference to the relevant laws, regulations, practices and guidelines in Namibia, particularly the Labour Act 11 of 2007 and the Employees' Compensation Act 30 of 1941.

Companies have implemented working from home protocols as preventive measures or in response to the order or directive of the Government restricting face-to-face contact. This guide provides recommendations for companies, including the duties and responsibilities of employers and workers, considerations, and challenges, and how to address and manage those challenges. It also provides a sample template for companies to enable them to develop a bespoke working from home policy.

In the guide, in addition to the Namibian laws and regulations, there are references to International Labour Standards and Recommendations, these are internationally negotiated labour standards that form the basis for many national labour laws.¹

Disclaimer: The responsibility for opinions expressed in this guide rests solely with their authors, and the publication does not constitute an endorsement by the International Labour Office (ILO) or the Namibian Employers' Federation (NEF) of the opinions and guidance expressed in them. Reference to names of firms and commercial products and processes does not imply their endorsement by the ILO or NEF.

¹ See this link for further information <https://www.ilo.org/global/standards/information-resources-and-publications/lang-en/index.htm>

► Foreword by the President

In only a few months' time, the coronavirus (COVID-19) pandemic has had a devastating economic, social and health impact across the globe. Hundreds of thousands of lives have already been lost, and the end of this crisis is not yet in sight. From the outset, the Namibian Employers' Federation (NEF) has been working with our members across the country to assist them in managing the negative economic, social and health implications of the COVID-19 crisis.

NEF will continue to provide support throughout this crisis. Our priorities throughout the crisis are to:

- provide strong leadership to ensure the health and sustainability of the workforce and our communities;
- represent the interests and needs of business in crisis to Government with innovative and quick action, measures and solutions;
- support business during this period with relevant information and services as well as opportunities for remote networking and engagement with peers as these alternative arrangements are becoming universal.

This guide is the latest example of our commitment to our members.

Employers navigate a complex and evolving landscape. In our daily discussions with government representatives, we are prioritizing measures to support business continuity. This is particularly critical for the hospitality, retail and related sectors that have already suffered a very significant demand shock.

Difficult decisions are being made each day and people's safety must always come first. We urge our members to implement government measures as speedily and effectively as possible and implement positive action wherever possible.

This guide has been designed to help our members respond to a "new normal" that is changing day by day. Many companies are relying on "working from home" arrangements for the first time. Some are thriving while others are struggling to adapt. I hope this guide can provide timely assistance.

Finally, I would like to thank the International Labour Organization for their assistance in developing this guide.

Yours sincerely,



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Elia Shikongo

President of the Namibian Employers' Federation

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► Introduction

The coronavirus (COVID-19) pandemic continues to severely affect public health and cause unprecedented disruptions to economies and labour markets. In line with the advice from the World Health Organization (WHO), many steps have been taken worldwide to contain the spread of the virus. Governments have implemented measures ranging from physical distancing, restrictions on the freedom of movement and the closure of non-essential companies and undertakings, to the lockdown of entire cities in different parts of the world. As the pandemic evolves, so have the measures governments have taken to address it.

The Government of Namibia declared a State of Emergency² on 17 March 2020 imposing travel restrictions, suspended non-essential services and activities and restricting people movement. Partial and nation-wide lock down³ were also imposed in late March and April 2020 with additional precautionary measures to combat the spread of the virus. The various measures taken to curb the virus have impacted business operation. Even though the lock down restriction has been gradually uplifted since 5 May 2020 to reopen the economy, certain restrictions⁴ and social distancing guidelines are still in place to minimise the spread of the virus.

Reducing face-to-face contact is an important action to mitigate the impact of COVID-19. According to the International Labour Organization (ILO), around 68 per cent of the world's total workforce, including 81 per cent of employers, are currently living in countries with recommended or required workplace closures.⁵ In this new environment, employers have to be able to adapt and make contingency plans to respond to new measures as they arise. Many companies are exploring working from home (WFH) as a temporary or alternative working arrangement.

1. What is working from home?

WFH is a working arrangement in which a worker fulfils the essential responsibilities of his/her job while remaining at home, using information and communications technology (ICT). For the purpose of this guide and in the context of the COVID-19 pandemic, the term "working from home" is used to refer uniquely to home-based teleworking as a temporary, alternative working arrangement. It requires a shared responsibility and commitment by both employers and workers to ensure business continuity and employment.

2. How is working from home different from teleworking, telecommuting, or remote working?

Progress in ICT has enabled and facilitated alternative working arrangements, including WFH, teleworking, telecommuting and remote working. These terms are often used interchangeably to refer to new and evolving models of working outside the employers' premises or workplace. There may be slight differences among these terminologies. For example, some may imply a temporary arrangement while others may imply a long-term arrangement. WFH is considered to be home-based telework⁶ the

² Declaration of state of emergency: National disaster (COVID-19) Proclamation 7 of 2020

³ COVID-19 Regulations, Proclamation 9 of 2020.

⁴ Health Directives relating to Covid-19, Government Notice 107 of 2020

⁵ ILO (International Labour Organization), "ILO Monitor: COVID-19 and the world of work. Third edition – Updated estimates and analysis", 29 April 2020.

⁶ Eurofound (European Foundation for the Improvement of Living and Working Conditions) and ILO, *Working anytime, anywhere: The effects on the world of work* (Luxembourg and Geneva, 2017).

difference being that teleworking may include various locations away from the primary worksite or the employer's premises (such as mobile working).⁷ Telecommuting refers to substituting telecommunications for commuter travel. There are some differences between the terms "teleworking" and "telecommuting", mainly because telework is broader and may not always be a substitute for commuting, but they are relatively minor. For the purposes of this guide, the terms "teleworking" and "telecommuting" are used interchangeably.

"Telecommuting, also called telework, teleworking, working from home, mobile work, remote work, and flexible workplace, is a work arrangement in which employees do not commute or travel to a central place of work, such as an office building, warehouse, or store".

- source Wikipedia

3. Are all jobs suitable for working from home arrangements?

When worksites and premises are closed across the entire company as a precautionary measure or as a result of a government directive, companies may be able to implement WFH arrangements to achieve continuity of service, maintain productivity, and preserve jobs while safeguarding the safety and health of workers. The ILO estimates that close to 18 per cent of workers have occupations that are suitable for WFH and live in countries with the infrastructure to enable WFH.⁸

The responsibility for WFH arrangements is shared, and it requires the commitment of both employers and workers to make it successful. Both employers and workers should be practical, flexible, and sensible to each other's situation when implementing WFH arrangements.

Before rolling out WFH arrangements, employers should first assess if it is possible and practical for the job functions and the jobholder, as follows:

- ▶ Identify the job functions and tasks that can be done off-site. This may involve innovation and creativity to do things differently from the norm.
- ▶ Assess mechanisms for connectivity such as regular videoconferencing calls and other means.
- ▶ Assess the infrastructure, facilities, and tools available for WFH, such as Internet connectivity and the availability of reliable power supply.
- ▶ Assess the legal requirements, obligations, and potential liability, taking into consideration the worker's situation and the job functions, equipment and tools needed⁹.
- ▶ Assess the worker's situation in terms of safety and health in his/her domestic environment and actual ability to carry out the tasks required at home.
- ▶ Consider the potential impact of the worker's living arrangements. For example, workers may have child or dependent care responsibilities, relationship strain or domestic violence, long-term health conditions or disabilities.
- ▶ Assess any mental health concerns or possible future concerns that could arise through a work from home arrangement.

⁷ Jon C. Messenger (ed.), *Telework in the 21st Century, an Evolutionary Perspective*, ILO Future of Work series, (Edward Elgar and ILO, 2019).

⁸ ILO, "Working from Home: A potential measure for mitigating the COVID-19 pandemic", Policy Brief, April 2020.

⁹ Employers should consider whether the home workspace is insured. Many employer liability policies will encompass WFH arrangements, but this should be verified. Employees may alternatively be covered by their personal home insurance policy.

It is important to note that while advances in ICT have enabled WFH, not all job functions and tasks can be done outside the employers' premises or the specified workplace. There are companies, occupations, and tasks where WFH is not practical or feasible, or it cannot be deployed in a short time frame.

Employers need to explore and implement an alternative plan for job functions and tasks that cannot be performed remotely, or for workers who have limitations at home or health and safety issues that prevent WFH. Employers are encouraged to discuss with workers, or unions if applicable on the alternative plan. Employers may consider advising the workers to take the accrued annual paid leave, unpaid leave, or any other applicable leave. The **Labour Act 11 of 2007** provides procedures for annual leave but not unpaid leave. However, Company employment contracts and policies may have provisions for unpaid leave and other leave entitlements which could be utilised in the situation.

4. How are companies adapting to implementing WFH arrangements?

Some companies may have previous experience in implementing WFH arrangements or they may already have emergency WFH plans in place. However, many companies are likely to be implementing WFH arrangements for the first time, and they need to adopt WFH arrangement quickly and urgently across the entire company. For example, a survey conducted in March 2020 of 250 large firms in Argentina found that 93 per cent had adopted teleworking as a policy in response to the COVID-19 pandemic. Similarly, the Indian business process outsourcing giant, Tata Consultancy Services, reported that around 85 per cent of its 400,000 employees in India and elsewhere in the world were working from home as a result of lockdowns.¹⁰

Although many companies recognize the benefits of WFH, some have had difficulty making the transition. In Japan, for example, a survey conducted prior to the 7 April announcement of a state of emergency, found that while 96 per cent of respondents agreed with the importance of WFH or working remotely, 31 per cent of companies were unable to adopt this form of working. The main reason was that paperwork was not digitized and the required internal rules and procedures for teleworking were not ready. Concerns over confidentiality of information or possible security breaches can also limit the use of WFH. Many small and medium-sized enterprises (SMEs) also struggle with WFH, and several recent surveys demonstrate this. The Argentine SME Observatory for example found that SMEs use telework much less than by large companies.¹¹

According to Mercer's 2020 Global Talent Trends Study, only 22 per cent of companies were ready for mass remote working prior to the outbreak of COVID-19. The study also found that only 44 per cent of companies systematically assess jobs for their adaptability rather than allowing flexibility to be determined by the worker's circumstances. Such assessments can help companies design flexibility into a job in a systematic manner, balancing the needs of the company and its workers.

"During Stage One of the lockdown period in Namibia, the NEF team and I needed to work from home. We seamlessly adapted to this arrangement, and apart from a few technical glitches, we experienced no problems at all."

¹⁰ ILO, "Working from Home".

¹¹ ILO, "Working from Home". The Argentine SME observatory found the use of telework to be only 55 per cent of SMEs in the service sector, 24 per cent of SMEs in industry and 23 per cent of SMEs in retail trade.

Many of our members also adapted with ease to work from home arrangements, especially the commercial banks who had to allow almost half their staff to work from home. A work from home arrangement is however not always possible.

Workers in the tourism, construction and aviation sectors who need to deal with clients on a face-to-face basis or must be on-site to do the work cannot engage in work-from-home arrangements.”

- Daan Strauss, NEF Secretary General

5. Are workers obliged to observe the company's directive to work from home?

Normally, WFH arrangements are implemented on a voluntary basis between employers and workers, often accompanied by a signed agreement setting out terms and conditions. In the current situation, however, WFH has been mandated in many parts of the world as a temporary public health measure.

In accordance with Article 19(a) of the **Occupational Safety and Health Convention, 1981 (No. 155)** and Section 41 of the **Labour Act 11 of 2007**, workers are legally obligated to cooperate with the employer to secure a safe and healthy working environment in support of relevant statutory provisions, collective agreements or company policies. Workers are also responsible for taking care of their own health and safety and the safety of others, using devices and protective equipment, and complying with the policies set forth by the employer. Additionally, in accordance with Paragraph 16 of the **Occupational Safety and Health Recommendation, 1981 (No. 164)**, they should report any hazards or issues as soon as possible following the employer's reporting procedures. It is important to be clear that the workers' obligations and responsibilities apply even in the informal surroundings of WFH arrangements.

Therefore, when WFH is required to minimize the spread of a pandemic, workers must cooperate and comply fully with preventive measures or directives, take reasonable care of their own safety and the safety of others and observe company policies.¹²

6. What are employers' responsibilities when implementing working from home arrangements in response to COVID-19?

It is important to note that temporary WFH arrangements do not require any permanent adjustment to the terms and conditions of employment. The arrangements can change in response to updated directives and the evolving needs of the company. Employers should consider modifying or developing a company policy or guidelines to provide clear guidance on implementing WFH arrangements (see annex for a template). They should communicate the policy effectively to all workers, and any changes to the policy should be communicated as early as possible.

Many countries around the world have begun legislating aspects of WFH/remote working arrangements, working conditions, the rights and responsibilities of employers and workers. For example, in the Netherlands, the Working Conditions Decree concerns paid work performed in the worker's living quarters or another place chosen by the worker outside of the employer's premises. It includes the employer's duty of care to check on the worker and ensure legal obligations under the Decree are met. In Poland, the provision of the Labour Code that addresses “telework” emphasises

¹² In Singapore, a new COVID-19 (Temporary Measures) (Control Order) Regulations 2020 was passed on 7 April requiring companies to implement WFH, when possible, and making it an offence if a company does not implement remote working measures if the job scope allows it.

that the location of work is away from the premises of the employer and is based on services rendered by electronic means, while in Austria, “telework” is regulated through working-time legislation, rather than as a separate issue.¹³ In March 2020, Chile enacted a law regulating teleworking, granting legal certainties to both employers and workers in teleworking arrangements and specifying their rights and responsibilities. For example, employers' obligation includes bearing the costs of operation, functioning, maintenance, and repair of equipment.¹⁴

“Where possible, I will always recommend a work from home solution as there are many benefits to be had – reduced costs, much more flexibility, increased speed in getting things done, no commuting on a daily basis, better work-life balance and more focus – less stress.

A word of caution though – managers will have to ensure that they have built sufficient levels of trust in their staff, that staff is capable to execute self-discipline in planning, productivity and observing deadlines. Also, that staff is skilled in the required technologies”.

- Daan Strauss, NEF Secretary General

If there is no specific legislation on WFH, employers are advised to consult provisions in existing laws and regulations particularly the ***Labour Act 11 of 2007*** and the ***Employees' Compensation Act of 1941*** and the relevant directives and guidelines issued by the Government.

¹³ Examples from the Netherlands, Poland and Austria were drawn from: ILO, *Ensuring decent working time for the future*, General Survey concerning working-time instruments, Report III (Part B), Committee of Experts on the Application of Convention and Recommendations, International Labour Conference, 107th Session, (Geneva, 2018) p. 744.

¹⁴ Dentons, “[Chile Telework law](#)”, April 2020.

(a) **Safety and health of workers**

Employers have a duty of care for all their workers and need to, insofar as it is reasonably practicable, provide a working environment that is safe and without risks to physical and mental health. This includes assessing, controlling and mitigating risks in locations other than the normal workplace, such as the worker's home during WFH. Employers should also remind workers of their duties and obligations under their contracts of employment and applicable policies, in particular, their obligations and duties in relation to health and safety.

Labour Act 11 of 2007

Section 39: Employers duties to employees

- (1) Every employer or person in charge of premises where employees are employed must, without charge to the employees –
 - (a) provide a working environment that (i) is safe, (ii) is without risk to the health of employees; and (iii) has adequate facilities and arrangements for the welfare of employees;
 - (b) provide and maintain plant, machinery and systems of work, and work processes, that are safe and without risk to the health of employees;
 - (c) provide and maintain safe entry and exit from places of work;
 - (d) provide employees with adequate personal protective clothing and equipment if reasonably necessary;
 - (e) provide employees with the necessary information and training to work safely and without a risk to their health;
 - (f) ensure that the use, handling, storage or transport of articles or substances is safe and without risk to the health of employees;
 - (g) ensure that employees are given the necessary instructions and supervision to work safely and without a risk to their health;
 - (h) ensure that the organisation of work, including hours of work and mealtimes, do not adversely affect the safety or health of employees; and
 - (i) take any other prescribed steps to ensure the safety, health and welfare of employees at work.
- (2) Every employer must report to a labour inspector in the prescribed manner, whenever
 - (a) there is an accident at any place where the employer's employees work; or
 - (b) a prescribed disease is contracted at any such place.

Even though it may be difficult for employers to carry out traditional health and safety risk assessments at a worker's home in the current context, it remains the employers' responsibility to check that:

- ▶ the work asked to be performed is one that can be safely performed from home;
- ▶ adjustments are made to the tasks, if needed, to ensure that they are safely doable when WFH;

- ▶ workers have the right equipment and tools to work safely at home, including the required protective or safety equipment, where applicable;
- ▶ arrangements are made to ensure the company's equipment, if taken home to facilitate WFH, is accounted for and returned in the condition it was provided;
- ▶ workers have relevant information, instruction, supervision and training, including measures to deal with emergencies;
- ▶ reasonable accommodations are made for workers with disabilities in relation to the work they are required to perform from home;
- ▶ arrangements are made for workers' physical and mental welfare;
- ▶ consult the representative of the safety and health committee with regards to arrangements and measures to ensure safety and health of workers¹⁵.

To facilitate WFH during COVID-19, Spain established an exceptional temporary legal measure allowing WFH risk assessments to be carried out by the worker based on a provided checklist¹⁶.

Employers should establish a system for reporting and investigating injuries, illness or other accidents that occur because of work activities. Additionally, employers should be aware of any increased health and safety risk that may arise from WFH during the COVID-19 pandemic. This could include heightened psychosocial hazards connected to WFH, including a potential rise in occupational stress. It could further encompass increased odds for an incident of domestic violence to occur due to economic hardship and changed family demands at the household level and forced confinement to the home. There are also reports in some countries of increased domestic violence and abuse during COVID-19 lockdowns.¹⁷

Employers should keep in regular contact with their workers and keep them apprised of any resources they may have. For example, some employers maintain employee assistance programmes that provide for confidential counselling and referral services.

Gender-Based Violence (GBV) in Namibia amid COVID-19

In spite of initial concerns raised about an expected increase in GBV reported cases during the national State of Emergency Stage 1 Lockdown, surprising statistics were delivered with regard to GBV cases. According to statistics provided by the Namibian Police Force on GBV, gathered during the months of March and April 2020, the country overall experienced a decrease of approximately 69% in reported GBV cases during the month of April. The Lockdown Stage 1 began on 30 March 2020 in Khomas and Erongo regions and later spread to the entire country along with a ban on the sale of alcohol. Despite the overall decrease, the country experienced increased cases reported in two regions (Khomas (9%) and Zambezi (38.7%)), while five regions experienced significant decreases in reported cases (Karas (42%), Hardap (88%), Erongo (22%), Otjozondjupa (43%) and Kavango West (100%)).

¹⁵ Section 45 of the Labour Act 11 of 2007

¹⁶ ECIJA, COVID-19 Spain: FAQs for business.

¹⁷ The News International reported that in China's Hubei Province, police reports on domestic violence tripled during the coronavirus outbreak. In Brazil, state-run drop-in centres recorded a 40 per cent surge in cases attributed to COVID-19 isolation.

The table below reflects the actual numbers as recorded by Namibian Police Force:

REGION	MARCH	APRIL
Erongo	53	12
Hardap	51	6
//Karas	24	10
Kavango East	36	20
Kavango West	10	0
Khomas	84	91
Kunene	4	5
Ohangwena	42	30
Omaheke	10	4
Omusati	29	26
Oshana	31	28
Oshikoto	20	23
Otjozondjupa	21	9
Zambezi	12	31
TOTAL	427	295

(b) Tools, equipment, supplies, and technology

Employers should provide workers the specific tools, equipment, supplies, and technology needed for performing the required tasks when implementing WFH arrangements unless the terms and conditions of employment, collective agreement, or company policy state otherwise.¹⁸ Additionally, employers should see to the repair of such tools and equipment if necessary. The type of equipment and set-up required depends on the business and work involved. This may include a laptop, computer monitors, software, phone, access to the Internet, headset, access to host applications, and other applicable equipment as deemed necessary. In other situations, it may include the delivery of equipment and the installation of technical devices required for the job.

Employers could consider setting up a separate help desk or support email address where workers can forward issues related to workplace tools, equipment, and technology to seek help and support when needed. Employers should also make clear that the use of equipment and tools provided by the company for WFH is limited to the worker only and for work performance only.

(c) Home working setup and related expenses

WFH expenses traditionally are not reimbursable under most national laws and practices. However, in the current pandemic situation, WFH may be necessary and result in workers incurring related expenses. In the absence of legislative requirements or government directives requiring employers to reimburse workers for WFH expenses, employers should consider reimbursing workers for their reasonable and necessary home office expenses incurred in performing required tasks. This may include a portion of the expenses associated with:

¹⁸ ILO, *Final report: Global Dialogue Forum on the Challenges and Opportunities of Teleworking for Workers and Employers in the ICTS and Financial Services Sectors*, GDFTWEFS/2016/9, p. 28. "Employers should unless there is an agreement to the contrary with the worker, shoulder the hardware and software costs."

- ▶ mobile phone or landline costs
- ▶ Internet costs
- ▶ personal computer or tablet
- ▶ teleconferencing software or hardware

However, employers may exclude home office expenses which are mainly for the convenience of the worker, which may include a faster Internet connection, additional computer monitors, ergonomic chairs, or printers.¹⁹ Employers should ensure the company policy specifies which expenses it will cover for WFH situations. The policy could specify that workers must seek the company's prior approval for the reimbursement for expenses incurred in WFH situations.

(d) Worker's compensation

The ***Employees' Compensation Act 30 of 1941***²⁰ provides for compensation in respect of work-related injuries or industrial diseases contracted by workers out of and in the course of their employment or for death resulting from such accidents and diseases. The Act requires every employer to register, assess and contribute to the fund in respect of liability as a result of his workers suffering injury or death in the course of employment²¹. Generally, when WFH is implemented, any injury caused by accident incurred during work hours and arising from or while performing work functions in the designated work area of the house should be covered by worker's compensation insurance.

Employees' Compensation Act 30 of 1941

Related Laws & Regulations

Year	Law Title	Sub-Category	Origin
2011	<i>Employment Services Act 8 of 2011</i>	N/A	Namibia
1996	<i>Namibia Qualifications Authority Act 29 of 1996</i>	N/A	Namibia
2007	<i>Labour Act 11 of 2007</i>	N/A	Namibia
1998	<i>Affirmative Action (Employment) Act 29 of 1998</i>	Affirmative Action	Namibia
1992	<i>Development Brigade Corporation Act 32 of 1992</i>	Development Brigade Corporation	Namibia

¹⁹ Norton Rose Fulbright, "COVID-19: Working from home and employer reimbursement of remote-work expenses in California and beyond", March 2020.

²⁰ Any reference to the Employees' Compensation Act 30 of 1941 in this guide is subject to the amendments made in Employees Compensation Amendment Act of 1995.

²¹ Section 68, 69, 72 and 74 of the Employees' Compensation Act 30 of 1941.

Overall, the number of workers' compensation claims could fall during the pandemic, as fewer people are working. But that effect is unlikely to be felt uniformly across all industries, and the workers' claims may not be limited to COVID-19 exposures. Employers may face additional challenges in limiting work-related injuries during WFH due to a lack of oversight of work environments and the increased potential for improper use of equipment and in-home distractions. These challenges may be compounded by the current pandemic, which has contributed to rising anxiety and mental stress and forced many workers to share makeshift home workspaces with spouses, children, and pets.

After consultation with various labour experts, the NEF reached consensus that the Compensation Act, in providing for compensation in respect of work-related injuries or industrial diseases contracted by workers out of and in the course of their employment or for death resulting from such accidents and diseases, is equally applicable to those employees working from home.

Employers would be well advised to apply creative thinking in establishing procedures for their staff working from home. The following are suggested;

- An employer needs to set down clear guidelines as what hours will constitute working hours.
- An employer will need to indicate which steps an employee is compelled to take when he/she stops working to attend to any other issue, such as collecting a child at a day-care/school or taking a child for a soccer practice.
- An employee should know what he/she is permitted to do or not to do or how to report the start/stop of a working activity.
- An employer should set down guidelines in respect of what will happen if an employee uses his/her own transport to attend to a work-related matter.
- An employer should indicate in clear terms whether overtime will be allowed or what will happen in the event of an employee working longer than he/she should have, (for e.g. a meeting running late).
- An employer will have to provide guidelines for what an employee must/should do to ensure his/her own safety at home in respect of a robbery/burglary or assault at home as well as when using work related equipment.

(e) Liability

The worker's home workspace may be considered an extension of the employer's workspace in a WFH arrangement. The employer could be liable for accidents that arise out of and occur within the course of employment when the injury takes place in the worker's home workspace during work hours. The timing, location and circumstances of the injury are important considerations to evaluate. If the injury occurred during regular working hours, in a location where the employer anticipated the workers to perform work and was in the midst of performing a required duty, employers may be held liable.

In addition to the workers compensation insurance mandated by the ***Employees' Compensation Act 30 of 1941***, some companies are also insured under the employers' liability insurance, which sometimes known as employment practices liability insurance, that protects employers from financial loss if their workers sustain job-related injury or illness that involves expenses not covered by workers'

compensation. Employers are advised to review its existing employers' liability insurance to ensure it covers workers WFH.

The employer should ensure the company policy on WFH assumes no liability for injuries arising in the worker's home workspace outside the agreed work hours or any loss, destruction, or injury that may occur to the home of the worker. This includes family members, visitors, or others that may become injured within or around the worker's home.

7. What are workers' responsibilities when working from home?

Convention No. 155

Article 19

There shall be arrangements at the level of the undertaking under which—

- (a) workers, in the course of performing their work, co-operate in the fulfilment by their employer of the obligations placed upon him/her;
- (b) representatives of workers in the undertaking co-operate with the employer in the field of occupational safety and health;

...

Recommendation No. 164

Paragraph 16.

The arrangements provided for in Article 19 of the Convention should aim at ensuring that workers—

- (a) take reasonable care for their own safety and that of other persons who may be affected by their acts or omissions at work;
- (b) comply with instructions given for their own safety and health and those of others and with safety and health procedures;
- (c) use safety devices and protective equipment correctly and do not render them inoperative;
- (d) report forthwith to their immediate supervisor any situation which they have reason to believe could present a hazard and which they cannot themselves correct;
- (e) report any accident or injury to health which arises in the course of or in connection with work.

Workers have the duty to protect themselves and others and to cooperate with their employers in the implementation of preventive and control measures, in accordance with Article 19(a) of **Convention No. 155**. This includes following any information, instruction, or training provided by employers and adopting safe work behaviours, complying with instructions, ensuring good hygiene practices, and using safety devices and protective equipment.

Workers are obliged to notify the employer if they become aware that they are suffering from any disease or physical or mental impairment which affects their ability to do their job and report any accident to management immediately. Workers should also keep in regular contact with their employer and inform of any health and safety risks at home or any need to change the home working arrangement.

Labour Act 11 of 2007

Section 41: Employee duties

Every employee has a duty to -

- (a) take reasonable care to ensure -
 - (i) the employee's own safety and health in the workplace; and
 - (ii) the safety and health of any individual who may be affected by the employee's activities at work; and
- (b) co-operate with the employer to enable the employer to perform any duty imposed under this Chapter or the regulations.

In addition to safety and health, the general obligations and responsibilities of workers, including those stipulated in the ***Labour Act 11 of 2007***, the terms and conditions of employment, the collective agreement or company's policies shall be applicable in a WFH arrangement. These responsibilities may include:

- ▶ complying with the company policy or guidelines on WFH, if any;
- ▶ complying with all existing policies and regulations, including safety and health policy, ICT and data protection policy, intellectual property, use of company tools and equipment policy;
- ▶ taking care of one's own safety, physical and mental health and well-being;
- ▶ restricting working time to those agreed with the employer and in line with the working time provisions in the ***Labour Act 11 of 2007***;
- ▶ fulfilling all normal duties or alternative duties assigned;
- ▶ practicing work-life balance, and staying active and connected;
- ▶ being available and accessible during work hours, and maintaining regular and timely communication with managers;
- ▶ refraining from holding meeting with customers or other workers at home without the company's approval;
- ▶ making necessary child or dependent care arrangements;
- ▶ taking reasonable care of the company's tools and equipment, including technology, data protection, confidentiality, and security.

8. How do you measure workers' productivity when working from home?

Companies with remote workers are generally concerned about productivity from two angles. Some employers wonder "are they working at all?" while others are more concerned with "are they working efficiently?" Yet measuring the productivity of a remote workforce should not be any more difficult or different than measuring a physically present workforce.

Well managed remote teams can be far more productive than physically managed workers as companies are required to measure productivity by objective metrics than the physical presence of “time in the building”.

Before a company establishes how to track and measures a workers' performance, it should identify what needs to be measured. Choosing the most impactful and qualitative metrics is key.

Measuring productivity based on results requires quantifiable metrics, which can be challenging to define. Some sectors and jobs are easier to define than others. For example, for a sales worker, it is very clear what can be measured and evaluated. In job functions like a call centre representative, a simple metric of calls per hour can be used. However, when workers have varying responsibilities, creating metrics for each worker will be required, with some degree of frequent revision.

Additionally, meeting a measurement does not necessarily equate to productivity. If goals are set too low, a worker accomplishing the desired result may not be working at full capacity. Just because a worker is connected to the office by a virtual private network (VPN) does not mean work is being performed.

Performance is best determined by outcomes, and whether a worker is meeting measurable benchmarks or goals. Like any goal, worker performance cannot be achieved if no one knows what it is. The key to working well with remote workers is to be very clear and specific with all expectations.

Consideration should be given to how long it will take to know if someone is productive or not. Measurable results make sense, but the more frequent the measurement, the more susceptible is the feeling of micromanagement. However, measuring too infrequently means that the employer may not be aware of problems that need to be resolved.

Importantly, there are privacy issues that employers need to be aware of regarding workers and workplace monitoring.²²

Labour Act 11 of 2007

Section 130 (*Records and Returns*) requires every employer to keep record of workers which may contain the personal information of the workers including age, wages, qualification, record of performance and other related information.

Section 131 (*Preservation of Secrecy*) prohibits unauthorised disclose of confidential information except legally permitted or authorised.

Five elements to consider in measuring remote workers' productivity include:

- ▶ Set and communicate clear goals and deadlines in the same way with workers in a physical workspace.
- ▶ Form plans to increase accountability.
- ▶ Analyse important tasks and track progress on a time bound basis.

²² In the European Union, the General Data Protection Regulation provides strong data protection and privacy for citizens.

- ▶ Evaluate quality and quantity instead of time worked – shift the metrics to "tasks accomplished and their quality" versus "hours spent".
- ▶ Track achievements.

9. What are the main challenges in implementing working from home arrangements and what considerations should be made to address and manage them?

There are multiple benefits associated with WFH, including: the reduction in commuting times; greater autonomy and flexibility in the organization of work; a better work-life balance; increased motivation and reduced turnover; and enhanced productivity and efficiency.²³ In addition, reduced travel associated with WFH leads to a reduction in carbon emissions.

However, in such an unexpected and urgent situation as the COVID-19 pandemic, both employers and workers may be unprepared physically, mentally, or infrastructure-wise to meet all challenges posed by WFH. According to a recent survey conducted by the Society for Human Resource Management (SHRM), 71 per cent of employers are struggling to adjust to remote work; 65 per cent of employers say maintaining employee morale has been a challenge; and more than one third of employers are facing difficulties with company culture, employee productivity and leave regulation.²⁴

It is therefore highly recommended that employers develop a workplace policy to provide clear guidelines and address the challenges. In addition, employers should regularly assess the effectiveness of the company policies and guidelines. Workers should regularly communicate challenges experienced with the company policies and guidelines to their employers.

"The Corona Pandemic that hit the globe in early 2020 took everyone by surprise, and no economic sector could, or did prepare for it in any form.

When faced with the reality of a global travel ban and subsequent national lockdown, the tourism sector could in some form or other transfer administrative and bureaucratic functions to technological communication; as such the tourism industry, both locally and abroad, connected via zoom meetings to engage on cancellation policies, strategies going forward, while the marketing team worked on virtual tours and marketing products that could be shared via social media in the absence of personal contact. Administrative staff could also do book-keeping and correspondence from home, provided they were equipped with both computers and internet connectivity, which did pose a challenge, even in urban areas at times.

However, the heart of the tourism sector, hospitality, working with dreams of people and converting them into reality by warm hospitality, sharing space and experience of a country, its people, places and products physically, with all the sounds, touches and tastes that go with it, can never be replaced by technology, and tourism was left with no other option but to allow hospitality staff members to go & stay home. And because tourism activity is by the nature of its product decentralized, this meant that the apart from emergency / skeleton maintenance staff, the housekeeping and service staff were left with nothing to occupy and fill their working time with, - their duties and work basically banned through the international travel ban and lockdown.

²³ Eurofound and ILO.

²⁴ See www.shrm.org/resourcesandtools/pages/remote-work.aspx.

People-to-people industries, such as the tourism, hospitality, and catering industry, are difficult to keep active and connected during lockdown and intense travel restrictions, as the whole essence of their being is suddenly obsolete. Tourism needs tourists and open borders, - and as much as communication and sharing of motivational messages and encouragement to do skills development may have helped maintain some form of optimism, - the insecurity and lack of perspective as to the end of the global travel restrictions, has posed immense challenge on the tourism industry, both financially, and morally”.

- Gitta Paetzold, CEO Hospitality Association of Namibia

(a) **Communication**

Advances in ICT have enabled and facilitated WFH arrangements, yet ICT cannot overcome every limitation amid the rapid changes in the current situation. While employers and workers are both making efforts to keep up with the latest developments, changes announced by the Government or policy changes by the company could cause confusion among workers, especially if the changes could impact business operations or the expectations on workers, such as new restrictions on the movements of people. There are a range of software tools that make communication, collaboration, and transparency easier. Many are free or low cost.²⁵

Communicate regularly

Communication should be quicker and much more frequent when WFH arrangements are in place. This improves collaboration and builds the necessary trust to successfully roll out new ways of working. Employers should do the following:

- ▶ Designate communication channels to enable the business to communicate with staff during WFH as necessary and ensure consistency of messages.
- ▶ Keep an up-to-date registry of contact details of all workers (phone number, email address, or physical address).
- ▶ Communicate with all workers regularly to keep them informed of updated developments related to COVID-19 and its impact on company operations, including any change in company policies.
- ▶ Encourage an exchange of views and ideas on business continuity strategies.
- ▶ Hold periodic virtual meetings to update workers on the situation, review work and agree on how to deliver the company's services. This will also help workers to feel less isolated during WFH.

(b) **ICT equipment and workstation set-up**

Staff may experience technical challenges, such as connectivity problems, if WFH arrangements were deployed quickly and possibly in an unorganized fashion. The COVID-19 pandemic makes it difficult for employers to plan ahead and allocate sufficient time for optimum preparation for WFH arrangements. Issues may arise where companies, especially SMEs, may lack the required communication infrastructure or sufficient equipment for all staff to work from home at the same time.

Establish shared responsibilities, commitment, and mutual understanding

²⁵ Slack for team collaboration and instant messaging; Zoom for video conference calls with team members and customers; Google Suite for email, document collaboration, file storage, shared calendar; Mural for team brainstorming workflow collaboration; Trello for project planning etc.

Employers should seek cooperation, ideas, and commitment from workers as to how they can best address and overcome the above-mentioned challenge²⁶ while ensuring business continuity and preserving jobs. Workers may have limited resources for WFH, or their home may offer a less optimal working environment than the workplace would (for example, it may be situated near a noisy construction site or factory or workers may have multi-generational household or cramped living conditions that are not conducive to WFH). Therefore, employers need to understand and assess the limitations that staff encounter and adjust expectations, responsibilities, and tasks accordingly.

(c) **Data protection and security**

While the use of technology has enabled and facilitated WFH, it also presents higher risks of cyber-attacks and confidentiality breaches. Safe WFH processes are essential, especially if workers are using their personal laptops or devices to perform official duties and connect to the company network. Some companies have an existing data protection, confidentiality, and security policy for this purpose.

Protect cybersecurity and privacy

Employers need to ensure that:

- ▶ data security is maintained even during WFH;
- ▶ a robust information technology system is in place with the necessary safeguards, including the safe transmission of confidential data outside the workplace;
- ▶ computers used for work have proper software installed, including anti-virus protection, secured virtual private networks or firewalls against cyber threats;
- ▶ workers are aware of the company data protection policy, if any;
- ▶ workers have the required skill to use the ICT in accordance with company policy. Reminders and online training can be used to refresh skills in this area.²⁷

Data Protection and privacy in Namibia

Namibia recognizes the right to privacy as a fundamental human right under Article 13 of the *Namibian Constitution*.

Even though it has not enacted comprehensive data privacy legislation, the various sector-specific laws are in place to protect client information, including in the legal and banking sectors²⁸.

(d) **Staff management and possible abuse of WFH arrangement**

As more and more companies choose to (or are required to) offer WFH arrangements during the COVID-19 crisis, issues of trust often advance to the frontline of workplace discussions. This is because WFH can impact the trust equation between workers and managers because the task of management is more challenging. In the absence of face-to-face contact, the traditional “command and control” style of management becomes less relevant and managers may struggle to find other

²⁶ IBEC (Irish Business and Employers Confederation), “Remote Working during Covid19 outbreak – IBEC outline of key considerations”, 11 March.

²⁷ IBEC.

²⁸ DLA Piper: The government is currently drafting a Data Protection Policy to protect citizens against abuse of their personal data and to regulate extraterritorial data transfers. The Ministry of Information and Communication Technology (MICT) is expected to finalise a draft Data Protection Bill in either 2019 or 2020.

ways to make sure that workers are getting their work done during WFH. If workers do not feel a sense of belonging during WFH, they may also distrust their managers and company leadership. This may lead to the manager's loss of control, and certain workers may abuse the WFH arrangement. Hence, workers' self-discipline and mutual trust and confidence between employers and workers are essential in this working arrangement. Furthermore, the effective management of WFH requires a results-based management approach. This involves identifying objectives, tasks, and milestones, and then monitoring and discussing progress without overly burdensome reporting requirements.²⁹

Build mutual trust and shared responsibilities

The "glue" that holds WFH arrangements, together is trust. Managers, workers, and their colleagues need to trust each other. WFH cannot be effective without it. Employers should build mutual trust and establish shared responsibilities with workers through open and transparent discussions about expectations and outputs, including:

- ▶ when workers will be available and be responsive;
- ▶ how they will keep in touch, such as online and telephone contact;
- ▶ how work-life balance will be managed, for instance through regular breaks and switching off from work at the end of the day;
- ▶ how performance and reporting will be managed, taking into consideration worker's circumstances where necessary;
- ▶ who workers should contact if they have any work-related issue;
- ▶ who workers should contact if they have an emergency type situation.

Employers must also recognize some workers may find it hard to motivate and organize themselves when working from home. If this happens, the manager and worker should talk about practical steps to overcome those obstacles.³⁰

"A word of caution onwards till end is that remote working requires trust as well as digital infrastructure – trust in people's reliability, capability and motivation".

(e) Organization of working time

The organization of working time is essential, but it could be challenging, especially for workers with specified work hours or hourly paid wages.

The ILO report, *Ensuring decent working time for the future*³¹ referred to the European Union Framework Agreement on Telework, provides that the working time of teleworkers should be within the framework of the applicable national legislation, collective agreements and company rules. Teleworkers manage the organization of their working time and can do their work at times that are most convenient for them, while remaining contactable during the normal business hours of the organization. Performance standards of the teleworker are equivalent to those of comparable workers at the employer's premises. The report also indicated that Singapore and Sweden regulate telework,

²⁹ ILO, "Keys for effective teleworking during the COVID-19 pandemic", March 2020.

³⁰ ACAS (Advisory, Conciliation and Arbitration Service), "Working from Home".

³¹ ILO, *Ensuring decent working time for the future*, p. 743.

including work hours and rest provisions, through collective bargaining or guidance issued by public authorities.

Labour Act 11 of 2007

Part C of the ***Labour Act 11 of 2007*** governs the Hours of Work.

Section 16: Ordinary Hours of Work (maximum weekly and daily hours of work)

Section 17: Overtime (conditions for overtime work and overtime rate)

Section 18: Meal Intervals (At least an hour of meal interval after 5 hours of continuous work)

Section 19: Night Work (conditions of night work and rate of payment)

Section 20: Daily spread-over and weekly rest period

Section 21: Work on Sunday (the conditions and procedures for work on Sunday)

Establish self-discipline and close monitoring

While some degree of flexibility should be deployed in a WFH arrangement, employers should:

- ▶ establish an expectation of the worker's self-discipline and compliance with the agreed work hours;
- ▶ ensure work hours and rest breaks occur in line with the ***Labour Act 11 of 2007***, collective agreements, or the company's terms and conditions of employment;
- ▶ ensure that workers record the total hours worked for each day or week;
- ▶ consider deploying online attendance or using email to record work hours.³²

(f) Occupational safety and health

As indicated in section 6(a), employers generally are responsible for the safety and health of workers at the workplace and during work hours. However, during WFH, supervisors are unable to ensure the health and safety of workers because they are not present at the employer's workspace. Participants in the Global Dialogue Forum on the Challenges and Opportunities of Teleworking for Workers and Employers in the Information and Communications Technology and Financial Services Sectors, held in Geneva in October 2016, included this among their consensus points: "Occupational safety and health conditions are more difficult to monitor and control in teleworking arrangements, especially where the home is also the workplace."³³

Furthermore, for a majority of individuals who are working from home for the first time, getting the correct home office set-up presents a challenge. Sometimes, space within the home is limited and office space may double as a dining space, kitchen counter or general use area. Other times, a desk and chair may be present but without the adjustability needed to provide a suitable long-term work environment. Ergonomic risks can be exacerbated as workers may not have access to the same ergonomically friendly equipment as inside the company's premises. For both employers and workers, the use of proper ergonomics can be overlooked while implementing WFH arrangements during COVID-19, possibly increasing the risk of injury or health problems to workers. Employers should consider how they could mitigate the potential for injuries to address potential ergonomic concerns for workers.

³² IBEC.

³³ ILO, *Final report: Global Dialogue*, p. 28.

Promote awareness and ensure compliance

Employers should do the following:

- ▶ provide information and training on health and safety issues particularly relevant for workers in WFH arrangements (e.g. ergonomics, working in isolation, general fire and electrical safety issues);
- ▶ ensure that workers are aware of or provided with relevant information about their general obligations with regards to safety and health including taking care of their own health and safety and the safety of others;
- ▶ ensure that workers are aware of and comply with the company's safety and health policy, if any, including the procedures for reporting work-related accidents and ill health or any health and safety concern;
- ▶ review the company's safety and health policy, if any, and ensure it has provisions covering the worker's home when WFH arrangements are in place;
- ▶ ensure workers are aware of the company's liability under the ***Employees' Compensation Act 30 of 1941*** and their liability insurance for injuries that occur in the worker's home during the WFH hours;
- ▶ provide on-going evaluation of offsite workers' workstation and offer guidance and monitoring of ergonomic conditions (however, managers will need to respect workers' home privacy);
- ▶ offer ergonomics and safety training or resources to change work habits and improve the physical home-based work environment.

(g) Health and mental well-being

During the COVID-19 pandemic, many workers may be experiencing full-time WFH for the first time, while they are also isolated from co-workers, friends and sometimes even from family. Their daily living routines have been disrupted, which may cause added stress, tension, and physical and mental strain.³⁴ The impact of these stressors is even stronger in the current economic situation. When companies are adversely affected there can be increased redundancy, lay-offs, and terminations, causing workers to feel further anxiety, uncertainty, and insecurity, which may result in feelings of depression. The situation is aggravated during mandatory and prolonged WFH when lockdowns prevent people from going out and social life is limited. Studies have indicated that being unable to interact with friends and isolation from colleagues are key disadvantages in WFH.³⁵ Company policies on WFH should incorporate measure that respond to those factors.

Promote health and well-being and be supportive and understanding

It is important to stress that physical distancing does not require social isolation. While it is important for workers to find new ways to work and interact, employers must recognize the impact of isolation and loneliness, hence they must be supportive and empathetic, and keep workers informed, connected and mentally healthy. Employers may consider taking the following actions:³⁶

- ▶ regularly contacting workers to make sure they feel supported and being available, accessible and willing to listen when workers need support;

³⁴ WFH may impact a worker's mental health such as from changed family demands, relationship strain or family and domestic violence.

³⁵ Jon C. Messenger (ed.), *Telework in the 21st Century, an Evolutionary Perspective*, ILO Future of Work series (Edward Elgar and ILO, 2019) p. 303.

³⁶ WorkSafe Victoria, "Minimising the spread of coronavirus (COVID-19): Working from home", 23 March 2020; ILO, "Work from home: human factors/ergonomic considerations for teleworking", 20 April 2020.

- ▶ creating opportunities for team communications by using online tools or apps to establish team-wide chat groups, for example;
- ▶ providing workers with appropriate control and flexibility over how they do their work;
- ▶ offering information and practical tools to support positive mental health, including access to the employee assistance programme;
- ▶ appropriately responding to signs of workers' distress and providing workers with a point of contact to discuss their concerns;
- ▶ raising awareness of workers' responsibility to take care of their own physical and mental well-being during WFH, including encouraging workers to stay physically active, eat well and regularly go outside for fresh air.

Companies may consider issuing a policy guideline on WFH, addressing the physical and mental health and well-being of workers, or they may refer to available resources on health and well-being during WFH.³⁷

(h) **Work-life balance**

WFH can help workers to achieve a better work-life balance as they avoid long and stressful commutes between home and the workplace, and they have more time for family. Other benefits of WFH include increased worker satisfaction, productivity and loyalty, and reduced staff turnover.³⁸ While WFH arrangements have a great deal of potential, the reality is often more complicated, especially when WFH arrangements are implemented to contain a pandemic and not necessarily because the workers voluntarily chose it. Maintaining work-life balance may be a particular challenge for those with family care responsibilities due to closures of childcare facilities and schools, and in the absence of alternative care arrangements.

Often, WFH leads to a blurring of the boundaries between work and personal life, an increase in work hours and an intensification of work. Thus, WFH can interfere with private life and cause work-life conflicts that can be challenging for workers' well-being and affect overall work performance. A survey of teleworkers in Japan shows that the issue of the ambiguity of working time and time off was the highest-ranked disadvantage of remote working.³⁹

The worry and stress of “work without end” are being recognized and regulatory measures have been introduced in response to separate paid work and personal life.⁴⁰ For example, France introduced the “right to be disconnected” in the 2017 revision of its Labour Code. It is therefore crucial that the employer has clear guidelines on working time arrangements that are in line with national legislation.

Promote work-life balance and be supportive

While there may be some measures taken at the national level addressing work-life balance, employers should do the following:

- ▶ set clear expectations of work hours and encourage and empower workers to set boundaries on his or her work schedule;
- ▶ promote a healthy lifestyle and work-life balance, including regular breaks and rest, exercise and fresh air;

³⁷ See American Psychiatric Association Foundation, Center for Workplace Mental Health. “[Working Remotely During COVID-19: Your Mental Health and Well-being](#)”.

³⁸ Eurofound and ILO.

³⁹ Eurofound and ILO, p. 301.

⁴⁰ ILO, *Ensuring decent working time for the future*, p. 747.

- ▶ provide mental well-being support to workers who experience work-life conflict;
- ▶ for guidance, refer to the applicable laws and regulations or the relevant guidelines promoting healthy work-life balance, such as those issued by the occupational safety and health or mental health department.

(i) **Performance and productivity**

Benefits of WFH for workers typically include less time spent commuting, fewer interruptions, and greater flexibility. Thus, WFH could lead to better performance and increased productivity and engagement, which could improve workers' satisfaction and reduce turnover. However, WFH implemented in response to COVID-19 lockdown measures may be different in practice. Additional care responsibilities of working parents may dramatically increase due to school closures. Working parents may need to be involved in home-schooling, surveillance, and care of children of school-age or there may be more than one family member sharing the same space for online schooling or teleworking. The worker's family responsibilities, having to share working spaces, or even strains in relationship or domestic violence may interfere with his or her job responsibilities, alter working schedules, and affect work performance and productivity.

Change productivity mindset and be flexible and reactive

Employers could consider providing expanded support to parents and caregivers at this time. Employers may be able to provide flexibility, including changing the measures on productivity by focusing on outcomes delivered rather than on working time. Employers may also use collaborative online tools, such as shared calendars and public status to facilitate teamwork and boost productivity.⁴¹ Workers must adapt to their new WFH arrangement and environment and ensure the essential job responsibilities are fulfilled. Any issue on performance should be openly discussed between managers and workers.

(j) **Caring for children and dependents**

Working parents may have competing responsibilities between WFH their employer and caring for children whose school or day care is closed. It is unlikely that workers would be able to adequately perform their jobs while simultaneously performing dependent care duties. Employers and workers should agree on arrangements that would enable the worker to effectively perform the required work meeting the employers' expectations while still being able to undertake care activities at home. Employers should be sensitive to the worker's situation, especially when WFH is implemented on short notice and workers had little time to prepare or make the required child or dependent care arrangement.

Be responsible and adaptive

Workers must communicate with their supervisors about their situation and determine whether modifications to WFH arrangements are necessary to balance the responsibilities of work and family care.

It is important for employers and workers to address the situation and agree on a more flexible WFH arrangement. For example, work hours can be scheduled around the needs of the family, temporary changes can be made to the work terms for a reduced workday or work hours and reduced targets, or the employer can be flexible about deadlines where possible. Some governments are adopting

⁴¹ International Organization of Employers (IOE), "IOE Guideline on Teleworking in the times of Covid-19", Apr. 2020.

legislation allowing workers to take special paid leave⁴² or unpaid leave without risking their jobs if they have to care for children or if they are unable to work due to COVID-19.

(k) Skills, staff training and development

Staff training and development play an important role to ensure workers are equipped with the required knowledge and skills to keep up with the latest information and technologies. Workers may need to develop technical skills to use communications tools for WFH when it is implemented in response to COVID-19.

Promote a learning culture

Depending on the specific sector and context, different ICT skills will be required during WFH. Online training, remote coaching, peer-to-peer learning and ongoing support for software and other tools⁴³ may be required to ensure workers develop the necessary skills and abilities to perform effectively from home. Employers should make use of ICT and online training tools and apps for regular contact with workers, and provide necessary training, coaching, or mentoring and ensure workers are motivated, developed and recognized.

(l) Keep up with the Government's policy and directives

The COVID-19 pandemic has significantly impacted the operation of companies. Many are struggling to sustain themselves, leading to temporary shutdowns or closures. Companies may have to implement WFH as a preventive measure or in response to the Government's orders and directives. Governments should allow a certain degree of flexibility and provide an assistance scheme to facilitate the implementation of the WFH policy. For example, the government of Malta, provided financial support to employers to partially cover the costs of technology and teleworking solutions incurred to implement telework during COVID-19. Employers are granted up to € 500 per teleworking agreement and maximum € 4,000 per employer to cover 45 per cent of the eligible cost (e.g. purchasing and/or leasing of computer hardware, communication solutions such as VPN) incurred between 15 February and 8 May 2020⁴⁴.

Engage in policy discussion

Companies all over the world are at the front line of a new way of working. It is happening in real time and in a less than optimal fashion. Companies have little time to respond to an enforced and necessary situation. Overall, the usual ways that workers and management would agree on WFH arrangements have been discarded.

For some companies, WFH can be a benefit for their bottom line. A company that can run its entire operation staffed by workers who (mostly) work from home will no longer need to lease large office spaces and long commutes will also be gone. Some companies will be able to hire a geographically diverse workforce without providing additional office space and without incurring any expense to relocate them.

During this challenging time, it is crucial that companies play an active role in providing constructive inputs in policy recommendations. It is critical that company experiences with WFH are shared with NEF to facilitate its discussion with Government in any policy consultation including possible revision

⁴² Seychelles passed the Employment (Coronavirus special leave temporary measure) regulations 2020, introducing special leave for workers to care for the school-age children during the COVID-19 pandemic.

⁴³ IOE.

⁴⁴ Lexology, "Telework-Legal framework and financial support in view of COVID-19", 28 March 2020.

to the existing laws and regulations or introduction of new regulation or directive in response to COVID-19.

Companies across the country are adapting to the use of WFH arrangements, in some sectors of the economy this has undoubtedly been easier than others. But we are in a high-speed learning environment and NEF will consistently collect the experiences from members and relay to policymakers the concerns and needs of the business community.

10. Should working from home continue after COVID-19?

The response to the COVID-19 pandemic is, among other things, a massive experiment in WFH arrangements. While some jobs cannot be done at home, the outbreak is accelerating the trend toward teleworking, possibly for the long term. Employers and workers are likely to adapt to and become more comfortable with WFH, learn to use ICT for WFH, and understand the benefits of WFH. Workers may even be able to maintain the same or higher levels of productivity during WFH. In mid-April, a survey was conducted in the United States of more than 1,200 full-time employees experiencing WFH during the pandemic. It found that nearly half of the respondents wanted to keep working remotely. More than 45 per cent said their employers are actively considering or are open to this strategy. Among respondents, 40 per cent had been teleworking regularly at least one day per week before the COVID-19 pandemic.⁴⁵

The WFH arrangements implemented by employers due to the COVID-19 response is temporary. Workers will normally be obliged to resume normal working arrangements when the situation permits and as directed by employers. Employers however may want to assess the benefits and challenges of WFH during this pandemic and decide on a case-by-case basis and in consultation with workers or unions, if any, on the feasibility of implementing regular WFH arrangement, if workers request it.

⁴⁵ SHRM, "Will Employees Continue Working from Home After COVID-19? One Company Says Yes", 30 April 2020.

► Annex: Working from home policy template⁴⁶

A working from home (WFH) policy is a key element for an effective contingency plan to ensure business continuity, productivity, and job preservation. It is drafted based on applicable laws and regulations particularly the **Labour Act 11 of 2007**, **Employees' Compensation Act 30 of 1941**, collective agreement and company's policy or terms and conditions of employment, and subject to change in response to the changing directive and needs of the company.

The following template aims to provide a practical guide to company that intends to develop a company's policy on WFH. While there is no one-size-fits-all solution to respond to ongoing changes, the template lists out the main components to be included in the policy and other elements for consideration to suit the different situations and needs of the company.

(a) Purpose

Describe one or two sentences that explain why the company is implementing WFH. It is important to note that WFH is not a formal or universal workers' entitlement but an alternative temporary arrangement for business continuity in response to an emergency, such as the current COVID-19 pandemic and forced shut down, and is subject to change as the situation develops.

For example:

- *This WFH policy is in effect due to the COVID-19 pandemic and Government's directive recommending work from home when feasible. This policy will be reviewed when the directive or business needs change.*
- *WFH is not a universal workers' entitlement but an alternative temporary arrangement in response to the COVID-19 pandemic.*

(b) Definition

Provide a definition of WFH in the current context of COVID-19. Refer to the definition in the relevant laws and regulations, if any.

In short, WFH is a working arrangement that workers working from their home, using ICT and still fulfil the essential responsibilities.

For example:

- *WFH is a working arrangement in which a worker works from home, using ICT, and still fulfils essential work responsibilities.*

(c) Scope and application

Provide statements on when and to whom the WFH policy is applicable, limitations and conditions, including other applicable and existing policies. It is important to note that it is at the discretion of the company to implement the WFH arrangement.

⁴⁶ Adapted from *Telework Toolkit, Guide to Writing a Telework Policy*.

For example:

- ▶ *WFH does not change or replace the terms and conditions of your employment or the required compliance with the existing company policies, rules, and practices.*
- ▶ *This policy applies to all workers undertaking remote work from home. All workers should be familiar with the contents of this policy.*
- ▶ *The implementation of the WFH arrangement is at the sole discretion of the company.*
- ▶ *The company reserves the right to change, modify, or discontinue the arrangement for any worker at any time as it deems fit, upon which the worker shall resume the normal working arrangement.*

(d) **Eligibility**

Include a statement on the eligibility of workers to perform work remotely from home. It is important to state that the WFH arrangement is implemented as a response to COVID-19 to contain the spread of the virus, ensure continuity of service and productivity, minimise adverse impact to work quality, production, or service quality. Based on the suitability of the jobs, the home environment, and the manager's ability to manage remote workers, there may be workers who are not eligible for WFH.

For example:

- ▶ *WFH is implemented in response to COVID-19 as a preventive measure to contain the spread of the virus and to ensure the continuity of business and productivity of our workforce.*
- ▶ *While efforts are being made to accommodate all workers into WFH, there will be some workers who may not be eligible for WFH due to the specific roles or the job function or situation surrounding the home environment that made it not practicable to perform work from home. The departmental manager will be in direct contact with the workers regarding eligibility for WFH.*

(e) **Main elements for consideration**

1. Compliance to company policies

Most companies have existing policies on a range of workplace obligations. It is important to note that all workers on WFH must comply with existing company policies as applicable.

For example:

All workers on WFH must abide by existing company policies, which include:

- ▶ *Occupational safety and health*
- ▶ *The use of ICT, data protection and confidentiality*
- ▶ *Intellectual property*
- ▶ *Company's Code of Conduct*
- ▶ *Use of company's tools and equipment, such as laptop, software, and so on*
- ▶ *Social media*
- ▶ *Anti-discrimination/ anti-harassment/ equal opportunity*

2. Compensation and work hours

WFH should not change the normal work hours, compensation, benefits, or work responsibilities. However, it should be noted that due to the current circumstances, some flexibility may be required

with the agreement between the manager and worker concerned and in compliance with the **Labour Act 11 of 2007** and company policy.

For example:

- ▶ *The working hours, compensation, benefits, and work status and responsibilities of workers shall remain unchanged.*
- ▶ *Due to the current situation, some flexibility in working hours may be permitted with the approval of the company.*
- ▶ *Upon application by workers and if feasible, the manager may agree on specific work hours, provided the total weekly work hours remain unchanged, and in compliance with the company's existing policies.*
- ▶ *Any changes to the total weekly work hours shall be approved by the human resources department.*

3. Safety and health

Employers have the duty to provide a safe and healthy working environment, thus should ensure the home workplace is safe. Employers should look after the health of their workers, including mental health. It is also important to note the duty of workers to protect themselves and others and to take care of their own safety, health, and mental well-being.

For example:

- ▶ *All workers must abide by the company's safety and health policy (if any) during WFH arrangements.*
- ▶ *All workers have the responsibility to take care of their own physical and mental well-being during WFH and ensure they are physically active, eat and sleep well, and exercise regularly.*
- ▶ *It is important for all workers to maintain work-life balance, stick to the agreed work schedule, and take a necessary break and rest to stay active and healthy.*

4. Equipment, tools and supplies

The company's position with regards to equipment, including hardware, supplies, or furniture should be outlined. It should address if, and under what conditions, the company will provide the equipment for the workers to perform their duties from home. This may include computer hardware, computer software, phone lines, access to the Internet, access to host applications, and other applicable equipment and supplies as deemed necessary. It should also highlight the duty of workers to care for the equipment and to use the equipment as authorized.

For example:

- ▶ *The company will provide the required tools and equipment for the workers to carry out the job function from home. This includes computer hardware, software, access to the Internet, access to host application, and so on.*
- ▶ *The use of equipment, software, data supplies, and furniture, when provided by the company are for use by the authorized persons and for purposes relating to company business only.*
- ▶ *Workers have the duty to take good care of such tools and equipment and shall contact the company (technology dept or manager) if there is any issue with regards to the equipment, software, or connectivity.*

5. Technology, data protection and security

The use of technology for WFH can present higher risks of cyberattacks and confidentiality breaches as well as increased risk of cyberbullying. Most companies have data protection, confidentiality, security, and an anti-harassment policy for this purpose.

For example:

- ▶ *It is important that all workers on WFH read, understand, and abide by the company ICT policy to safeguard data protection, confidentiality, and security.*
- ▶ *All workers on WFH must take up the ICT online training, which is accessible for all workers.*
- ▶ *All managers and workers on WFH must do no harm when using work-related communication, including those enabled by ICT.*

6. Workstation at home

Company's guidelines and requirements concerning home-office setup, equipment installation, safety, cost, and so on should be taken into consideration when designing a WFH policy.

For example:

- ▶ *The worker shall designate a workspace at his/her home for placement and installation of equipment to be used in a safe condition. This designated area of the home is deemed to be the workplace (all other areas of the worker's home is not classified as the workplace).*
- ▶ *The worker is responsible for following the instructions given by the company on establishing and maintaining a designated workplace in a safe, healthy, professional, and secure manner.*
- ▶ *For reimbursement of expenses incurred, such as remodelling, electrical modifications, or other improvements to the home office workspace must obtain prior approval of the company.*

7. Communication

Communication is critical to remote working. Managers and workers on WFH should agree on how they would be in contact. It is important to note that the workers must be accessible to their managers and co-workers during the agreed core work hours.

For example:

- ▶ *Workers on WFH must be available and accessible to their manager and co-workers during the agreed work hours.*
- ▶ *The manager and the worker shall agree on the communication channel and how they would keep in touch with each other, utilising the ICT available.*
- ▶ *The workers remain obligated to comply with all company rules, practices, and instructions.*

8. Performance standards

Employers should reinforce the standards of performance are expected to be maintained during WFH. However, the company should recognise as the WFH is implemented in such an urgency situation; there could be obstacles at the workers' home that need to be managed. Certain degrees of flexibility should be considered while upholding the standard expected.

For example:

- ▶ *Workers must maintain the same level of productivity and work quality during WFH.*

- ▶ *Professionalism, in terms of job responsibilities, work output, and customer service, will continue to meet the company's high standards.*
- ▶ *Employers recognise there could be obstacles at workers' homes that might impact the work performance; workers who experience difficulties should contact their manager to assess the feasibility of WFH and flexibility required.*
- ▶ *Any adjustment to outputs and performance is at the sole discretion of the manager, taking into consideration the specific circumstances of the workers and the job requirements.*

9. Dependent care and other family responsibilities

The issue of childcare and other personal obligations that may impact WFH should be addressed between the concerned manager and worker. It is, however, important to stress that while the company may be able to extend a certain degree of flexibility, workers must make arrangements for dependent care and family responsibilities to enable WFH. Workers need to manage and adapt to the situation and ensure the essential responsibilities of the job are fulfilled.

For example:

- ▶ *Workers with dependent care and other family responsibilities at home must address the situation with the respective managers and agree on a more flexible homeworking arrangement, such as different work hours, reduced workday or work hours with reduced work targets or flexible deadlines where possible.*
- ▶ *While the company may permit a certain degree of flexibility, WFH may be incompatible with dependent care and family responsibilities. The worker must make arrangements for family care and ensure the essential duties of the job function are fulfilled.*

10. Worker's compensation and liability

Employers generally are responsible for the safety and health of workers at the workplace and during work hours. They could be liable for job-related accidents that occur in the worker's home workspace during work hours. Employers should check applicable national laws and regulations, particularly the **Labour Act 11 of 2007**, the **Employees' Compensation Act 30 of 1941**. Work-related injuries that occur during work hours, and while performing work functions in the designated work area of the home are usually covered by worker's compensation. Employers may consider developing or extending the existing safety and health policy to cover worker's homes during WFH. They should ensure workers are aware of the policy, including the procedures for reporting work-related accidents and ill health or any health and safety concern.

For example:

- ▶ *If the worker is injured while performing work duties during the agreed work hours at the designated work area, the worker is covered under the **Employees' Compensation Act 30 of 1941**. The worker must notify the supervisor immediately and complete the required form.*
- ▶ *The company assumes no liability for injuries occurring in the worker's home workspace outside of work hours, or for any non-work-related injury that might occur in the home, even if it occurs during the worker's agreed work hours.*

11. Emergency and illness

The policy may include a clause providing guidance to workers on what action they should take in the event of an emergency, such as illness and injury, power failure, or loss of Internet connectivity.

Employers may also consider including lockdown or company shut down as an emergency to activate the WFH arrangement.

For example:

- ▶ *The worker on WFH must notify his or her immediate supervisor in the event of any emergency, including illness, injury, power failure, or loss of Internet connectivity.*
- ▶ *If an office closure or emergency prevents workers from commuting to the office or working in the office, upon consultation with their respective manager or supervisor, workers should commence work remotely from home or at any other suitable location, as approved by the company.*

12. Expenses

The WFH arrangement is deployed to ensure business continuity and job preservation and, therefore, it should be implemented with the shared responsibility and commitment of both employers and workers. The employer should make it clear if will bear the expenses of a WFH arrangement, as it may create additional costs for the workers in terms of workstation setup, access to the Internet, electricity, insurance. As reimbursement is at the sole discretion of the employer, the worker must seek approval before any expenses are incurred for WFH.

For example:

- ▶ *The worker must seek approval from the company before any expenses are incurred for and during WFH.*

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