

5 key questions about work-from-home arrangements

When can a request be refused? What accommodations are valid?



With work from home set to become permanent for many, even post-pandemic, what are the main considerations employers will have to contend with when such a request comes in?

Canadian HR Reporter asked Gerald Griffiths, employment and labour lawyer with Sherrard Kuzz in Toronto, about some of the best practices around accommodating employees who wish to work at home more often.

Q: How should employers prepare for a potential flood of requests?

A: “One big one is making sure you do have a remote-work policy in place that addresses how you’re going to manage these issues. The policies to be made clear is the right to recall employees to the workplace when needed and including if there are performance issues, and making clear that it isn’t terms and conditions of employment to have a right to remote work indefinitely.

“A policy should ideally address factors that include the criteria for establishing: when someone’s going to be permitted to work from home; the right of the employer to recall an employee to the workplace; the restrictions on where an employee may perform work including whether that’s in the province of employment; the technology and how that’s going to work; and also ensuring that confidentiality and security protocols are there. And lastly, expectations regarding tracking hours of work, while the employee is working remotely.

“In Ontario, a lot of remote work has effectively been mandated by public health measures. That will change and our ability to revisit the existing arrangements now and those remote-work arrangements may begin to look more like terms or conditions of employment that can be difficult to change.

“It’s important to make sure that you’ve put in place measures to track and ensure the productivity, as well as how it is you’re going to really manage both engagement of your employees and ensure they have a connection to the organization still, which can be really important for retention.”

Q: How should a work-at-home request be handled?

A: “When looking at whether to grant the request, the first factor is whether it is a request that makes sense for the organization and regardless of whether there may be a human rights code-protected ground that may require a remote work arrangement; there may be reasons as an organization that it does make sense to permit some level of remote work.

“As a secondary question but one that is very important, legally whether or not the request for the accommodation is one that is required as part of an employer’s duty to accommodate in those circumstances on the basis of a protected ground of discrimination under the Human Rights Code.”

Q: How should requests for accommodation be handled?

A: “It’s got to be tied to one of the protected grounds of discrimination under the Ontario Human Rights Code and the two most common grounds are disability-related accommodation and family status accommodation.

“For disability-related accommodation, an employee being at higher risk of COVID-19 that’s due to disability puts them at a higher level of vulnerability in relation to COVID-19; that can be a basis for requiring some form of accommodation that could potentially be the remote-work arrangements.



Gerald Griffiths

“But there are also some jobs that won’t permit them to work remotely and, in those cases, the accommodation would be a leave of absence, which is another form of accommodation.

“For the second big category of accommodation requests under the Ontario Human Rights Code is family status accommodation. That can be engaged where an employee has a legal obligation to, for example, supervise children or be around while they’re in online learning. That can sometimes be a basis, it can’t just be a preference to look after children and it might also include varied hours in some circumstances or reduced hours. What’s going to be appropriate or necessary is really all going to turn on factors, which include the nature of the job itself that the employee occupies.”

Q: What are valid and acceptable reasons to refuse work at home requests?

A: “If the request doesn’t engage your protected ground as discrimination or there are other alternate means of accommodation that are available and oftentimes the

core duties of an employee's position can't be performed from home. If that's the case, an employee, even if for a disability-related reason, can't attend at the workplace.

“Another type of request we've seen a fair amount of is from employers having requests or accommodations relating to general anxiety around a return to work in the current public health environment. Those feelings of worry or fear of contracting COVID-19 generally won't be sufficient — employees need to establish the existence of an actual disability and provide detailed medical information about restrictions and limitations.”

Q: How might an employee prove they need to work from home?

A: “In the case of a disability, it can include medical documentation, verifying that it is unsafe for an employee to attend the workplace. Some medical notes may be general and there may be reasons for an employer to follow up and get additional information or challenge the medical information that's provided. It would be within the rights of an employer to request updated medical information.

“An employer is entitled to medical information that's needed to facilitate and engage the duty to accommodate and so that can include the nature of the disability, though generally not the diagnosis. It can include the restrictions or limitations of the employee the prognosis for recovery and those types of factors.

“On the family status accommodation side, the employer has a right to request information about the employee's personal circumstances and why the accommodation is being requested. What are the circumstances with an employee's child that requires, for example, that they stay home? Is it because of the health situation of that child? That may be a situation where you're permitted to request medical information about the child to verify whether or not that accommodation is required.

Canadian HR Reporter has also spoke with experts about how to handle vaccinations at work and how to prevent employee fraud, while working at home.