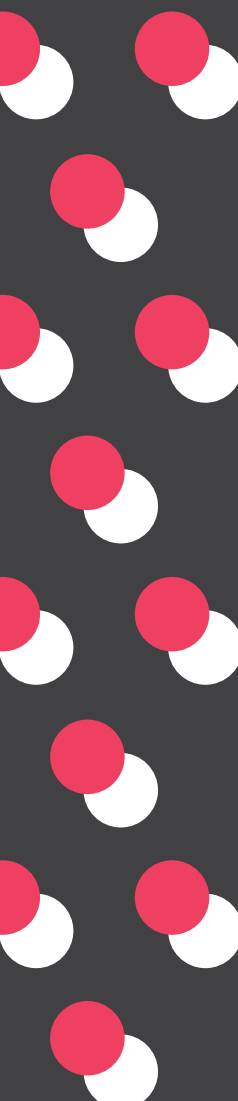




Remote working

Employer challenges and how to overcome them





Remote working – Employer challenges and how to overcome them

The move to more remote working is shaping up to be one of the biggest long term impacts globally of COVID-19 for employers.

Pre-pandemic, roughly five percent of full-time employees with office jobs worked primarily from home. That figure is likely to settle at 20-30 percent in the new normal, with variation across occupations and industries ([Forbes, 2020](#)). Location will become less important in hiring and more workers will live out of city centres, and possibly even outside the country, accelerating and changing geographic trends. The shift in positive attitudes toward remote work is evident in the recent [PwC US Remote Work Survey January 2021](#). In the report 83% of employers now say the shift to remote work has been

successful for their company, compared to 73% in the 2020 survey.

[Stats NZ](#) said in September 2020 that more than 40 percent of employed Kiwis did at least some of their work from home during the COVID-19 level 4 and level 3 lockdown. Looking ahead, remote working will be a key change for post-pandemic New Zealand. There are some important considerations for New Zealand employers around remote working. What does it mean for your business, and what do you need to do to be successful in 2021 and beyond?

In this report we explore the issues and impacts of the longer term move to remote working, and what leaders need to do across four key areas:

Organisational culture and workplace transformation – the need to maintain connectivity and culture as well as supporting professional development of staff, particularly new joiners.

Employment law – the good faith principle still applies so employers must consider whether employment documentation needs to be updated, and revisit health and safety in the workplace, even if that workplace may be at home.

Employment taxes – Inland Revenue has released new temporary guidance while it considers a public statement on “new ways of working”, so employers must be aware of the current tax position and also prepared that there may be change.

Distant (and overseas) employees – with a rise in remote working and a tight domestic labour market, employers are more willing to hire distant workers, but managing tax in different jurisdictions comes with a number of obligations.

Organisational culture and workforce transformation

While many international workforces have faced (and continue to face) lengthy months in and out of lockdown, New Zealand's working from home experience has been relatively short in comparison. It's given us a unique opportunity to trial a fully flexible working environment, so now we must seize this opportunity for change and turn our insights into action while we have the benefit of choice.

There are three key areas that our insights tell us posed the greatest challenge for leadership:



Connectivity



Culture



Development





Connectivity

The absence of shared physical space creates a challenge for leaders to read team dynamics, identify wellbeing issues and build team social connections and belonging.

Structures and cadences such as team meetings, stand-ups and one-on-one scheduled times are the tip of the iceberg. Real value also comes from the informal connections that happen organically within a physical work environment. These moments give rise to learning, information sharing, ideas and problem solving.

They can also give rise to meaningful leadership moments where leaders can connect people, identify wellbeing concerns, or have informal 'check-ins' with individuals. These moments matter and hold immense value, but are impromptu and cannot be scheduled for. The leadership opportunity now is to consider how to proactively recreate and promote these moments (and the space for them) through informal, yet purposeful connections within remote and hybrid team environments.

Organisations can support their leaders by revisiting organisational policies and frameworks to ensure that these enable leaders to practically and simply manage workforce flexibility. This can include removing or addressing the secondary business practices that may obstruct application of flexible delegations and decision rights.

As New Zealand organisations adapt to hybrid workforce flexibility, think about:

- The capability and capacity of leaders to effectively lead a more dispersed and agile workforce.
- Understand and adjust for the challenge operating as a hybrid workforce where teams combine a range of flexible working arrangements.
- Expect some friction as the new balance develops.



Culture

Beyond the interpersonal interactions, leaders also face culture challenges as the traditional workforce model has flexed. Few executives think company culture will survive a purely remote working set up ([PwC's US Remote Work Survey – January 2021](#)). As teams adapt to working remotely, they are leveraging the individual benefits that come with it, such as greater work-life balance in terms of work fitting around life activities. The challenge for leaders now is to maintain, strengthen and harness a sense of belonging across their teams to something bigger.

This is critical not only from a workforce perspective, but particularly so when considering the potential impacts of a passive response to 'the way things happen around here' (culture) on workforce diversity and inclusivity. Leaders need to be mindful that out of sight, out of mind can have significant impacts on team inclusivity and the value that comes from diverse groups. Leaders must not let crisis response become the point around which the team anchors its connection to each other and the organisation.

The ongoing experience of managing the impact of COVID-19 has uncovered many positive opportunities for leaders including matrixed teams that better tap into skills and interests. This includes working around established organisational structures that have unintentionally built in barriers to innovation, collaboration (and engagement), and shifting towards high-trust principled ways of working.

The focus for organisations should be on supporting culture through:

- Actively identifying the development and support needs of their leadership cohorts. This is to enable them to effectively respond to and engage with the changing workforce (and needs) around them.
- Identifying new tools and methods to support those leading hybrid teams, where the workforce has adopted a range of flexible working tools and arrangements such as Kanban boards and StandUps.



Development

Leading into 2020, over 90% of NZ CEOs ([PwC CEO Survey](#), 2019) were increasingly worried about the availability of key skills and knowledge to support their business growth. This is not a new trend.

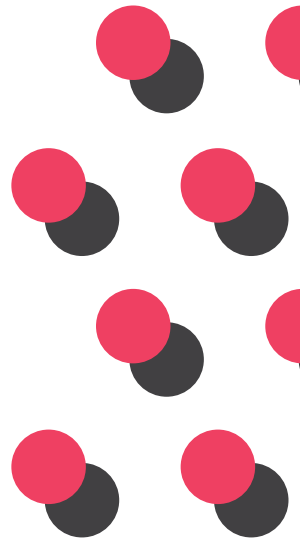
The Future of Work has become a clichéd conversation, centring around technology and skills. The past 12 months has fast tracked this, turning conversation into action. Organisations have adopted technology to enable remote working, which in turn has created new possibilities to source key skills that have otherwise been challenging to source locally.

This has also created a leadership challenge which is inherently linked to connectivity and culture. Specifically, how you develop your new starters, particularly those who are new to the workforce.

A physical office does provide some critical foundations, particularly for those new to the workforce, least experienced or those who thrive best in spaces where there is routine, structure, and well supported opportunities to build important connections and network. It also creates an environment where people learn through what they hear, see and do sitting alongside others.

To mimic a physical office remotely requires leaders to:

- Consciously involve their people, facilitate connections and spend dedicated and regular time coaching. We cannot underestimate the learning and career value that comes from these opportunities.
- Consider how they leverage team networks and technology to facilitate group working sessions.
- Create collaborative spaces which individuals can learn and participate alongside established team members.
- Organisations should be leveraging their insights into agile ways of working gained during COVID shutdown periods. Going forward the focus should be on finding ways to adopt greater flexibility into how and where their people work, including revisiting and assessing the suitability of technology and physical workspaces to enable the best of flexible working (and hybrid teams).





Employment law considerations

While the global pandemic has fundamentally changed the way individuals perform work, employment laws have not changed. This means that employers may need to take extra care in order to meet their statutory obligations.

In particular, the cornerstone principle that governs all employment relationships in New Zealand – good faith – still applies, even if an employee is working from another location. Good faith requires the parties to an employment relationship to be “*responsive and communicative*” with one another – something that requires extra time and effort when an employee is not physically present in the workplace.

Employers should also consider whether their employment documentation needs to be updated to reflect work-from-home arrangements. This includes the legislative requirement that employment agreements specify an employee’s hours and place of work, so a variation to contractual terms may be necessary for more permanent arrangements. It may also be necessary to contractually record other aspects of remote working, such as any permanent modifications to an employee’s duties or how work-related expenses are managed (e.g. in relation to home office equipment or set-up). Expectations around employee conduct may also need to be updated, as the blurring of work and home life can create significant data breach risks. Ensuring that employees understand their obligations in respect of confidential information (and its handling) will be paramount.

Many businesses have found that keeping track of employees’ day-to-day workflows and productivity has become far more difficult with the shift to remote working. This has led to the increased use of tracking software and other tools to monitor employees during the workday. In tracking their people, employers need to be careful not to breach their good faith obligations (such as by engaging in any misleading or deceptive conduct) and ensure that the activity is allowed under internal policies. If third party tools are utilised, employers must protect employees’ personal information so as not to be in breach of their obligations under the Privacy Act.

Health and safety

The definition of “*workplace*” under the Health and Safety at Work Act 2015 (HSAW) is deliberately broad and includes any location where an employer’s workers undertake work. This means that, in a remote working scenario, an employer’s health and safety obligations will likely extend into an employee’s home.

Under the HSAW, an employer must ensure, so far as is reasonably practicable (that is, so far as is reasonably *able to be done*), the health and safety of its workers. The lack of direct control that an organisation can have over the physical environment of an employee’s home means that a greater emphasis should be placed on training and education (with a view to minimising health and safety risks). However, in order to do this, an employer will need to proactively engage with employees to understand the risks present in the home.

Does the employee have adequate equipment and tools? Are these ergonomic? What hazards exist in the immediate workspace? Checking in on employees’ mental wellbeing (particularly during stressful times, such as lockdowns), and ensuring that breaks are taken and fatigue is managed should also form part of an employer’s approach to health and safety compliance.

As with all aspects of health and safety, managing remote workers will involve ongoing monitoring, regular review, and continuous improvement. Employers should ensure that their risk-mitigation measures remain fit for purpose and revise them if they become obsolete. Regular, positive engagement on health and safety matters, including allowing active participation by employees, will significantly improve an employer’s ability to respond to the unique challenges that remote working presents.





Employment taxes, allowances and equipment

During the Level 3 and 4 lockdowns in 2020, many employers were concerned about being able to pay their employees.

They were not in a space to consider increasing employment costs by compensating employees for the costs associated with working from home. However, with limited time to act, many employers did provide employees with office equipment (taken directly out of their usual workspace) to use during the lockdown period.

In other jurisdictions (such as Australia and the UK) employees are able to claim deductions in their personal income tax return for employment related expenses. However this is not the case in New Zealand, and employees soon started asking about working from home allowances.

During 2020, Inland Revenue released Determination EE002 and Determination EE002A to provide guidance to employers in relation to working from home costs. Inland Revenue has also recently released Determination EE002B. These Determinations are only a temporary measure applicable to 30 September 2021 while Inland Revenue considers a public statement on “new ways of working”.

Anecdotally, most organisations we are communicating with are not looking to ‘compensate’ employees for working from home. However, as remote working increasingly becomes the norm, we anticipate this will be a feature of contract negotiations.

The current position in New Zealand

Working from home allowances

Employers can provide employees with tax-free allowances for the costs associated with working from home (e.g. internet, power, heating). The difficulty here is determining the appropriate amount of the allowance. Inland Revenue has provided ‘safe harbours’ of \$15/week for utilities and \$5/week for telecommunication costs.

Business tools

The Determinations allow an employer to provide a tax-free \$400 one-off payment to employees for the purchase of equipment to set up a home office. Alternatively employers can provide staff with office equipment to use in their home office. Generally this will be exempt from FBT as long as the employer retains ownership of the office equipment, and it is mainly for business use.

Where to from here?

The Determinations were simple to apply when employees were required to work from home 100% of the time. However, with employees able to return to the office, there is a question about what employers should be agreeing to over the long term. Many employers have implemented hybrid policies where employees are able to choose where they work from on any given day. We suggest waiting until Inland Revenue releases their public statement of “new ways of working” before any decisions are made about longer term working from home allowances.

Distant employees

COVID-19 has changed the way people work, and this change in some form will be here to stay. With a tight domestic labour market, employers are increasingly willing to agree to employing distant workers. In the domestic context, there are tax considerations when considering whether as the employer, you should cover the costs of travel and accommodation for that individual travelling to the place of business.

Guidance is available in Inland Revenue Operational Statement 19/05. However, you must be careful with how you interpret and apply the commentary in that paper to the practical situations as the tax outcome will depend on the exact facts of a specific situation.

There is also an international dimension. As a result of the sudden border closures and lockdowns, employers and employees have realised that many employees can effectively perform their duties from home – whether that home is in NZ, or halfway across the globe.

Some of the scenarios we have seen include

- Employees of offshore organisations ‘stuck’ in New Zealand – many still remain even now
- Employees of New Zealand organisations on work visas that went overseas on holiday, and are unable to return to New Zealand
- New employees of New Zealand organisations who were meant to move to New Zealand but have been unable to do so (as they are not citizens or permanent residents) and have commenced work remotely

Just one employee in another jurisdiction can create significant employment obligations (income tax withholding, superannuation, social security, benefits in kind, insurance). Employers who have no presence in the same jurisdiction as their offshore employee are simply not set up to easily comply with these obligations.

Cross-border employees can also potentially create other income tax issues for their employer in the country in which they are present, due to creating a permanent establishment, depending on their role and duties.

In New Zealand, Inland Revenue has released a [draft operational statement](#) which is helpful in determining the New Zealand tax position. However, in our experience many overseas jurisdictions have not released similar statements, and it is the offshore obligations which have created the real compliance headaches and costs.



Perhaps most concerning, has been that while considering COVID-19 related cross-border employees, some employers have discovered that they already had employees based offshore, and performing their job remotely. This has highlighted that the tax compliance consequences have not been given any consideration and the potential tax exposures have been sizable.

Given we expect to see an increase in employees working remotely, recruiters and HR managers need to be aware of the potential tax implications, and there should be tax sign-off prior to offshore employees being engaged.

As referred to above, there are also permanent establishment risks to consider where employees are hunkering down across the globe. It is crucial for businesses to remain conscious of where employees and contractors are undertaking activities, the nature of those activities and the time spent in particular countries. Triggering a permanent establishment may mean profits need to be taxed in another jurisdiction and may give rise to additional tax compliance obligations.

Immigration

While New Zealand's borders are currently tightly controlled due to COVID-19, meaning fewer foreign workers are entering New Zealand, it is still important for employers to understand their work force and ensure all visa holders are entitled to lawfully work for them. Employers should regularly review the entitlement to work of all their employees. This means checking work conditions and expiry dates to ensure that all employees (citizens, residents and visa holders) are permitted to work for you. A robust tracking system and process should be in place for all employers including tracking and documenting for specific employees any automatic extensions to work visas the government announces.

Working from home and remote working are fast becoming the norm in many sectors since Covid-19 lockdowns and social distancing rules entered our daily lives. In general, Essential Skills and Specific Purpose or Event work visas have three conditions: location, role and employer. A visa holder must meet the conditions of their work visa at all times. If they change employers or roles without seeking a new work visa they will be in breach of their visa conditions and may find it difficult to obtain a further visa in New Zealand.

Employees of accredited employers who hold a Work to Resident or Talent Visa (as it is commonly referred to) may work in any location in New Zealand. So there are really only two conditions they must meet under their work visa – role and employer. An open work visa holder has none of these conditions and therefore the foreign worker may work for any employer, in any role anywhere in New Zealand. These types of visas are generally granted to partners of primary work visa holders and post study workers.

Given the above, when employers permit, allow or instruct an employee to work from home or remotely they should review the type of work visa the foreign worker holds. They must check what conditions are imposed by the visa with regard to location, and whether working from home or remotely means the employee will be working in a different geographic location from where the employer is located. In most instances, New Zealand work visa holders should be able to continue to work for their employer from home without issue. However, if an employer transfers an employee to a new location (say from Auckland to Dunedin) careful attention will need to be paid as to whether a new visa will need to be applied for under the Essential Skills policy as these Visas are subject to a labour market test.



Six key actions for employers in 2021

1.

Go beyond internal policies that enable flexible working arrangements and revisit the organisational structures. This includes delegations, processes, systems, technology, communal spaces, manager training and tools to ensure that they support the new hybrid working model. What is valuable enough to keep your employees coming into the office?

2.

Invest in both creating an environment that enables flexible working, and growing leadership capability and capacity to manage this new sort of workforce.

3.

Focus on remote working possibilities, and continue to push the paradigm further. The experience of the past year has highlighted the strengths of New Zealand's people leaders, their teams and our organisations to quickly adapt and keep on going. It is time to build on these and enable them to be ready for the next challenges that come their way.

4.

Question whether new ways of working could impact your organisation's ability to meet its legal obligations, both from an employment law and a health and safety perspective. While there has been a significant change in the way people work, the legislative framework that governs employment relationships is the same as it was before the pandemic.

5.

Ensure you have an understanding of your employee entitlement to work data. This will be key for managing remote workers, ensuring compliance and navigating upcoming changes to immigration policy anticipated to be introduced in mid-2021.

6.

Be mindful that tax law often does not keep pace with our fast changing world – when considering flexible and remote working policies, ensure that tax implications are considered (and ideally at the planning stage).



How we can help

PwC's Employment Advisory offering brings together an integrated team of experts to guide employers with practical advice and steps to support your most valuable asset – your people. Our connected team works together across multiple disciplines to deliver a complete solution for all your people issues, leaving you with more time to spend with your team. We would be delighted to help you and your organisation as you progress implementing your remote working practices, develop appropriate policies, and consider tax, legal and immigration issues.



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