

The Future of Work: Remote Work Policies

Presented by: Tara Vasdani & Jozef Hadlaw-Murray



Jozef Hadlaw-Murray

Jozef is a labour and employment lawyer at Shields O'Donnell MacKillop LLP, a downtown Toronto law firm. He specializes in providing advice and legal support to employers in all areas of workplace law. Jozef also has a broad labour and employment litigation practice and has acted for clients before Ontario's Superior Court of Justice, Court of Appeal, administrative Boards and Tribunals, private arbitrators, and mediators.



Tara Vasdani

Tara Vasdani is the Principal Lawyer and Founder of Remote Law Canada. From 2018-2022, Tara was nominated for Canadian Lawyer's Top 25 Most Influential Lawyers in Canada. In 2020-2022 she was awarded the Employment Law Firm of the Year Award, by Canada's Prestige Awards. In 2022, Tara was named a LinkedIn Top Voice in Remote Work, and in 2021, she was recognized as one of the Top 10 Remote Work Advocates and Leaders in North America.



Remote Work Policies and Returning to Work

Employer Management Rights

General Principles:

1. Unless employer policies or employment contracts state otherwise, employers retain the management right to implement, modify or discontinue remote work policies or arrangements at any time for legitimate business reasons.
2. Remote work policies must be reasonable.
3. Remote work policies that are reasonable will not breach an employment contract or be grounds for a constructive dismissal claim.

Remote Work Policies

What to include overview:

1. introduction and definitions
2. employee eligibility requirements
3. process for requesting approval
4. remote work terms
5. performance expectations
6. health and safety
7. travel & related expenses
8. confidentiality and security
9. equipment and workspace requirements
10. accommodations
11. general terms

Remote Work Policies

What to include:

1. Introduction and Definitions

- An employer should indicate any workplace policies that take priority over the remote work policy in the event a conflict arises.
- Key Definitions: (1) ad hoc remote work, (2) hybrid work, (3) remote work location, (4) remote work location assessment & (5) remote work agreement.

2. Employee Eligibility Requirements

- Clearly indicate differing criteria between types of positions or multiple work locations.
- Include the specific type of remote work available.
- Consider limiting eligibility to employees without performance issues or undergoing disciplinary measures.

Remote Work Policies

What to include:

3. Process for Requesting Approval

- Key considerations:
 - a) how far in advance must an employee request remote work;
 - b) how long will the decision-making process take; and
 - c) what specific meetings with managers or HR personnel are required before approval of a request can be granted.

Remote Work Policies

What to include:

4. Remote Work Terms

- Indicate the information an employee must provide about their proposed remote work location.
- Expressly state that employees have no right or entitlement to remote work or hybrid work, any requests can be denied, and any previous approvals can be revoked or altered at the employer's discretion.
- Mandatory in-person attendance for workplace events.
- Basic remote workspace requirements.
- Mandatory compliance with organizational policies and legislation while remotely working.
- Prohibition on in-person meetings at remote work locations.

Remote Work Policies

What to include:

5. Performance Expectations

- Key considerations:
 - a) general performance and work guidelines;
 - b) expected work hours;
 - c) time tracking procedures (employee and potentially software details); and
 - d) dependent care expectations.

6. Health and Safety

- Employers should consider including a detailed “remote workspace assessment” and requiring it to be completed properly and submitted by the employee prior to remote work commencing.
- Reporting health and safety incidents in the remote workplace should be a mandatory term.
- Reporting changes to the remote workspace or location should be a mandatory term.
- Employers should consider including the right to virtually inspect the workspace of a remote employee and with 24 hours’ notice or greater the right to inspect the workspace in-person to ensure it complies with any remote workspace assessments, applicable laws and organizational expectations.

Remote Work Policies

What to include:

7. Travel & Related Expenses

- These terms should indicate that employees are not compensated for travel between the remote work location and their regular non-remote workplace.
- If employee travel to other locations is required by the employer, how compensation will be provided should be addressed.

8. Confidentiality

- Stringent confidentiality terms should be included for physical and digital data and documents.
- The terms should be tailored to the employer's specific confidentiality needs and include mandatory compliance with all other confidentiality rules in other employer policies.
- Employees working remotely should be limited to using devices that are provided or approved by the employer.
- Employers should consider including a provision that limits, if not eliminates, transporting original documents to a remote work location and disposing of documents at remote work locations.

Remote Work Policies

What to include:

9. Equipment and workspace requirements

- A term(s) should require employees to contact their supervisor if system access or internet is lost while remotely working.
- The employer should indicate what equipment, if any, it will provide to employees approved for remote work.
- The employer should consider enumerating the acceptable uses of employer devices or indicate that acceptable use policies already in place must be complied with and direct employees to them.
- A term should address the costs employees are expected to be responsible for at their remote work location (i.e. desks, lighting, a chair, etc.) so there is no confusion amongst the parties.

10. Accommodations

- The employer should include a term stating that the policy does not limit accommodations required under applicable human rights legislation or the employers' obligation to provide them.
- The process for making an accommodation request should be included.

Remote Work Policies

What to include:

11. General Terms

- Prohibition of unauthorized people completing or helping to complete the employee's work.
- Prohibition of conducting personal matters or other business during working hours without approval.
- A term should expressly set out the discipline an employee may face for breaching a remote work agreement and policy. If disciplinary measures are set out in part or in whole in a different organizational policy, the employer should direct employees to it.
- Employers may want to consider including a right to have the employee indicate when they begin for the day and log off in the absence of time tracking software.

Legal Tech Solutions

Tools of the Trade

- Lexis: legal research
- Blue J Legal: tax foresight, employment foresight
- Beagle: automated contract analysis
- Financial Disclosure
- Kira Systems / Diligen