



AFRICA
REMOTE WORKING GUIDE



JURISDICTIONS

BOTSWANA

Chilume & Company

BURKINA FASO

Cabinet Maitre Cheikh Fall

CAMEROON

Chazai + Partners

ETHIOPIA

GeTS Law Office

GHANA

Bentsi-Enchll, Letsa & Ankamah

KENYA

Cliffe Dekker Hofmeyr

LESOTHO

Tharollo Chambers

LIBERIA

CMB Law Group LLC

MALI

Cabinet Maitre Cheikh Fall

MOZAMBIQUE

Couto, Graca & Associados

NAMIBIA

Dr Weder, Kauta & Hoveka Inc

RWANDA

Landmark Advocates

SIERRA LEONE

Messrs Ibrahim Sorie Yillah,
Francis Gbakai Kaindaneh &
Ms. Rakiatu Savage

SENEGAL

Maitre Cheikh Fall Law

SOUTH AFRICA

Cliffe Dekker Hofmeyr

SOUTH SUDAN

Case Advocates

TANZANIA

Abenry & Company Advocates

UGANDA

Mutebi Advocates

ZAMBIA

Corpus Legal Practitioners

ZIMBABWE

Dube, Manikai &
Hwacha Legal Practitioners



AFRICA REMOTE WORKING GUIDE

CONTENTS

04	Botswana
08	Burkina Faso
15	Cameroon
21	Ethiopia
25	Ghana
31	Kenya
38	Liberia
43	Mali
49	Mozambique
53	Namibia
58	Rwanda
62	Senegal
67	Sierra Leone
71	South Africa
77	South Sudan
81	Tanzania
85	Uganda
91	Zambia
97	Zimbabwe

Remote working and a “Next Normal” are key considerations employers need to take into account when thinking about the future of the workplace and the employment relationship.

Technological developments and the ability of an organisation to take the “workplace” online was the differentiating factor between employers who could continue operations notwithstanding the pandemic and those who were severely effected by nationwide lockdowns. While remote work provided an avenue to continue operations, it is not without its challenges. Africa has a large and varied workforce and all of us have been affected by the COVID-19 pandemic which has reshaped the way in which organisations not only in Africa but around the globe work. What is the future of remote work on the African continent? How will remote work be impacted by poor technological infrastructure and the like? How will the nature of the employment relationship change in a remote working environment?

The CDH Africa Remote Working Guide provides insights into the challenges and opportunities of remote working in various African jurisdictions, but most importantly, the thinking that Africa has done to ensure that its workforce kept going during the height of the pandemic. Remote working may not be here to stay or it may be the way of the future, we can’t say yet. What we do know is that remote work has certainly provided a viable option for sustainability and continuity of business during a global pandemic and will continue to do so. We want to thank all of our contributors to this guide. You demonstrate our ability to collaborate and produce work that is important and timely.

CDH Employment Law Team



BOTSWANA





Chilume & Company is a law firm that was established in March 2002 in Gaborone under the auspices of Law Society of Botswana by Yvonne Chilume and registered and recognised as a practicing member firm of SADC Lawyers Association. It is a fully fledged commercial/corporate practice including areas of Employment and Labour covering litigation in Industrial Court, High Court and Court of Appeal, negotiation and drafting of Employment Contracts, advisory work associated with COVID-19 pandemic and its impact on employment and labour, handling grievances and termination of employment.

1. Has there been a move towards remote working in Botswana in light of the COVID-19 pandemic?

Yes. Remote working was introduced by the Government of Botswana as a measure to curb the rate of COVID-19 infections. Prior to the pandemic, remote working was used in the private sector on an occasional basis.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

The decision to allow remote working lies with the employer, based on sound public-health related reasons. Alternatively, an employee can provide health-related reasons to support a request to work from home. In such instances, employees and employers need to agree on a solution for the tools and resources required for the employee to work from home effectively.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

Working from home was encouraged by the Presidential COVID-19 Taskforce

for compliance with the COVID-19 safety protocols outlined in the 2020 Emergency Powers (COVID-19) Regulations. The private sector and Government, together with key employers, were advised to develop internal guidelines to cater for remote working, which they have done.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

Some of the remote working options available to employers are:

- rotational shift work;
- staggering flexi time; and
- working from home.

5. What are some of the challenges and risks presented by remote working?

Some of the challenges and risks presented by remote working include:

- lack of digital infrastructure to facilitate employees working from home;
- lack of discipline and self-motivation on the part of employees;
- security risks for work files and sensitive organisational information;
- electricity outages affecting productivity;
- lack of office space in employees' homes;
- weak internet connections; and
- limitations for performance management and proper supervision of employees.

Remote working is a new approach and there has been slow adaptation, along with a sustained preference towards face-to-face meetings.



ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

An employer may wish to implement guidelines and protocols that address the following: how to assess job suitability for working from home, a proposed work schedule and working hours, a written agreement between an employee/employer pertaining to remote working, the provision of equipment and technical support, clear protocols for health and safety, confidentiality, accessibility and communication, psychosocial support, and management of employees.

These are just some of the considerations that need to be taken into account when implementing remote working policies. An employer may also wish to implement policies related to flexible working arrangements, staggering work arrangements and rotational cohorts, all of which should take into account the risks associated with remote working and possible solutions to combat those risks.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

Employers must take precautionary measures, guided by COVID-19 protocols, to ensure the health and

safety of employees who provide services to their customers during this period, and this extends to the employee's home where an employee is working from home.

8. What are the legal obligations of employees who work remotely?

In addition to the guidelines and any agreements with their employer (which address COVID-19 rules), employees are obliged to continue to comply with relevant employment legislation, including the Employment Act Chp 47:01 (Botswana Employment Act) and the Public Service Act 30 of 2008.

9. Are there any tax allowances and/or benefits to remote working?

No. There is no exemption or deferral of tax in Botswana owing to a remote working arrangement.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

The cost of compliance with remote working remains with the employer, most of the time. This means that an employer is responsible for ensuring that work can be done effectively by providing equipment, securing

insurance for safe keeping of records, and supplying things like office furniture, internet access and stationery to equip employees to perform their duties.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

Employers usually develop internal protocols or operating plans and communication strategies for the management of employees and members of the public to ensure the continuation of service delivery in their respective sectors. In some instances, supervisors are appointed for monitoring and evaluation and a reporting schedule is implemented.

12. Is remote working a viable long-term or permanent working option? Will it have an impact on organisational culture?

Yes. Remote working should be considered as a long-term strategy in light of the fact that the infection rate of COVID-19 is increasing in Botswana. However, the impact on organisational culture should be taken into account. Employers must consider flexi hours and online meetings as part of their strategy as these are critical measures for communication, performance measurement and target tracking in the workplace.



Where an employee and employer entered into an agreement to continue with the main employment contract prior to the COVID-19 pandemic, the approach would be to agree to the balancing of the costs to be shared between the parties.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Yes, an employer has the discretion to determine the manner in which it will organise the workplace. Rotational flexi work systems and having employees work from home part time have become popular approaches. This is generally implemented as and where needed. However, this remains at the discretion of the employer who is responsible for structuring suitable working arrangements at its workplace through negotiations with labour movements and employee representatives.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

Yes, an employee may be instructed to return to the workplace at any stage since Botswana implements partial remote working and most employees are already working at both the office and at home. An employer has the discretion to decide when employees are required at the office in line with any agreement that has been reached.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

Where an employee and employer entered into an agreement to continue with the main employment contract prior to the COVID-19 pandemic, the approach would be to agree to the balancing of the costs to be shared between the parties. Since items such as disinfectants and masks are usually supplied by employers, the overall cost to company is not necessarily reduced, and in fact, many entities are experiencing higher overheads since the introduction of remote working. This has been compounded by generally lower revenues and reduced profits. If it were not prohibited to retrench employees, many employers would have done so. These employers have instead used a work-from-home approach and applied section 16 of the Botswana Employment Act (the duty of the employer to provide work) to abandon their obligations to their employees. However, if the cost to company is reduced, the employee may negotiate a salary increase.

BURKINA FASO





Cabinet Maître Cheikh Fall Law Firm provides its customers a range of consulting services for legal assistance, defense and preventive treatment of disputes by guaranteeing absolute discretion, complete confidentiality and constant availability.

Their business activities can then take place in a secure environment.

Labor Law | Drafting Employment contracts, Ordinary Dismissal or Dismissal for economic reasons, Non-Competition and disclosure clauses, Social Litigations to name but a few.

1. Has there been a move towards remote working in Burkina Faso in light of the COVID-19 pandemic?

Information and communication technologies (ICT) and the internet, in particular, have made the need for the physical presence of employees at a company’s work premises redundant, to an extent. Remote working or distance work is a reality in Burkina Faso, but until recently has only taken place in an informal manner. There are no official statistics on the prevalence of remote working in the country.

However, the COVID-19 pandemic has prompted increased adoption of remote working, and this has shown the limits of labour legislation in Burkina Faso. This has led to the inclusion of provisions on this new form of work in the draft labour code in order to take into account the situation introduced by COVID-19.

EMPLOYEE’S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

The Burkina Faso Labour Code 28 of 2008 (Burkina Faso Labour Code) provides sufficient scope to allow remote working in its provisions governing the physical and mental health of employees as well as their safety at work. Article 263 of the Burkina Faso Labour Code

states that “*When the maintenance of a worker in a position is not advisable for medical reasons, all means must be used by the employer to assign him to another position compatible with his/her state of health.*” For example, working from home seems appropriate in the context of the situation created by the COVID-19 pandemic in order to limit the transmission of the virus within an organisation.

In addition, the Burkina Faso Labour Code does not stipulate that the physical presence of an employee is a condition for the validity of an employment contract and thus remote working may continue after the pandemic. Article 35 of the Burkina Faso Labour Code lists the main obligations of the employee, and these do not include the obligation to be physically present at their employer’s premises. This allows for the possibility of carrying out work outside the workplace through remote working.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

According to Article 40 of the Burkina Faso Labour Code, people with disabilities who cannot work under normal working conditions can benefit from “*adapted jobs or, if necessary,*



protected workshops". This provision speaks in favour of remote working for people living with disabilities. Similarly, Paragraph 2 of Article 143 of the Burkina Faso Labour Code favours remote working by allowing pregnant women to benefit from a "change in the nature of their work" subject to providing a medical certificate proving that this change is necessary in the interest of their health and that of their child.

More generally, there may be collective agreements or establishment agreements. These conventions and agreements are bilateral agreements between an employer and employee, which means it is up to the employees who are convinced of the necessity of remote working to make the employer aware of the advantages and potential that can be derived from remote working.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

Working from home is the most common form of remote working. In this approach, an employee with the appropriate equipment at home carries out the activities and tasks assigned to them by their employer from their place of residence. There are two alternative models:

- one, working exclusively at home while having periods of occasional visits to the company for meetings or to meet with customers or external service providers; or

- alternating between home and the office. In this case, the employee works at home during agreed periods, and at their employer's premises the rest of the time.

It is unclear which of the options is mostly commonly implemented in Burkina Faso as there is no data available on the subject.

5. What are some of the risks and challenges presented by remote working?

There are a number of risks and challenges associated with remote working, including:

- remote working is not affordable for all companies and it remains impractical for some activities that require an employee to be physically present;
- due to the high cost of internet connections and ICT equipment, some employees may not be able to work remotely if their employer does not provide them with the appropriate equipment;
- performance monitoring and ensuring employees are dedicating the requisite time to their work. Organising working time is essential, but it can be difficult, especially for employees who have a specific work schedule or hourly wage;
- occupational health and safety conditions are more difficult for the employer to monitor and control;

- working from home can affect the trust relationship between employees and managers as the latter's task of oversight and supervision is more difficult. The traditional "command-and-control" management style becomes less relevant, and managers may have difficulty finding alternative ways to ensure that employees perform their duties when working remotely;
- the use of technology presents increased risks of cyberattacks and privacy breaches. Security of telecommuting processes is critical, especially if employees use their laptops or personal devices to perform official tasks and to connect to the company network. To this end, some companies already have a data protection, privacy and security policy in place; and
- the mental health of employees may suffer as a result of remote working. Employees may work an excessive number of hours, become stressed without adequate supervision, have to deal with manifold distractions, including family demands, and suffer from a lack of human contact and in-person collaboration with fellow employees.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

There is no legal provision for remote working in Burkina Faso that dictates that an employer is required to have a specific set of policies and protocols. However, an employer must comply with labour legislation when implementing a remote working policy. This means that the rights of employees working remotely are similar to those in traditional forms of work, especially in terms of benefits such as salary, training, career opportunities and eligibility for election as employee representatives.

An employer can carry out training on remote working. This will enable employees to understand the context of ICT and its effect on work. The following topics can be addressed:

- accurate reporting on how work is done and meeting deadlines;
- complying with all applicable health and safety standards;
- understanding that legal and ethical obligations remain even outside the workplace;
- the use and care of company-owned equipment;

- secure means of communication (such as email encryption, blockchain); and
- that any injury during work time is considered an accident at work.

An employer cannot require its employees to work beyond the legal working hours on the grounds that they are not on the company's premises. The hours worked beyond the legal weekly working time shall be considered as overtime and shall give rise to an increase in salary in accordance with the provisions of Article 137 of the Burkina Faso Labour Code.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

Article 236 of the Burkina Faso Labour Code states that "*The head of the establishment shall take all necessary measures to ensure the safety and protect the physical and mental health of the workers of the establishment.*"

This means that the employer is responsible for the employee's safety during working hours even if the employee is not on the company's premises. In case of an accident, the employee will benefit from the work accident regime.

There is no legal provision for remote working in Burkina Faso that dictates that an employer is required to have a specific set of policies and protocols.



Article 242 of the Burkina Faso Labour Code takes this further by stating that employees must be informed and instructed in a complete and clear manner about the occupational risks in the workplace. To this end, they must receive adequate instructions on the means available and the conduct to be adopted to prevent these risks. In this respect, the employer is obliged to provide minimum general training in occupational health and safety. In the context of remote working, this can be translated into training on the ergonomic and health aspects of remote working.

8. What are the legal obligations of employees who work remotely?

The obligations of employees working remotely remain the same as if they were on the company's premises. They must, among other things:

- perform their work with care, probity and conscience, at the time, place and under the conditions agreed upon;
- respect the orders and instructions given to them by their employer in line with their contract;
- abstain from disclosing company secrets that they have become aware of in the course of their professional activity;
- maintain their non-competition obligations and abstain from any behaviour which may be harmful to the company; and

- if their employer has provided them with certain equipment such as a telephone and/or a computer, return the equipment once they have completed their work or no longer need it when returning to the workplace.

9. Are there any tax allowances and/or benefits to remote working?

In the absence of a special provision, the general regime applies. Consequently, there is no provision allowing for a tax reduction or advantage for an employee or their employer as a result of remote working.

However, the Burkina Faso Ministry of Labour, the National Council of Employers of Burkina Faso and the Trade Union Action Unit are seeking to reach consensus on the draft Burkina Faso labour code. To this end, they are re-examining certain articles of the draft and proposing new provisions on issues related to remote working or distance work. It remains to be seen whether the issue of tax deductions and/or benefits related to remote working will be taken into account in the draft.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

There is currently no legislative provisions for this as remote work is only applied in practice for the moment. However, according to the Burkina Faso Labour Code, an employer is obliged to provide adequate material for employees to perform their work. One can infer, therefore, that this requires employers to provide materials such as paper, pens and printer ink.

However, an employer may consider that an employee does not have any additional expenses if they only need their computer to work and are not required to send letters and print documents. In the age of new technologies, the reduction of production costs is a must at all levels.

In the case where an employee has requested to continue working remotely, the employee will have to make all arrangements to carry out their work without the entitlement to require their employer to provide them with the tools to do so since this work can be carried out in the premises of the company.



On the other hand, if an employer requires an employee to work remotely, the employer will have to provide the employee with the necessary equipment unless otherwise stipulated in the employment contract. The employer will have to take care of the repair and maintenance of the tools and equipment necessary for an employee to complete their duties. The employer may also choose to set up a help desk or a separate email address where employees can report problems with tools, equipment and technology in the workplace and seek help and

support if necessary. The employer should also make it clear that the use of company-provided equipment and tools for remote working is for the exclusive use of the employee and for the exclusive purpose of performing their job.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

An employer can set up a system whereby employees are assigned tasks to be carried out over a defined number of hours and within a set

deadline. Employees can then work at their own pace as long as they submit their work on time. This system allows the employer to follow the progress of an employee's work and to evaluate their productivity.

Measuring productivity based on results requires quantifiable parameters, which can be difficult to define. Some industries and jobs are easier to define than others. For example, for a salesperson, it is very clear what can be measured and evaluated. For a job such as a call centre representative, a simple



measure of calls made per hour can be used. However, when employees have a variety of responsibilities, metrics needs to be instituted for each worker and frequently reviewed.

It is also important for an employer to maintain a link with its employees, which can be done through video conference meetings and regular email exchanges.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Remote work is a possibility that more and more companies are open to implementing, especially for tasks that do not require a permanent physical presence at the company's premises.

The mental and physical health of employees is a significant point in the growth of a company and the productivity of employees. It is therefore, in the collective interest to allow remote working on an ad hoc basis.

Companies are also increasingly sensitive to sustainable development. Remote working can be one of the solutions to meet economic, social

and environmental needs. It can allow a reduction of overhead costs for a company, particularly in relation to rental space where employees go in to the office on a rotational basis. Remote working may also facilitate job creation due to the increased demand for digital services to facilitate remote working operations.

In a globalised world, the need to travel for work can be reduced as much as possible, and decreasing the number of people commuting to work can have a positive impact on the local environment and employees' stress levels. Physical presence, especially in the service sector, can be regulated and in so doing, contribute to a reduction in the negative environmental impacts of the old way of work.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

In the case where their employment contract provides that an employee will exclusively work remotely. The Burkina Faso Labour Code does not oppose

the will of the parties. However, the employer will be bound by the same obligations to employees who are present at the workplace.

On the other hand, if an employee's original employment contract does not stipulate a provision for remote working, Article 85 of the Burkina Faso Labour Code states that any proposal for a substantial modification of the employment contract must be in writing and approved by the employee. Thus, assigning an employee to remote work constitutes a unilateral change of their employment contract. If the employee refuses, the contract is considered to have been terminated by the employer.

14. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

An employee working remotely can negotiate a raise by demonstrating that they are saving the company money. However, the employer is under no obligation to satisfy such a request.

CAMEROON






CHAZAI+
PARTNERS

Chazai & Partners (hereinafter the “Firm”) is an independent business law firm for Africa based in Cameroon which offers to local corporates, multinationals, financial institutions, investment funds, public and private institutions, and sovereigns, personalised, accessible and innovative services throughout the CEMAC region and across Africa. The Firm also assists business creators and managers, as well as start-ups on all their legal needs. Our lawyers have a perfect knowledge of the practice of labour law particularly in Sub-Saharan Africa. Concerning the Employment sector, the Firm regularly assists its clients on employment matters by providing legal consultations/opinions as well as litigation.

1. Has there been a move towards remote working in Cameroon in light of the COVID-19 pandemic?

In Cameroon, remote working has mainly been implemented by a few large companies since the beginning of the COVID-19 pandemic. Other companies do not seem to be open to this alternative because many businesses in Cameroon are based on an assembly line system, which requires employees to be on-site.

EMPLOYEE’S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

It should be noted from the outset that Cameroonian legislation does not provide for remote working. In order to better address this question, it is necessary to distinguish between during the pandemic and after the pandemic, to understand whether the employee may insist on working remotely.

During the COVID-19 pandemic

Article 98, Paragraph 1 of the Labour Code of 1992 (Cameroon Labour Code) provides that any company or establishment of any kind must organise a medical and health service for its employees. The role of this service is to monitor: hygiene conditions at the workplace, the risks of

contagion, and the state of employees’ health, along with the health of their spouses and children. This service should also include appropriate preventive measures and ensure the availability of necessary medical care.

Article 2 Paragraph 1 of the Cameroon Labour Code establishes general health and safety measures in the workplace and specifies that, “*the employer is directly responsible for the application of all preventive, health and safety measures intended to ensure the protection of the health of the workers he uses.*”

Cameroonian law only makes the employer responsible for safety risks directly related to the work covered by the employment contract.

Therefore, if an employee feels that their working conditions are not optimal and if they sense a serious and imminent danger to their life or health, or a defect in the protective systems, they may request and obtain from their employer the right to work remotely.

After the COVID-19 pandemic

It should be remembered that, legally, remote working is neither a right nor an obligation. It is rather a means of exercising a professional activity. It can be occasional or regular, individual or proposed to all employees, depending on the circumstances at a given time.

Thus, the conditions for carrying out work can be freely negotiated by agreement between an employee and an employer.



- 3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?**

Remote working is based on a mutual agreement between an employer and an employee. The employer can, therefore, agree to an employee's request to remote working or refuse it, for reasons it deems reasonable. Reasons can include, for example, that the nature of the activity cannot be performed remotely, the overload of work, the employee's mandatory presence in the workplace, or security and confidentiality imperatives.

- 4. What types of remote working options are available to employers? Which options are most commonly implemented?**

As remote working has been implemented by only a small number of Cameroonian companies, it is not possible to list all the forms commonly used.

However, if we consider the main modes of remote working as mobile work (jobs where travel is continuous), home-based remote working (working from an employee's home or family home) and co-working offices (where

tasks are performed from a space with shared resources), we can say that, so far, the most commonly implemented has been home remote working.

- 5. What are some of the risks and challenges presented by remote working?**

Remote working presents two main challenges, namely costs and performance.

In terms of costs, not everyone has the latest and most efficient technological equipment to facilitate remote working. The implementation of remote working therefore, undoubtedly requires the acquisition of important equipment and adequate digital services to make work more fluid. This creates a new area of expenditure that requires financial investment.

In relation to performance, beyond the structural and material issues that make remote working difficult for some companies, there is the even more important issue of performance. For some employers, the physical absence of an employee from their workstation could have a significant impact on the company's performance.

As the implementation of remote working is not without any limit, the employer should take into consideration the risks that could jeopardize its operations. These risks concern both companies and employees.

Data security is one of the greatest risks for companies as remote working makes the protection of sensitive data more complex.

There are several risks for employees, including:

- social isolation;
- separating their private and professional lives;
- work-related addictions;
- self management challenges; and
- loss of team spirit.

ARRANGEMENTS TO WORK REMOTELY

- 6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?**

The processes and protocols for remote working would be at the discretion of an employer. Since remote working is not legislated in Cameroon for the time being, each employer fixes its own remote working policies and processes. However, the policies must not be contrary to public order and morality.

- 7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?**

Since Cameroonian legislation does not provide for remote working, safety measures that an employer is required to have in place at its premises do not extend to employees' homes.

8. What are the legal obligations of employees who work remotely?

Since Cameroonian labour law has not specifically legislated guidance for remote working, the answer to this question is based on inferences. In general, it should be noted that employees who work remotely are subject to the same obligations as when they work from their offices, because the distance does not erase their duty to their employer. These obligations may however, be adapted.

Firstly, the implementation of remote working generally requires that the company provides an employee with company-owned equipment so that they can perform their work remotely. The employee's first obligation is to take care of the equipment assigned to them.

Secondly, an employee has the same attendance obligation as when working from the company's premises and must respect the remote working schedule.

Thirdly, an employee is subject to the duty of good faith performance of their employment contract and a duty of loyalty inherent in the contract of employment.

Fourthly, remote working does not exempt an employee from taking responsibility for their own health, notably with respect to preventive measures to avoid contracting COVID-19.

9. Are there any tax allowances and/or benefits to remote working?

Cameroonian law does not provide for tax deductions or benefits related to remote working.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

Generally, in practice, an employer must simply equip an employee with sufficient furniture and computer equipment to carry out their duties and respect the rules of health at work even at a distance. The obligation to cover all professional costs lies with the employer, that is, those relating to the installation, maintenance and adaptation of the equipment and services necessary for the exercise of remote working, including those

Cameroonian law does not provide for tax deductions or benefits related to remote working.



incurred by the remote working employee, as soon as they demonstrate that the said costs benefit remote working. This could include:

- airtime;
- internet access; and
- videoconferencing software and hardware.

In principle, employees who have used their own funds for these things must be reimbursed by their employer, unless both parties have a contrary agreement.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

Monitoring and evaluation of an employee allows the employer to monitor their productivity and efficiency. However, when work is to be done remotely, monitoring becomes more complex.

The evaluation of productivity gains can be based on factual elements such as improved performance of complex tasks, increase in actual productive time or increased concentration potential. Nevertheless, the loss of access to information and the difficulties of collaborating with colleagues are negative aspects that must also be measured.

There are solutions that allow the productivity of employees to be measured based on the accomplishment of assigned tasks.

Tools such as Producteev and Atlassian (it should be noted that these types of software have been criticized for being in breach of privacy legislation and this is an additional consideration that all employers should consider), for example, allow employers to assign tasks and monitor the progress of activities related to these tasks. However, this kind of solution implies a project mode operation, which is not necessarily the case for all sectors of activity that can use remote working. If measuring productivity per task is not possible, employers could measure the time spent on an activity using solution like Deskttime, which makes it possible to know how much time an employee has spent on a particular application or website.

Technology provides many answers to the problem of evaluating the performance of remote working employees. It is even possible to discreetly trace an employee's activities on their computer or smartphone. However, this kind of spyware is extremely intrusive and ethically problematic as it violates the privacy of the individual.

The added value of using tools to measure productivity is that they can, if used wisely, help create a culture of productivity within remote teams.

To get the most out of employees, employers need to be rigorous in setting and achieving goals and must institute practices for exchanging and sharing information and ideas among team members.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Not all jobs are suitable for remote working. The pandemic has accelerated the trend toward remote working for activities that do not necessarily require an employee's presence on the company's premises. The work-at-home accommodations employers have put in place in response to COVID-19 are temporary thus far. Employees will likely be expected to return to their usual workplace when the situation permits and when employers decide to do so.

However, it is not excluded that an employer may, by mutual agreement with an employee, decide to use this work mode in the long term, provided that it has been established that this work alternative does not disrupt the employee's productivity or efficiency.

In terms of organisational culture, the fact that working conditions have changed will have an effect. However, by adapting to this change, companies will be able to re-examine their values, define the behaviours to be valued, and recruit employees that fit into this vision. Then, to guarantee the sustainability of this remote culture, companies will have to master the necessary collaborative tools, and encourage interactions between the employees. Finally, we must not forget that remote working is still in its infancy, especially in Cameroon, and that we are in the middle of an exploration phase.



PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

In Cameroon, there is no regulation on remote working and thus, both parties must simply agree on the terms and conditions of remote working if they wish to implement this mode of work.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

The answer is not clear-cut. It depends on two factors: the level of enforcement of the health guidelines and whether the employee's presence is necessary.

The employer is entitled to require the return of the employee if it complies with Government health guidelines to control the spread of COVID-19 and if the employee's presence is necessary.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

Remote working is not legally regulated. Therefore, there is no legal basis on which an employee can base such a claim.

In the context of this period of the COVID-19 pandemic, although an employer's expenses might be reduced as a result of remote working, this does not guarantee the employer an increase in income giving the right to a salary increase; some employers providing services have seen their revenue reduced because their clients have experienced decreased income or had to close due to financial difficulties. In these circumstances, it is almost impossible to consider a request for a salary increase.

ETHIOPIA





GeTS Law Office is an outstanding law office established by Gebreamlak Gebregiorgis, Tewodros Meheret and Seyoum Yohannes. Each of us had over a decade of experience in independent practice of law when we co-founded the office in January 2018. We joined forces to increase the depth and range of our resources and create more value for our clients. Among other things, we assist in the creation of business entities, their licensing, governance, merger, acquisition, restructuring and insolvency. We also provide support in concluding contracts from inception all the way to closing deals. In particular, we help in negotiating, drafting and reviewing contracts in fields such as employment, franchising, distribution, construction and real estate. We advise a range of clients on labour matters, Tewodros taught the course, and we have prepared training and HR manuals.

1. Has there been a move towards remote working in Ethiopia in light of the COVID-19 pandemic?

Yes, in terms of the regulations issued under the State of Emergency Proclamation 3 of 2020, employers are encouraged to embrace remote working in order to tackle the spread of COVID-19.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

No. The law introduced a set of measures to be taken by employers depending on their particular situation. Employers may comply with the law by introducing shift-based working, applying annual leave (due or from the upcoming year), or allowing remote working.

If employees do come into their workplaces, employers have the obligation to supply sanitising materials, to ensure that there is enough office space for physical distancing and provide transportation services to accommodate capacity restrictions (transportation capacity is limited to

50%, which means, for instance, that if an employer has a bus for employee transport, it must now provide two).

The goal is for employees to be able to work in an environment that does not expose them to the COVID-19 virus. The choice to allow remote working is left to the employer. Barring any legislation to the contrary, an employee does not have a right to insist on working from home.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

Remote working was recognised as one of the options to deal with the COVID-19 pandemic, particularly if an employer cannot provide the space required to allow for social distancing. It is the employer's decision to allow remote working, subject to meeting all legal requirements during the emergency period. At the end of the emergency period, remote working is purely at the discretion of an employer.



4. What types of remote working options are available to employers? Which options are most commonly implemented?

The details of how remote working is carried out are not stipulated, meaning an employer can use any available options, subject to observing the minimum labour conditions. Most employers implement a hybrid system where employees work in part at the workplace and in part at their home or another remote working location.

5. What are some of the key risks and challenges presented by remote working?

It has been observed that supervision or control is the most common problem associated with remote working, along with ensuring that employees are using work hours to perform work-related duties. There have been complaints that employees are less productive (contrary to what has been the case in other countries) as the home environment may not be conducive to working and there are distractions from family and friends. Distance also hinders the normal control exercised by employers.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

Generally, no process or protocol pertaining to remote working is regulated by law. Therefore, it is the responsibility of the employer to adopt policies and protocols on a needs basis. Employers could put a system in place to ensure that employees discharge their responsibilities where, for instance, the output is measurable or if there is a time limit for delivery, or the organisation has an online system that can be used to monitor how time is used.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

No, that is not the obligation of an employer as the law does not recognise working from home unless a broad construction of the law is extended to include it.

8. What are the legal obligations of employees who work remotely?

Owing to the fact that remote working is not regulated by law, it can be said that all other terms of an employment contract remain the same except for the place of work and the natural consequences thereof.

9. Are there any tax allowances and/or benefits to remote working?

No, there are no tax allowances and/or benefits to remote working.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

Article 12/1/b of the Ethiopian Labour Proclamation 1156 of 2019 imposes an obligation on employers to provide employees with the implements and materials necessary to perform the work stipulated in their contract of employment. An employers' obligation in this regard is limited to what is necessary for an employee to perform their functions, read together with the terms of their contract of employment.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

Effective monitoring and evaluation of employees is subject to the discretion of the employer. For instance, some employers require some volume of work to be performed or a piece of work to be delivered within a given time in this way employers may exercise supervision/control.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

It depends on the nature and type of work. The cultural context of a jurisdiction is relevant when dealing with this matter. In Ethiopia, employers do not prefer remote working as the control they can exercise is curtailed. Further, flow of work and effective teamwork requires that employees work together at the same time and place.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Place of work is subject to an employment contract, so such a change would need to be based on agreement between the parties and this agreement should outline the extent to which remote working is required.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

An employer may instruct an employee to return to the workplace at any stage, notwithstanding the employee working effectively remotely. Under the law, the employer has the discretion to transfer an employee to a position or place it thinks appropriate.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

No, an employee would not as a right be entitled to an increase in their salary as a result of any reduced cost to company owing to them working remotely.

An employer may instruct an employee to return to the workplace at any stage, notwithstanding the employee working effectively remotely.

GHANA



GHANA



Bentsi-Enchill, Letsa & Ankomah

(BELA) is the leading law firm in Ghana providing first-rate legal services for international and local clients in all sectors of the economy. As a full-service law firm, BELA is structured into specialised departments namely, Corporate & Commercial, Energy & Infrastructure, Financial Institutions & Capital Markets and Disputes. The Corporate & Commercial department which handles the firm's employment practice (i) advises on employment law issues on mergers and acquisitions, IPOs and other corporate actions; and (ii) provides services relating to employment and separation contracts, employee handbooks and employment related documentation. It also advises on terminations, redundancies, employee share incentives, pensions, trade union consultations, non-litigation employment disputes and general employment matters.

Susan-Barbara Adjorkor Kumapley and Angela Gyasi head this department.

BELA is a member of Lex Mundi and Lex Africa.

1. Has there been a move towards remote working in Ghana in light of the COVID-19 pandemic?

Yes, Ghana has moved towards remote working since the emergence of the COVID-19 pandemic. No legislation has been passed to support this move, although it was encouraged. The Labour Act 651 of 2003 (Ghana's Labour Act) and Labour Regulations of 2007 (LI 1833) do not have any provisions related to remote working. Consequently, remote systems of work were adopted largely in the formal system by private organisations, alongside rotation and shift work systems. Public institutions largely adopted rotation and shift work systems to decongest workplaces.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven that they can effectively work from home? This includes any basis in law or otherwise.

No. An employee does not have a right to insist on working remotely during and after the COVID-19 pandemic unless this is in accordance with the provisions of the Ghana Labour Act or the right to do so exists in terms of the employee's contract of employment, employee manual or other employer policy on remote working.

Under the Ghana Labour Act, section 119(1) in particular, if an employee finds themselves in any situation at the workplace which they have reasonable cause to believe presents an imminent and serious danger to their life, safety or health, the employee must immediately report this fact to their immediate supervisor and remove themselves from the situation. In addition, in terms of section 119(3) of the Ghana Labour Act, the employer must not require the employee to return to work if the dangerous situation is imminent or ongoing. An employee may therefore, on the basis of a life-threatening work situation, insist on remote working.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

Apart from the circumstances indicated above, any other motivation for remote working is subjective and may differ on a case-by-case basis. In our view, situations where there could be significant time savings for employees who have long commutes to work, or if an employee's particular home or family situation requires it, there may be motivation for working remotely.

GHANA



In terms of section 8(c) of the Ghana Labour Act, the decision to permit remote working is, however, at the sole discretion of the employer, which has the right to modify its operations as it deems fit. There are no specific factors or regulations under any legislation in Ghana which an employer must take into account to implement remote working. Generally, though, an employer has a duty to protect the interests of its employees as outlined in section 9(8) of the Ghana Labour Act.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

There are no statutory provisions on remote working. The type of arrangement for remote work depends on the employer and the needs of the business. Since the COVID-19 pandemic however, some of the models of remote working that have been implemented by employers in Ghana are:

- an exclusively remote working system without any on-site activity. This was common in private companies in sectors such as legal, accounting and other professional services;
- remote working on a shift basis, with employees working remotely and on-site in a shift system. This was common in the banking sector and some statutory corporations;

- remote working based on the kind of position or role undertaken by an employee. In this system, critical employees worked on-site while other staff worked remotely unless they were required at the company's premises. This was common within the utility services and private companies; and
- ad hoc remote working implemented as a protective measure, usually in cases where if an employee may have been exposed to the COVID-19 virus and other employees may be at risk of infection. In this case all employees or a department which could be at risk worked remotely pending COVID-19 test results and treatment, where necessary.

5. What are some of the risks and challenges presented by remote working?

In practice, for the employer or the company, the major challenges of remote working are:

- ensuring that employees' productivity or output levels do not fall below the expected standards;
- unstable network or internet connectivity;
- unpredictable power outages; and
- Employee personal issues such as:
 - blurred lines between work and personal life resulting in burnout and stress;
 - distractions at home;
 - inability to manage time or effectively organise work activities; and

- inability to effectively collaborate, communicate and co-ordinate with others to complete tasks.

The key risks for employers in relation to remote working are, in our view, reduction in output, liability for employee's injuries sustained or diseases contracted in the course of employment, and security of company documents and confidential information.

Reduction in output

As outlined above, there is a risk of reduction in work output when employees work remotely. The employer must set clear targets and timelines within which results must be provided. If necessary, an employer may provide software to track employee's activity during work hours such as billing, timesheets, video monitoring or other kinds of system monitoring.

Liability for employees' injuries or diseases

An employer is liable to pay compensation to employees for injuries or diseases occurring in the performance of duties under the Workmen's Compensation Act 187 of 1987 (Ghana Workmen's Compensation Act). An employer must pay the injured employee compensation commensurate with the incapacity so assessed by the attending medical doctor. In addition, the employer must bear the medical expenses in respect of the work-related injury or disease.



The employer is required to take reasonable measures to identify risks to personal data, implement safeguards against the risks, and regularly verify and ensure that such safeguards are updated.

Compensation is payable for specified diseases under the Ghana Workmen's Compensation Regulations 1967.

The entitlement to compensation or payment of medical costs by the employer for injuries does not extend to injuries caused as a result of an employee's intoxication from drugs or liquor at the time of the accident, injuries which are deliberately self-inflicted or cases where the employee knowingly misrepresented to the employer that he was not suffering or had not previously suffered from the same or a similar injury.

The calculation of compensation is undertaken by the Ghana Labour Office using a specified formula. If an employer and employee agree on the compensation to be paid to an injured employee, the amount agreed must not be less than the amount that would be payable under the Workmen's Compensation Act. An agreement with an employee to relinquish any right to compensation from the employer for injury arising out of and in the course of the employment is void.

Under Ghanaian law, activities "arising out of and in the course of employment" include activities incidental to the employment, insofar as the employee is not on a frolic of their own. The injuries or diseases do not have to be at the employer's premises or places over which the employer has control for compensation to be payable.

The provisions do not exempt employers from liability for employees who work from home. Consequently, these provisions generally still apply to employees who work from home.

Security, data protection and confidentiality

As a data controller, an employer is required under the Data Protection Act 843 of 2012 to take all necessary steps to secure the integrity of personal data through the adoption of appropriate, reasonable, technical and organisational measures in order to prevent the loss of, damage to, unauthorised destruction of, unlawful access to, or unauthorised processing of personal data. In this regard, the employer is required to take reasonable measures to identify risks to personal data, implement safeguards against the risks, and regularly verify and ensure that such safeguards are updated. Generally, accepted information security practices must be observed. The employer must put measures in place to ensure that its confidential information is not at risk of breaches by the employee and third parties. If employees are provided with laptops, they may include software that prevents exportation and transfer of data unless authorisation is obtained. The employer may regularly monitor or audit employees' activities over its network or on the laptops provided.



ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

Arrangements for remote work depend on the employer and the business needs. It is advisable for an employer to have a remote working policy to set out the guidelines and rules for remote working. The policy may address:

- criteria for remote working;
- working hours;
- monitoring and management of employees working from home;
- remote working expenses;
- insurance cover for employees working from home;
- work equipment and technology;
- arrangements for securing health and safety at home; and
- information security (data protection and confidentiality).

Prior to commencing remote working, the employer may undertake individual risk assessments of its employees to determine eligibility for working from home. The employer may:

- facilitate a self-assessment by the employee or conduct an in-person or virtual assessment of the employee's home workstation to determine if there is any risk to the employee working from home. For example, practically, an employee working from home should have a dedicated area of

their home to use for work. The employee must also be able to set boundaries in their home so family members and friends do not interfere with their work. If an employee's home environment poses risks to them while working, it is not recommended that such an employee be allowed to work from home;

- remedy any issues arising from the assessment that can be rectified to permit working from home. The employer can determine which liabilities it is prepared to take to permit working from home;
- if possible, assist or facilitate the setting up of a workstation to enable an employee to effectively perform their duties; and
- conduct periodic and/or random in-person or virtual monitoring to ensure that the standards required for working from home are satisfied.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

Under the Ghana Labour Act, an employer must take all practicable steps to ensure that its employees are free from risk of personal injury or damage to their health in the course of work or while lawfully on the employer's premises. An employer must also ensure that its employees work under satisfactory, safe and

healthy conditions. There are no exemptions from this obligation for employees who work from home. Consequently, legislation on health and safety applicable to employment generally still apply to employees who work from home. In our view, to the extent practically possible, an employer must ensure that it protects the employees working remotely from health and safety risks.

8. What are the legal obligations of employees who work remotely?

There are no specific obligations for employees working remotely. The general obligations of an employee apply to remote working. Under the Ghana Labour Act, an employee has a duty to:

- work conscientiously;
- report for work regularly and punctually;
- enhance productivity;
- exercise due care in the execution of assigned work;
- obey lawful instructions regarding the organisation and execution of their work;
- protect the interests of their employer;
- take proper care of the property of the employer entrusted to them or under their immediate control; and
- use safety appliances, firefighting equipment and personal protective equipment provided by the employer in compliance with the employer's instructions.

GHANA



9. Are there any tax allowances and/or benefits to remote working?

There are no tax allowances, benefits or other tax implications for remote working for an employee or employer.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

Under the Ghana Labour Act, an employer has a duty to provide work and appropriate raw materials, machinery, equipment and tools to its employees for the performance of their duties.

The cost of setting up a workspace and equipment for employees is implied to be the employer's responsibility. This would include the employer providing any stationery and other equipment (e.g. printer) required for the remote work, if necessary.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

The rules for an employer to ensure effective monitoring and evaluation of employees working remotely depend solely on the employer taking into consideration their business needs. There are no statutory rules applicable. In our view, the rules must be clear, adequate and reasonable. Further, for best practice, the employer must ensure, amongst other things, that supervisors:

- communicate regularly with employees on tasks assigned, updates or progress made when necessary;
- set targets and timelines for performance of work;
- organise team meetings to facilitate knowledge sharing and prevent isolation;
- monitor and manage employees to ensure that work is performed effectively; and
- set fixed work hours and rest periods for employees to ensure effective time management.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

In our opinion, the viability of long-term or permanent remote working depends on the individual employer and their specific business. The employer must assess the effects of remote working vis-a-vis working on-site to determine which system is more beneficial. Remote working may reduce overhead costs and increase or reduce productivity. Remote working could also significantly impact organisational culture with reduction in cross functional collaboration. Further, organisational norms or practices, acquired through in-person socialisation will be significantly reduced. To obtain a balance, employers may blend remote work with on-site work to maximise the benefits of both systems.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Under the Ghana Labour Act, employers have the right to modify their operations. An employer may, therefore, assign employees to work in any location. If the terms of the employment contract do not grant an employer the right to require an employee to work from home on a permanent basis, this must be agreed with the employee.

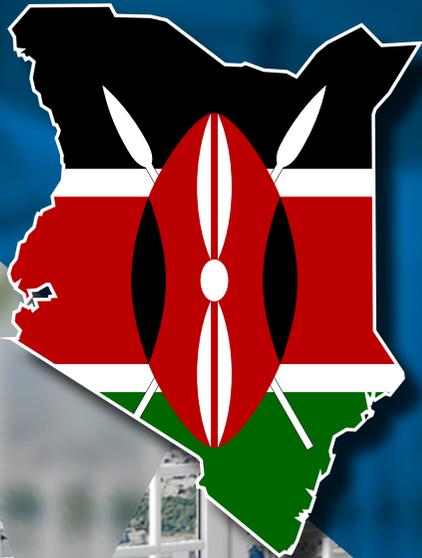
14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

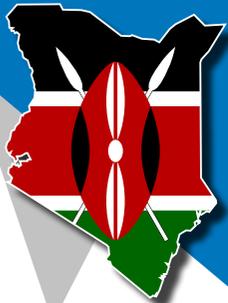
Yes. Since an employer has the right to modify its operations as it deems fit, it may instruct its employees to return to the workplace at any stage, even if it is proven that an employee works effectively remotely.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

No. An employee who works remotely is not entitled to claim a salary increment due to a reduction in overall cost to company resulting from remote working, unless the right is specifically provided for under the employment agreement or any employer policy.

KENYA





1. Has there been a move towards remote working in Kenya in light of the COVID-19 pandemic?

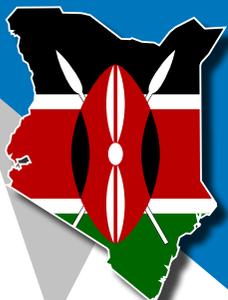
Since the onset of the COVID-19 pandemic, the President of Kenya has made several public addresses issuing guidelines for workplaces, the majority of which have called for employers to allow employees to work from home, with the exception of those working in critical or essential services that cannot be delivered remotely.

The Kenyan Ministry of Labour and Social Protection, through the Directorate of Occupational Safety and Health Services, issued a non-binding advisory on 14 March 2020 (the Occupational Safety and Health Advisory on Coronavirus (COVID-19)) with the aim of minimising transmission and reducing the economic impact of COVID-19 in workplaces. The advisory recommended that all workplaces develop infection control plans and policies, such as using social distancing techniques to conduct as much business as possible (including within the same building), and allowing employees to work from home or to work flexible hours to avoid peak public transportation times or crowding in the workplace.

On 20 April 2020 the Directorate of Occupational Safety and Health Services issued an Occupational Safety and Health Advisory (Advisory) for Employees with Disabilities. The advisory made general recommendations for additional health and safety measures for employers

and employees to minimise and reduce the spread of COVID-19 among employees with disabilities. These recommendations included:

- where roles permit, workers with disabilities should be encouraged to work from home and be provided with laptops, assistive technology and other equipment to support this;
- all job roles or tasks that can be conducted online should be identified and employers are strongly encouraged to support employees with disabilities to enable them to work at home effectively and to facilitate good communication with colleagues;
- if job roles cannot be fully changed to home working roles, employers should consider whether any elements of an individual's role, or roles of colleagues, could be adapted to working at home. Adapting job descriptions and the daily tasks of employees with disabilities could allow more people with disabilities to stay at home, reducing their risk of contracting COVID-19; and
- employees with disabilities who have more than one disability or have any underlying health conditions such as chronic heart, kidney, liver, spleen or respiratory diseases, diabetes, cancer, organ transplants or weakened immune systems, or who are pregnant, must socially isolate and stay at home. All employees with disabilities who are older than 58 must also stay at home.



EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. **May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This incus any basis in law or otherwise.**

In Kenya, it is a legal requirement for an employee to have a written contract of service if they are engaged for three months or more. Employment laws require that a written contract of service state an employee's place of work, meaning their place of work is not determined by the employee but by the terms of their contract of employment. If an employee were to insist on working remotely during the pandemic, or even post the pandemic, the employee would likely be in breach of the place of work provision in their employment contract. An employee cannot insist on working from home unless their contract of employment is amended to include their remote office as an alternative place of work.

3. **Where an employee may not insist on remote working, what, if any, are the reasons an employer may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?**

Employers have both statutory and common law duties for health and safety. Kenya's Occupational Health and Safety Act 2007 (Kenyan OHSA) is

designed to secure the safety, health and welfare of persons at work. The Kenyan OHSA imposes a duty on persons in actual occupation of a workplace, whether as the owner or not, and including employers, to ensure the safety, health and welfare of all people working there. Employers are required to take immediate steps to stop any operation or activity where there is an imminent or serious danger. An employer's failure to comply with the Kenyan OHSA is an offense and could result in a fine not exceeding KES500,000 or imprisonment for a term not exceeding six months, or both.

In light of the provisions of the Kenyan OHSA, employers have amended the place of work definition in employment contracts to allow working from home in an attempt to mitigate the risk of spreading COVID-19.

Employers have a common law duty to take reasonable care for the safety of their employees, including ensuring that employees are provided with a suitable working environment to perform their contractual duties.

The decision by an employer to allow remote working will be based on certain factors, such as:

- the industry the organisation is in. For essential service workers such as healthcare providers and industrial workers, it may not be possible to work from home; and
- the risk of the spread of the disease

in the workplace and the methods of prevention at the employer's disposal. If, upon assessment, an employer lacks the capacity to prevent transmission or to handle cases of infection, then it can require its employees to work from home.

4. **What types of remote working options are available to employers? Which options are most commonly implemented?**

The three most common remote working conditions available to employers in Kenya are:

- a full time remote working model;
- a hybrid, split-working or blended working arrangement where employees are required to work from the employer's premises for part of the week and from home for the remainder of the week; and
- a flexible working model where staff are allowed to decide whether to work in the office or at home.

The hybrid approach appears to be the most common remote working option because of various challenges for remote working, including a lack of stable internet connectivity in most homes in Kenya, technology illiteracy, and employers needing to supervise and have oversight of their employees.

Employees working remotely should be appraised like any other employee. They should not be denied promotional prospects open to comparable workers merely because they work from home full or part time.

5. What are some of the risks and challenges presented by remote working?

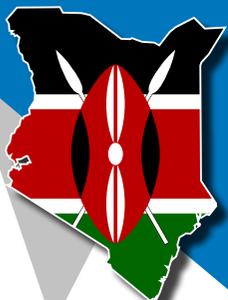
Employers who have adopted remote working arrangements are faced with a need to address a range of practical issues, including:

- developing policies that set out the arrangements and conditions for remote working;
- developing measures and adopting technologies that protect confidential information and personal data;
- providing the necessary equipment to facilitate employees working from home;
- managing and supervising employees; and
- employers who decide to formalise remote working arrangements may need to consider amending their standard employment contracts to encompass remote working.

Employers should take into consideration the following key risk areas:

- Employment contracts may have to be amended to fit the specific needs of remote working, such as:
 - place of work provisions in employment contracts may need to be amended;

- working hours may need to be adjusted. Employers will need to consider whether employees will be completely flexible or must observe strict working hours, or whether there is a 'core time' when they should be available; and
- stipulating the expenses an employee can claim when working from home.
- protection of confidential information and policing compliance;
- technology and cyber security risks that become more prevalent due to increased reliance on technology;
- equipment required by employees and who will provide the equipment;
- appraisal and monitoring of employees. Employees working remotely should be appraised like any other employee. They should not be denied promotional prospects open to comparable workers merely because they work from home full or part time;
- loss of control and damage to teamwork and organisational culture; and
- reduced on-the-job training opportunities for junior or less experienced employees.



ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

Employers should ensure that:

- employees are provided with the necessary equipment to perform their work remotely and that employees are trained on how they are expected to work remotely;
- the necessary technology support for employees is in place, including any required training. The effectiveness of technology when working remotely is contingent on the employer having a plan to deal promptly with issues. Employers should also distribute guidance and policies around work equipment, including how to report any issues and rules for data protection and information security;
- there is a support system for employees to be able to reach their supervisors for work purposes. Regular team meetings can help employees overcome feelings of isolation and keep in touch with the rest of the business;
- they set clear, well defined goals and tangible expectations for their employees since regular supervision may be difficult to carry out. It may be important for the employer and the employee to agree how performance will be monitored and managed; and

- they create and implement a remote working policy which ensures that employees know and meet their expected goals and are aware of the disciplinary measures that will be taken if they neglect their agreements or fail to meet the expectations set out by their supervisors.

In addition, employers should create policies setting out the conditions under which employees can work remotely and the terms that apply to all remote working.

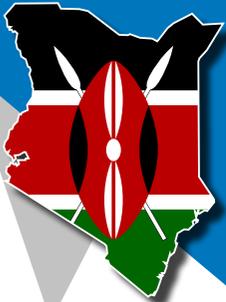
7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

There are no statutory requirements placed on an employer that requires them to create a "safe working environment" where an employee works from home. Employers do, however, have a common law duty to promote the health and safety of their employees by providing and maintaining a safe place of work and taking reasonable care for the health and safety of their employees and others whom it might be reasonably foreseen could be harmed as a result of their activities. This duty can be interpreted to extend to instances where an employee is engaged in remote working. The common law duties must therefore, be considered by every employer when deciding what measures to put in place where employees are required to work remotely.

8. What are the legal obligations of employees who work remotely?

The Kenyan OHSA defines a "workplace" as any land, premises, location, vessel or thing, at, in, upon, or near which, a worker is, in the course of employment. Employees' obligations therefore do not change while working remotely. While at their workplace, the Kenyan OHSA requires every employee to:

- ensure their own safety and health and that of other persons who may be affected by their acts or omissions at the workplace;
- co-operate with their employer or any other person in the discharge of any duty or requirement of the Kenyan OHSA, any regulation made under the act, or any other relevant statutory provision;
- at all times wear or use any protective equipment or clothing provided by their employer for the purpose of preventing risks to their safety and health;
- comply with the safety and health procedures, requirements and instructions given by a person having authority over them for their own or any other person's safety;
- report to a supervisor, any situation which they have reason to believe would present a hazard and which they cannot correct; and
- report to their supervisor any accident or injury that arises in the course of or in connection with their work.



9. Are there any tax allowances and/or benefits to remote working?

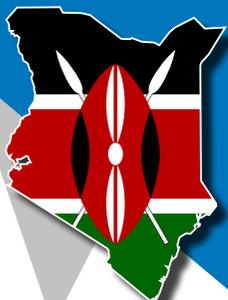
No there are no tax benefits or allowances associated with remote working.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

Where an employer requires employees to work remotely, the employer is generally expected to provide them with the necessary equipment to

enable the employees to carry out their work. However, the employer and the employee may also enter into an agreement providing for other schemes of bearing the costs of setting up remote working spaces.

Courts in Kenya have held that it is the duty of an employer to provide employees with the tools to undertake their duties with diligence and as required by the employer. To require an employee to be liable for their tools of work without the employer taking



charge over the same would defeat the very purpose of employment unless this matter is specifically set out in a contract of service.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

Employers have an obligation to come up with suitable monitoring, reporting and appraisal systems for reviewing work done, level of performance, expectations and difficulties faced by employees working remotely. Some of the methods adopted by employers include:

- monitoring email content, internet use and traffic to assess employee performance, undertake quality control and ensure no unlawful acts are carried out, especially where there are strict regulatory requirements in place;
- adapting communications and prioritising frequent check-ins; and
- working on synchronised systems, such as Microsoft SharePoint, so that employees are kept accountable. This allows employers to track employee progress and provide real-time feedback.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Remote working has both benefits and drawbacks for employers and employees. Long-term viability of remote working will depend on the nature of the work involved. Where work can be done at home without adversely affecting any service to clients or customers or the employer, then remote working may be a viable long-term option. Remote working is suited to work that involves limited administrative support and supervision, and which has inbuilt performance measurement indicators. However, it is reasonable to conclude that most employees will eventually return to the workplace either on a full-time basis or under some form of hybrid working structure.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

An employer can, with the consent of an employee, amend the employee's employment contract to provide for remote working on a permanent basis.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

The current directive from the Government is that employees should work from home where possible. An employer can, however, instruct its employees to return to the workplace at any time provided that the employer is able to discharge its obligation of maintaining the workplace in a condition that is safe and without risks to the health of employees and that complies with the directives issued by the Directorate of Occupational Safety and Health Services.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

No. The remuneration that an employee is entitled to is what is provided in their employment agreement. If an employee wants an increase, they may approach their employer and renegotiate the terms of their employment. Alternatively, if the employee is a member of a trade union, he or she can approach their union to renegotiate with their employer on their behalf. This would take the form of a collective bargaining agreement involving the employer, the employee, and the union.

LIBERIA



LIBERIA



CMB Law Group, LLC. (CMB) is a legal and advisory firm located in Monrovia, Liberia. At CMB, we combine law and strategic advice to optimize our clients' positions in Liberia.

With changes in employment practices and fluctuations in the Liberian economy, we help our clients create policies and procedures that mitigate risks. We guide our clients towards embracing a proactive approach to labour matters from the onset of engagement with prospective employees to ensure that our client's position is protected. Our holistic approach helps our clients meet all statutory and regulatory compliance requirements.

1. Has there been a move towards remote working in Liberia in light of the COVID-19 pandemic?

In 2020 the Ministry of Labour published the COVID-19 Preparedness Guide for Workplaces and Workers (COVID-19 Regulation) to regulate employers and employees' activities during the peak of the COVID-19 pandemic in Liberia. Section 3.1 of Chapter 3 of the COVID-19 Regulation, stated that:

"There is currently no vaccine to prevent the spread of COVID-19. The best way to prevent infection is to avoid being exposed to the virus. Prevention measures such as those described below should be taken now, even if COVID-19 has not arrived in your workplace. The measures should be included in the workplace risk assessment that covers all risks within your occupational safety and Health policy as prescribed by the Decent Work Act 2015 (DWA). Employers should minimize the risks of congestion of workers on site through rotational or shift work without effecting workers' salaries. Attention should be given to persons of advanced age or underlying health conditions, if there is a possibility of persons working from home."

This appears to have been the only move towards remote working in Liberia in light of the COVID-19 pandemic and we have been informed by the Ministry of Labour that there are no other policies or guidelines in this direction.

The COVID-19 Regulation has also expired, which has ended the formal support for a move towards remote working. Notwithstanding, employers and employees, within the context of employment contracts, are at liberty to designate a place of work, which could include an employee's home.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

There is no existing law that gives an employee the right to insist on working remotely either during or after the COVID-19 pandemic, even where it has been proven that they can effectively work from home. The option to work from home would largely depend on an employee's employment contract and their employer's internal policies. In addition, section 26.6 of the DWA provides the following:

"... where there is reasonable cause for the employee to believe that there is imminent and serious danger to his/her safety or health unless the employee ceases to perform a particular work, the employee shall inform the supervisor in the performance of the work about the danger to safety or health, or in the event the supervisor cannot be immediately contacted, the employee shall cease work and inform the supervisor that the work



has ceased. Where a supervisor is informed of a danger to the safety or health of one or more of the workers, the supervisor shall take such action as they consider appropriate to remove that danger, and any such action may include directing the worker or workers to cease, in a safe manner, to perform the work. Where there is disagreement between a worker and the supervisor as to whether there was imminent and serious danger or the action taken was sufficient to remedy the danger, the disagreement may be referred by either party to a labour inspector for investigation."

3. **Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?**

Working from home would largely depend on an employee's employment contract or the employer's internal policies. Alternatively, it could become an option where an employee raises a concern over a reasonable safety or health threat in accordance with section 26.6 of the DWA. An employer

should consult with an employee in making the decision to allow for remote working. Section 26.4(a) of the DWA states that "... an employer shall so far as is reasonably practicable consult with workers engaged by the employer who are or are likely to be directly affected by the employer ... making decisions about the measures to be taken to control risks to safety or health at a workplace under the employer's management and control or arising from the conduct of the undertaking of the employer."

4. **What types of remote working options are available to employers? Which options are most commonly implemented?**

No laws or government regulations exist about the types of remote working options that are available to employers. However, in terms of the DWA an employer is obliged to formulate a safety and health policy, and thus, depending on the outcome of a health risk assessment of the workplace by an employer, it may adopt policies that allow for certain types of remote working to be applied. In particular, section 25.2 of the DWA requires employers to formulate appropriate policies at the workplace, in consultation with their employees, that will ensure the employees are not exposed to safety or health risks.

5. **What are some of the risks and challenges presented by remote working?**

From a legal perspective, monitoring or supervision, especially of hours actually worked, could be a challenge posed by remote working, especially where the job cannot be evaluated on an output basis.

Furthermore, from a legal perspective the key risks would be the absence of a remote working policy that does not clearly define the parameters for the working relationship. Therefore, implementing a remote working policy reduces the risk to the employer as both the employer and employee are clear as to their rights and obligations.

ARRANGEMENTS TO WORK REMOTELY

6. **What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?**

From a legal perspective, employers may want to institute monitoring and supervision protocols to ensure that an employee actually spent the required hours working for their employer, and to ensure additional confidentiality measures are put in place to protect the company's confidential information.

An employer should institute remote working policies that align with their institutional practices or culture, provided that these policies do not violate or contradict the DWA or any other laws.

7. **Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?**

There is no law that mandates employers to implement health and safety measures at employees' homes while they work remotely. The health and safety policy of the employer and the workplace arrangement instituted by the employer should determine whether the employer implements health and safety measures for employees who work remotely. The law is silent on whether creating a "safe working environment" extends to an employee's home while the employee works from home. However, if the employer formulates a health and safety policy for remote working in consonance with the DWA, then the employer imposes a duty on itself to implement it.

8. **What are the legal obligations of employees who work remotely?**

The legal obligations of employees who work remotely would be to work in line with the terms and conditions of their employment contract, the policies of their employer and the laws governing their contract of employment. An employee is obligated to obey all legal and reasonable instructions from their employer.

9. **Are there any tax allowances and/or benefits to remote working?**

No, there are no statutory tax allowances or benefits for employees who work remotely.

11. **How does an employer ensure effective monitoring and evaluation of employees working from home?**

An employer should hire someone to monitor and evaluate the efficacy of remote working and to advise on how the employer can ensure effective monitoring and evaluation of employees working from home, as Liberia has no precedent in law to guide how an employer can ensure effective monitoring and evaluation of employees working from home.

12. **Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?**

From a legal perspective, remote working may create a precedent that ultimately becomes a norm, if not a policy or law for the institution. Policies and laws usually evolve from norms and thus impact organisational culture.



PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Working remotely on a permanent basis would depend on several factors, such as the type of work the employee is employed to do, the outcome of a remote working assessment, the employer’s policy, and the contract of employment between the employer and the employee. There is, however, no provision in the DWA that forbids an employer from employing an employee to work remotely on a permanent basis.

14. May an employer instruct its employees to return to the workplace at any stage of the employee’s remote working, even if it is proven that employees work effectively remotely?

Provided that any risks to employees’ health and safety have been assessed and mitigated, an employer may instruct its employees to return to the workplace at any stage, even if it has been proven that the employees work effectively remotely. The determination for an employee to return to the workplace must be in line with the terms and conditions of their contract or the employer’s policy, if any.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

This will depend on the contract between the employer and the employee, and the employer’s policies, as the DWA is silent as to the conditions that may give rise to the increment or reduction of an employee’s salary.

MALI



MALI



Cabinet Maître Cheikh Fall Law Firm provides its customers a range of consulting services for legal assistance, defense and preventive treatment of disputes by guaranteeing absolute discretion, complete confidentiality and constant availability.

Their business activities can then take place in a secure environment.

Labor Law | Drafting Employment contracts, Ordinary Dismissal or Dismissal for economic reasons, Non-Competition and disclosure clauses, Social Litigations to name but a few.

1. Has there been a move towards remote working in [name of jurisdiction] in light of the COVID-19 pandemic?

In view of the recent global COVID-19 health crisis, the Mali Ministry of Social Dialogue, Labour and Civil Service, in collaboration with the National Directorate of Labour, has provided companies with recommendations and preventive measures to help fight the spread of COVID-19. The ministry also reminded companies of the procedures for organising work, which they could use only in cases where they could prove the need to do so. One of these modalities is remote working. Indeed, it was mentioned in the recommendations that *"In the circumstances of the fight against COVID-19, the employer may temporarily resort to remote working even if Malian labour legislation does not provide for special provisions in this regard". Although not regulated in Malian legislation, remote working is defined by the French legislator as "any form of work organization in which work that could also have been performed on the employer's premises is carried out by an employee outside these premises on a voluntary basis using information and communication technologies".*

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

There are no specific provisions that regulate remote working in Mali. In allowing remote work, Mali has been largely inspired by its French counterpart, which provided for this modality of work organisation in its provisions of the Mali Labour Code of 1992 (Mali Labour Code). In light of these provisions, remote working is set up by a collective agreement or within the framework of a charter drawn up by the employer after consulting the company's social and economic committee. In the absence of a collective agreement or charter, the employee and the employer may formalise an agreement.

Thus, it can be said that an employee is entitled to ask to work remotely since remote working can be concluded on the basis of a mutual agreement, but they would not be able to insist on working remotely during the pandemic. For example, an employee cannot unilaterally decide to work from home because they have a fear of being infected. However, an agreement may



be reached between the employee and their employer to allow the employee to work from home. Similarly, after the pandemic even if it is proven that they can work effectively from home, the decision to work remotely can only be taken on the basis of a mutual agreement between the parties.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

The decision to work remotely is taken on the basis of a mutual agreement between the employer and employee. However, in the event of exceptional circumstances, particularly in times of the pandemic, the decision to work remotely may be taken unilaterally by the employer. Thus, the latter may justify its decision on the basis of its obligation to protect its employees. This is incumbent upon an employer in accordance with the provisions of Article L170 and following from the provisions of the Mali Labour Code related to the hygiene and safety measures for work establishments. In light of this, an employee is required to comply with the measures taken by their employer.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

The types of remote working options available to employers include remote working in a place other than an employee's home and working from home. Indeed, a distinction must be made between remote working and working from home. While remote working represents work carried out through information and communication technologies (ICT), such as the internet, working from home can be implemented in other situations without using these technological means, insofar as the employee can perform their duties at home. However, the most commonly used option remains remote working, especially in this period of COVID-19 pandemic.

5. What are some of the risks and challenges presented by remote working?

One of the major challenges posed by remote work is the use of new ICT. It should be noted that digitalisation is not uniformly widespread, as some regions do not have broadband, internet access or ICT tools that allow remote working. According to one study, only a quarter of the population in sub-Saharan Africa, including Mali, have access to the internet. In addition, in countries where regular power cuts and unstable internet

speed complicate email exchanges, remote working is practically impossible without dedicated help from an employer for the purchase of equipment and the provision of a stable internet connection.

The following are some of the risks associated with remote working:

- lack of supervision of employees;
- the inability to ensure effective control of compliance with working hours, even with an IT system in place;
- sub-optimal working conditions and delays in the execution of work;
- potential failure to meet deadlines due to factors related to the remote working environment;
- an impact on the quality of the work provided, especially in the context of remote work carried out from an employee's home;
- the risk of violating employees' privacy;
- management related issues (employees who do not work enough or who overwork);
- employees having difficulty negotiating the implementation of remote working within their home environments;
- remote work being considered by employees as an enforceable right or an acquired advantage, and not as a new mode of work based on the health and safety risks in the circumstances; and
- abuse of remote working.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

Implementation depends solely on the employer because of the lack of regulation in this area. The Mali Labour Code does not mention remote working in its corpus. Thus, it does not require complex protocols. A memo to employees pertaining to remote working will suffice and should define the periods of the remote working plan in the context of exceptional circumstances, including the threat of COVID-19 or force majeure. In the context of COVID-19 or force majeure, remote work can be imposed without the consent of employees because it is a work organisation modality made necessary to ensure the continuity of the company's activities and the protection of employees. Apart from these exceptional circumstances, an employer may not use the remote working system without the consent of the employee whose contractual relationship has been defined by their contract of employment. However, the employer is required to implement all logistical and other means to enable employees to properly perform their work remotely.

An employer who authorizes remote working must provide his/her employees with the equipment and tools to allow

them to perform their tasks as if they were working in the office and to prevent their performance, productivity and well-being from suffering. Working with poor quality equipment or tools for an extended period of time reduces employees' productivity and ultimately leads to feelings of frustration and demotivation. The employer must, therefore, provide its employees with the same technological tools that they usually have available in the office, in order to maintain the same level of productivity.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

The health and safety environment required from the employer at its premises does not extend to the employee's home. The employer is not responsible for what happens in the homes of its employees. For the execution of remote work, it is up to the respective employees to take the appropriate measures to perform their work in their home. However, if remote work is carried out on premises chosen by the employer, the employer would be required to take all necessary measures to ensure the health and safety of its employees at those specified premises.

The health and safety environment required from the employer at its premises does not extend to the employee's home.



8. What are the legal obligations of employees who work remotely?

The obligations incumbent on employees in the context of remote working remain the same as those when employees work from the company premises. Employees must also respect the hourly quotient set out in their employment contract. Nevertheless, adjustments relating to working hours may be made by the parties. Overall, employees must fulfil their contractual obligations with the exception of their actual presence at the company's premises. In this respect, they are subject to legislation on working hours as well as to collective agreements and rules applicable to the company and are bound by the same rules surrounding the maximum daily and weekly working hours.

9. Are there any tax allowances and/or benefits to remote working?

There are no tax breaks or benefits related to remote work. Indeed, the tax allowances are the same as when employees perform their work at their company's workplace.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

In terms of the contract of employment, an employer is obliged to provide work to its employees. Thus, in

the context of remote working, where it is up to the employer to provide logistical means to enable its employee to carry out their work properly at home, the employer will have to bear the set-up costs.

The employer, apart from the provision of a laptop, will have to provide employees with all the relevant means for the proper performance of their work. This includes providing employees with the means to connect to work platforms as well as the provision of telephones. In the absence of the provision of telephones, the employer may grant employees telephone credit of a fixed monthly amount for service needs. An employer will also have to bear the cost of reimbursement, in particular those related to the consumption of electricity through the use of laptops and other installations. The refund must be made upon the presentation of an invoice.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

In order to ensure effective monitoring and evaluation of employees working from home, the employer will have to put in place logistical means to monitor and evaluate employees. This will involve creating a server or platform where employees will have to connect to work. All company data should be centralised on this platform and each employee would need to have an identification number and password to access this platform,

which would automatically deactivate after a few minutes of inactivity. This will make it possible to know the time each employee accesses the platform and allow for effective monitoring and evaluation of employees working remotely without violating their privacy.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

The viability of working remotely in the long term or permanently depends on the individual organisation and its activities. Work that does not require the presence of employees at a set premises and activities that can be carried out online without the need for significant travel, coordination and consultation in decisions, would be viable for remote work in the long term. However, if the company's activities are more manual than intellectual, this requires the presence of employees. The viability, sustainability and permanence of remote work are intrinsically linked to the company's field of activity. This will have a significant impact on the organisational culture of the company that adopts remote work.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

An employer may not require an employee to work remotely on a permanent basis unless this has



been provided for in the employment contract between both parties. In the absence of specifying this, the employer cannot unilaterally require its employees to perform permanent remote work. The employer may, at most, make a proposal to the employee who is free to accept or reject it. The employee's refusal to perform remote work post the pandemic cannot constitute a reason for dismissal. However, in exceptional situations, particularly in light of COVID-19 this measure may be taken unilaterally by the employer in order to allow the continuity of the company's activity while guaranteeing the protection of its employees.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

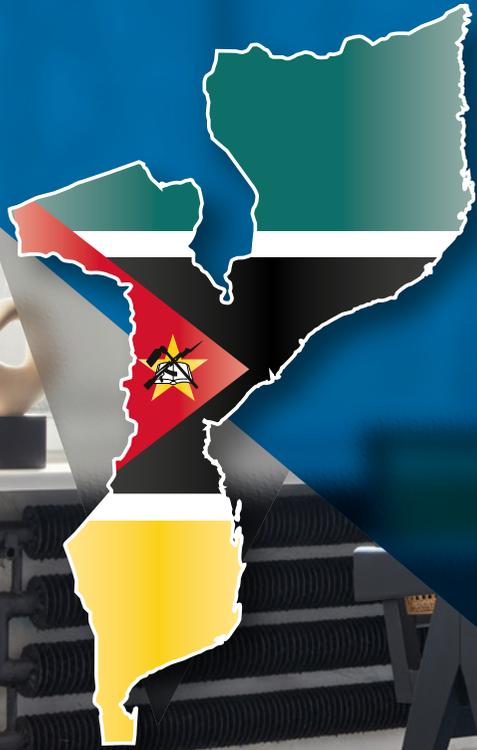
By virtue of the subordination that characterises the employment contract, an employee is called upon to work under the direction and control of their employer. Consequently, if the latter deems it necessary for the employee to return to the place of work, the employee is obliged to carry out the orders issued by their superior, even if it has been proven that the employee works effectively

at a distance. However, in exceptional situations, an agreement may be reached between the parties for office-based work once a week, for example, for employees working remotely full-time.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

An employee who works remotely can request a salary increase but can in no way demand an increase in their salary from their employer.

MOZAMBIQUE



MOZAMBIQUE



CGA is a Mozambican law firm, with specialised areas of practice and departments offering clients tailor-made advice to meet both specific needs and those of their business.

All lawyers comprising CGA are registered at the Mozambican Bar Association, CGA has a strong reputation in corporate, concessions, PPP's, dispute resolution, labour and investment, as well as leading practices in banking, real estate and tax. The firm is acknowledged as a prominent advisor in a number of industry sectors, energy, natural resources and infrastructure.

CGA has been well-regarded by Chambers Global, Legal 500 and IFLR 1000 as Top Tier Firm in Mozambique.

CGA is also a member of the "Lex Africa", a unique legal service group of the African Continent's leading law firms.

1. Has there been a move towards remote working in Mozambique in light of the COVID-19 pandemic?

Prior to the onset of the pandemic, Mozambique's labour law had been introduced, proposed revision related to the integration of telework (work performed using technological means and other forms of off-site location) into, but due to the COVID-19 pandemic, the revision process was delayed.

During the pandemic, the Government of Mozambique introduced a rule pertaining to the percentage of employees who may be present at the workplace, imposing a rotation regime and forcing companies to employ the applicable remote working model for their sector.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

During the pandemic, some people are subject to special protection because they are considered to be part of a risk group, namely: people over the age of 65, those with an existing condition that puts them at risk of severe illness from COVID-19, and pregnant women. These are the groups of people who have priority when looking at who should be exempt from working on-site.

After the pandemic, the legal basis that establishes who can be allowed to work remotely is Decree 30/2021 (Mozambique Decree). The Mozambique Decree is currently in force and provides for remote work in cases where physical distancing between employees in the workplace cannot be implemented to the degree required for COVID-19 infection prevention measures.

When the conditions for working on-site without risks are met, employers are not obliged to accept remote working. Whether during a state of emergency or at this moment in a situation of public calamity, the Government has indicated a preference for remote working but has not made it an obligation for employers to implement same.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

Employees not specified in Article 8 of the Mozambique Decree who are being allowed to work remotely cannot request priority to do so. However, nothing prevents an employee from requesting to work remotely if their sector and role allows for it. The state decreed for a period of time that work should be carried out on a rotational



basis, but at this time work has returned to normal, meaning it is up to each company to adopt a policy in order to establish a system that includes remote working. Companies should only adopt a rotational regime if they cannot guarantee the recommended social distancing allowances and, under these terms, it is up to each company to define the modality of remote work that will suit its context.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

The most common types of remote work are working from home and teleworking.

The teleworking model is more common, and the labour law presently under review will introduce the teleworking model more formally.

5. What are some of the risks and challenges presented by remote working?

The first, and perhaps most important, point is that remote working is not a modality adaptable to all sectors of activity. Even where it is applicable, an employer must make sure that it has created all the necessary conditions for an employee to be able to work effectively from home by, for example, providing them with a telephone, internet connection, computer and printer.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

An employer must ensure that employees have all the conditions created to work away remotely, as if they were at their place of work. The company can create a clear regulation indicating: working hours, tasks, times and frequencies of virtual meetings with colleagues or clients, evaluation criteria, expected goals and how to manage work time. In other words, the employer can create clear work policies with regards to the parameters pertaining to remote working.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

Where an employee is working on a rotational basis or working remotely for their safety and to prevent contamination due to infection, an employer can adopt internal policies to ensure a safe working environment for other employees, including policies relating to when employees must return after contamination has taken place. Therefore, a company can adopt prevention criteria for its employees who work remotely part of the time. The measures provided for by the Mozambique Decree are applicable to all employees.

8. What are the legal obligations of employees who work remotely?

The legal obligations of employees who work remotely are the same as the obligations of an employee who work at the employer's premises.

9. Are there any tax allowances and/or benefits to remote working?

There are no tax allowances or benefits in relation to remote working. However, an employer may adopt benefits for its employees through internal rules, stipulating, for example, that an employee who works from home does not use their travel allowance and the company may create a subsidy for things like faster internet or better mobile phones.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

It is an employer's responsibility to provide all the material and necessary working conditions for its employees. An employer must provide all the required equipment for its employees to carry out their activities. Thus equipment may include a laptop, mobile phone, internet connection, printer and office supplies.



Companies generally have a professional career table that guides promotions and salary increases. In light of this, the simple fact of working at a distance from the company's premises cannot be used to request a salary increase.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

The same obligations apply as with an on-site regime. According to the labour law in force, the evaluation of employees is carried out according to the rules previously established between the parties, which means that the employees and the company stipulate the evaluation methods, and such methods vary according to the particular sector. Depending on the industry, this may be based on quality or volume of goods produced or, in a services industry, it may be based on client- or investor-related metrics.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Depending on the sector, remote work has, in fact, had several positive outcomes, such as less time lost on travel and a subsequent increase in productivity.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Yes. This may be achieved by the parties entering into an addendum to the employment contract and changing the workplace clause in the employment agreement.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

An employer can indicate that the work can be performed at home and in other places indicated by the employer, which would allow the employer to periodically request the presence of remote working employees at its premises.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

No. Companies generally have a professional career table that guides promotions and salary increases. In light of this, the simple fact of working at a distance from the company's premises cannot be used to request a salary increase.

NAMIBIA





On 01 September 2006, the partners of Dr Weder, Kruger & Hartmann and the directors of Kauta, Basson & Kamuhanga Incorporated merged and commenced to practice under the name and style of **Dr Weder, Kauta & Hoveka Incorporated**. The merger of these two prominent legal firms was a first for independent Namibia, which now constitutes an empowered provider of professional legal services in various spheres. WKH specialises in Banking Law, Commercial Law, Company Law, Insurance Law, Civil and Criminal Litigation, Competition Law, Labour Law, Intellectual Property Law, Tax Law, the Administration of Estates and Conveyancing. WKH currently operates from offices in Windhoek, Ongwediva, Swakopmund and Grootfontein. WKH is widely respected and recognised for its professionalism and excellence in service provision.

1. Has there been a move towards remote working in Namibia in light of the COVID-19 pandemic?

Yes, there has been a move towards remote working in Namibia with the publication of COVID-19 related regulations and increased numbers of infections.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

This is purely at the discretion of the employer. During the nationwide lockdown that was declared from 28 March 2020 to 4 May 2020, only essential and critical service providers were allowed to leave their homes to go to work – all other employees were required to work from home.

Section 42 of the Labour Act 11 of 2007 (Namibia Labour Act) also gives employees the right to leave a dangerous place of work until effective measures have been taken to eliminate the danger. The employee must inform their employer as to why they believe the place of work is not safe or healthy. This could be a basis upon which an employee could insist on remote working.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

In terms of section 42 of the Namibia Labour Act regarding an employee's right to leave a dangerous working place, the decision to work remotely is at the sole discretion of the employer and the employer's policies. However, the Public Health COVID-19 General Regulations that were published in 2020 under the Public and Environmental Health Act 1 of 2015 encourage employers to permit vulnerable employees to work remotely.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

Employees whose positions allow them to work from home can do so at the discretion of their employers. For industries where employees are required to be at work (such as in retail) a common alternative approach is to rotate employees on a weekly basis to reduce the number of persons in the workplace at any given time.



5. What are some of the key risks and challenges presented by remote working?

Challenges presented by remote working include (i) technological challenges when employees are not equipped to work from home, (ii) lack of visibility and systems to track tasks and productivity, and (iii) delays in deliverables especially where face-to-face consultations are required.

The risks associated with remote work include the security risk of employees working on unsecured networks, less oversight of the protection of company property and customer information, productivity risks, and diminished workplace synergy and connections between employees.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

Employers should implement policies that govern employee conduct and work requirements when remote working. The policies should incorporate:

- the rules that will apply to remote workers;
- how performance is to be measured;
- working hours and the treatment of overtime; and
- how employees will be assisted with all the tools they need to work remotely, such as a computer/laptop, internet connection and access to a server or company files.

It is advisable for employers to adopt a remote work policy that sets out the rules applicable to remote work, where an employee may work (such as restrictions on location), the best practices to follow, and the rights and obligation of employees when working remotely. An employer may engage its employees to provide input to achieve a win-win position on best practice for both parties.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

In terms of section 39 of the Namibia Labour Act an employer in charge of premises where employees work must provide a working environment



An employer who requires an employee to work remotely should ensure that the employee has the necessary tools, equipment, and stationery to enable the employee to render their services remotely. This may include ensuring that an employee has access to the internet.

that is safe, without risk to the health of employees and that has adequate facilities and arrangements for the welfare of employees.

The duty to provide a safe workplace is thus confined to the premises that the employer is in charge of. There is no provision in current legislation to extend that obligation to premises that the employer is not in charge of. In addition, the Public Health COVID-19 General Regulations expressly relate to the “workplace” which refers to an employers premises.

8. What are the legal obligations of employees who work remotely?

The obligations would be determined by the employment contract or the employer’s policy, if any, on remote working. The obligations that are applicable at the workplace would undoubtedly extend to working remotely unless otherwise advised.

9. Are there any tax allowances and/or benefits to remote working?

Yes, provided they meet certain requirements, home office expenditure incurred by employees in the production of their income is deductible from employees’ taxable remuneration.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

This depends on the employer’s policy. The expense may be borne fully by the employer, or the employee may set up a remote working space at their own cost, in which case a tax allowance may be available to the employee.

Common law requires employers to provide the necessary tools, equipment, and stationery to enable an employee to render services. There is no reason why this duty should not extend to remote working. An employer who requires an employee to work remotely should ensure that the employee has the necessary tools, equipment, and stationery to enable the employee to render their services remotely. This may include ensuring that an employee has access to the internet.



11. How does an employer ensure effective monitoring and evaluation of employees working from home?

The monitoring of employee performance is one of the key challenges with remote working. Employees with measurable targets are easier to monitor as they are required to meet their set targets even while working remotely. Some employers have systems in place that allow employees to log how their time is spent daily or weekly, and some employers use measures like logging in to online platforms as virtual ‘clocking in’ systems, but these approaches are not always accurate. In the absence of targets, it is near impossible to measure productivity.

12. Is remote working a viable long-term or permanent working option? Will it have an impact on organisational culture?

The viability of long-term remote work depends on the nature of the organisation. Certain organisations may run efficiently if the nature of their business does not require employees to be present on site or at the office. For these businesses remote working may be a viable long-term option. However, for employees in the service industry or who need to have face-to-face interactions to perform their work, this is not viable.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

In terms of section 50(1)(e) of the Namibia Labour Act, it is an unfair labour practice for an employer to unilaterally alter any term or condition of employment. An employer may only require an employee to work remotely on a permanent basis by agreement with the employee and if it is in fact feasible to do so.

14. May an employer instruct its employees to return to the workplace at any stage of the employee’s remote working, even if it is proven that employees work effectively remotely?

It depends on the employment contract and the reason for having instructed the employee to work remotely in the first instance. If the requirement to work remotely is a term of the employment contract, then the employer may not instruct an employee to return to the workplace without their consent and a change to the terms of their contract. If the employment contract states that the employee should provide their services from a specified workplace, then the employer may instruct the employees to return. In the absence of an employment contract or without a variation of the employment contract, in a scenario

where working remotely is imposed by the Government of Namibia, once restrictions are lifted, an employer may require an employee to return to the official work premises, whether remote work was more effective or not. Employees can approach their employers and advise as to the effectiveness of remote working, but an employee cannot unilaterally change their working environment without the consent of an employer, and they will be required to return to the status quo, regardless of their proven effectiveness, if their employer does not consent to continued remote working.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

The remuneration of an employee is governed by the employment contract and the contract is usually flexible to allow for increases based on an employee’s ordinary performance assessment. An employee can certainly make an argument for an increase if remote working continues long term. Consideration will undoubtedly be given to the fact that the cost to company may change from things like electrical consumption to provision for computers and internet.

RWANDA





Landmark Advocates is a highly reputable law firm based in Kigali-Rwanda, which focuses on Corporate and Commercial services, Environmental law, Banking and Finance, Employment Law, Intellectual Property, Revenue and Taxation, Real Estate, Civil and Commercial Litigation.

We assist a number of organizations and companies in handling HR issues and we have represented numerous clients, including legal entities and individuals, before institutions in charge of Employment Inspection, and before employment courts.

1. Has there been a move towards remote working in Rwanda in light of the COVID-19 pandemic?

Yes. During the COVID-19 pandemic, many institutions urged or obliged their employees to work from home, depending on the nature of the work performed by the employees.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

During the pandemic an employee may insist on working remotely, depending on the nature of their work as long as they can deliver results in line with the required standard. An employee may rely on the Rwandan Cabinet's decisions in terms of which employers are urged to let their employees work remotely whenever possible in order to prevent the spread of the COVID-19 virus.

Post the COVID-19 pandemic an employee may not insist on working remotely because there is no law or regulation permitting same. It is only possible upon agreement with their employer.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

The decision to allow remote working is at the sole discretion of the employer. An employee may, therefore, not insist on working remotely in the absence of a legislative provision that mandates them to do so.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

There are no specific options of remote working. If an employee is allowed to work remotely, they can work from anywhere as there remains no legal restrictions in this regard. This will depend on the agreement reached between the employer and employee.

5. What are some of the key risks and challenges presented by remote working?

Some of the challenges presented by remote working are:

- poor internet connectivity;
- lack of adequate office equipment (furniture, laptop, and such);
- managing work and household or personal matters (such as children or visitors) which are now all in one location;



- implementation of working hours (many employees have claimed that their employers do not respect working hours and keep giving untimely instructions); and
- while many employees who work remotely do so from home, their homes are not designed to function as offices and this impacts their productivity.

Some of the key risks associated with remote working are:

- security of employment equipment and confidentiality of an employer's data;
- it becomes harder for employees to keep professional secrecy with members of their household effectively also being in their workspaces; and
- the safety of electronic communications might be at a greater risk.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, policies and protocols should be implemented by employers when allowing and facilitating remote working?

An employer may consider implementing the following measures:

- work spaces that are conducive to remote working conditions;

- protection of employment equipment or tools;
- online attendance records;
- measures to ensure the safety of work communications;
- measures to ensure confidentiality of information;
- specify a dress code (where required) in order to maintain professionalism;
- measures related to data protection; and
- a code of conduct related to remote work.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

There is no clear provision related to this. Article 77 of the Rwandan Labour Code of 2018 (Rwandan Labour Code) obliges employers to ensure the health, safety and welfare of employees in the workplace, but it does not define the workplace to include or exclude an employee's home or other remote location. If the workplace is considered as any place in which the work is performed, then the employer's duty with regard to safety at the workplace should extend to an employee's home if the latter is required to perform his/her job from home.

8. What are the legal obligations of employees who work remotely?

There are no specific obligations of employees working remotely. But the general obligations of employees include:

- personally carry out their work or services on time and to achieve performance;
- respect their employer or their employer's representative's instructions;
- abstain from any act that would jeopardize their health and that of their colleagues;
- keep the tools given to them by their employer in good condition;
- respect working hours; and
- protect the interests of the company.

9. Are there any tax allowances and/or benefits to remote working?

No, there are no tax allowances or benefits are offered for working remotely.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

The cost of setting up remote working spaces should be borne by the employer. The employer should equip the employee with all the necessary equipment as if the latter was working from a traditional workplace.



The ability for an employee to claim an increase in salary would depend on the benefits to which the employee was already entitled to before working remotely.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

The employer may achieve this by setting work deliverables or results to be completed in a given timeframe and requiring that work reports be completed.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

For some private institutions, it is a viable long-term option. It has been realised that some employees can perform their jobs well, albeit remotely. Remote work will, however, impact a company's organisational structures in the future.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Yes, as far as it is agreed upon by both parties. One of an employer's statutory obligations is to give its employee the agreed work at the time and place agreed upon (Article 39 (2) of the Rwandan Labour Code), so as long as the employment contract is clear about that, no issue will arise.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

The return to work should be done upon agreement with employees or where there are compelling circumstances.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

The ability for an employee to claim an increase in salary would depend on the benefits to which the employee was already entitled to before working remotely. In some cases, the employee may be the one to gain from working remotely by saving on their commuting costs. In others, it may be the employer who sees a reduction in workplace-related costs such as space rental fees, power usage, water consumption, and so on, etc. Alternatively, other costs, such as internet subscriptions, may increase because the employer is incurring such costs in relation to employees working remotely.

SENEGAL





Cabinet Maître Cheikh Fall Law Firm provides its customers a range of consulting services for legal assistance, defense and preventive treatment of disputes by guaranteeing absolute discretion, complete confidentiality and constant availability.

Their business activities can then take place in a secure environment.

Labor Law | Drafting Employment contracts, Ordinary Dismissal or Dismissal for economic reasons, Non-Competition and disclosure clauses, Social Litigations to name but a few.

1. Has there been a move towards remote working in Senegal in light of the COVID-19 pandemic?

Yes, the COVID-19 pandemic has led to changes in working hours and working methods, obliging companies and public institutions to review their working methods. In fact, remote working refers to any form of work organisation in which work that could have been executed at an employer's premises being carried out by an employee outside of such premises voluntarily, using information and communication technologies. This is a relatively new practice in Senegal. Thus, the Senegal Labour Code of 1997 (Senegal Labour Code) governs remote working, despite the fact that it makes no specific mention of remote working in any of its provisions. In addition, a circular note from the Minister of Employment encouraged the adoption of remote working in order to avoid gatherings during the COVID-19 pandemic.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

Yes, during the pandemic an employee can insist on working at home for reasons related to the

COVID-19 pandemic. However, after the pandemic, an employee cannot insist on working at home because in an employment contract, it is up to the employer to designate the place of work, even if it is proven that the employee can work efficiently at home.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

An employee may insist on remote working citing health reasons given the COVID-19 pandemic. However, this is also an economic challenge for developing countries where businesses rely on the continuity of activities in order to avoid the risk of bankruptcy. Therefore, an employer must react quickly by restructuring the functions on which its operations depend. For employers, it is the dematerialization of the company through remote work. As this is not provided for in an employment contract, it is therefore, at the discretion of the employer to establish the form in which the work is to be done. The decision to allow remote working does not have to come from an employee. The decision to work remotely is taken on the basis of a mutual agreement between an employer and its employee.



However, in the event of exceptional circumstances, particularly in the time of a pandemic, the decision to work remotely may be taken unilaterally by the employer.

Therefore, the latter can justify its decision on the basis of its obligation to protect its employees in accordance with the provisions of Article L167 of the Senegal Labour Code relating to the health and safety measures to be taken in work establishments.

Thus, an employee is required to comply with the measures taken by their employer.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

To enable an employer to continue its activities, it may allow for different forms of remote working methods that differ according to the context. Options include home remote working, online working, video conferencing working and satellite office working.

However, the most commonly used option is working from home. The second most common means of remote work is video conferencing which is now used for meetings and ministerial councils. However, an employer must inform the employees beforehand that this will be the mode of work.

5. What are some of the key risks and challenges presented by remote working?

The challenges of remote working are multiple. Depending on the level of autonomy and emotional stability of the employees, the extent to which an employee engages in remote working can have a greater or lesser impact on their well-being. The challenges that face employers who implement remote working in Senegal are at twofold levels. Firstly, there is the issue of availability of information and communication technologies which includes the need for accessibility and security of digital tools, as well as the use of software. Secondly, apart from the deficit in terms of adequate material means, there is the need to acquire a digital culture which remains imperative to adapt to remote working.

Remote working involves health risks with overexposure to screens, illnesses related to sedentary work and poor posture that can lead to back pain. An employer maintains responsibility for everything that concerns health and safety at work. Therefore, working at a distance or at a different location does not absolve the employer of this responsibility. It must be said that in remote working, the employer does not necessarily control the conditions in which the work is performed. Remote working is an arrangement of the working space and not of the working time and thus employers remain liable for the working conditions of employees during working hours irrespective of their place of work.

ARRANGEMENTS TO WORK REMOTELY

6. What processes protocols and policies should be implemented by employers when allowing and facilitating remote working?

There is an urgent need to develop a legal framework to govern remote working, which is required by most companies. There also needs to be clear policies pertaining to the expected conduct and standard expected of employees.

To facilitate remote working, an employer must also provide employees with the necessary technical tools, including computers and internet connections, to do their work. The employer should also choose an appropriate work environment, plan, organise and make sure that everyone will be able to access and work on files properly and will have all the necessary information to perform their duties. In addition, the employer should remain available, trust its employees, and allow for breaks to ensure that employees can work effectively.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

In this case, it is up to an employee to take all the necessary hygiene measures to be able to implement their work. However, Decree 126 of 2006



The implementation of remote working spaces for employees is incumbent upon the employer because remote working is considered an adaptation of the workplace in so far as to allow for the continuity of the company's activity and guarantee the protection of employees.

places an obligation on the employer to maintain the workplace and to identify and remedy any defects that are likely to affect the safety and the health of its employees. These measures can be followed even beyond the workplace.

8. What are the legal obligations of employees who work remotely?

The legal obligations of employees who work remotely remain the same as for employees who work in the office. In fact, because remote working is a circumstantial measure, the employee's obligation is to do the agreed work, to be connected on time and to accomplish the required tasks while respecting the timetable defined by their manager. Due to the nature of remote work being on a voluntary basis between the employer and its employees and often being accompanied by the signing of an agreement that defines the terms and conditions, the terms of any remote working agreement will determine the obligations of both parties.

9. Are there any tax allowances and/or benefits to remote working?

Remote working does not allow for tax deductions.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like

The implementation of remote working spaces for employees is incumbent upon the employer because remote working is considered an adaptation of the workplace in so far as to allow for the continuity of the company's activity and guarantee the protection of employees.

The employment contract, even if it is a remote working contract, is characterised by a subordinate relationship, an employer is responsible for the charges and expenses related to work activities. Since remote working is performed outside the workplace, employees are responsible for their own expenses incurred in the private sphere. However, the employer is responsible for all charges and expenses incurred in the course of their work.

SENEGAL



11. How does an employer ensure effective monitoring and evaluation of employees working from home?

Remote working in Senegal is an administrative measure taken in exceptional situations, which is why its control can be difficult. However, an employer has the right, as a matter of principle, to monitor the activity of employees by setting up a digital control system, even at a distance. Employers must also respect the rules that protect the privacy of its employees while implementing measures of this nature.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

In Senegal, remote working is a work option generally used for limited periods of time. Remote working has effects on the nature of the business as one of the most complex, and perhaps most hidden challenges is maintaining the identity and personality of an organisation when people do not spend much time together, which is not customary in Senegalese businesses.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Yes, by virtue of the employer's management and organisational power in an employment contract,



the employer can ask an employee to work remotely if the context so requires.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

Yes, an employer can, at any time, instruct employees to return to the workplace even if it is proved that they can work efficiently at home. However, the employer has to respect and implement all established health and hygiene obligations.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

An employee who works remotely cannot claim a salary increase on the basis of any reduced costs to the employer as a result of remote working as there was no mention of such an entitlement in the recommendations on remote working published by the Government in March 2020.

SIERRA LEONE



SIERRA LEONE



Tejan-Cole, Yillah and Partners' practice is based in Freetown with presence all over Sierra Leone, and affiliations across Africa. Tejan-Cole, Yillah and Partners, Sierra Leone's premier International Law Firm was established to provide quintessential and bespoke legal and business advisory services to its cherished clients in Sierra Leone and the world at large. Our lawyers are specialised in commercial and corporate, criminal, civil, international law, natural resources, shipping, industrial sectors etc. This firm subscribes to the fundamental principles of the Rule of Law; and vows to spare no effort at securing the legitimate interest of our clients, whilst maintaining the dignity of our esteemed profession and the local and international recognition of our expertise.

1. Has there been a move towards remote working in Sierra Leone in light of the COVID-19 pandemic?

There is no law or policy in place to guide or inform decisions to be made around remote working. To some extent, there has been a move towards remote working in Sierra Leone because of the COVID-19 pandemic. In addition, government ministries, departments and agencies have adapted to meeting via Zoom, Skype and other video conferencing platforms. The private sector has also begun adopting these initiatives but it is far from widespread and is not accessible to the masses.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

During the pandemic, there has to be a mutual agreement to work remotely by both the employer and employee. The employee cannot insist on remote working of their own volition if the mode of operations of the employer do not provide or allow for remote working.

Post the pandemic, it depends on the type of work and the circumstance surrounding it. In instances where it is shown to be more efficient for employees to work together in

person and collaborate and ideate in a common environment, then a workplace setting will be better. There needs to be research done to prove the effectiveness of working from home. However, an employer ultimately decides the manner in which it will structure its operations.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

There must be dynamic changes in an employment contract to allow an employee to insist on working remotely as the terms and conditions of employment contained in the employment contract are dictated by the employer. If employees are unionised and bargain collectively for better conditions and terms of service that have roots in laws and policy then they can insist on it, but as of now no such laws are in place regarding remote working.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

In Sierra Leone due, to internet access and electricity supply challenges, the options available for remote working are limited to email exchanges, Zoom, Skype and other similar video conference platforms.



5. What are some of the key risks and challenges presented by remote working?

The key risks that employers should be aware of when implementing remote working are; occupational hazards, workplace accidents, diseases, violence and harassment, domestic violence, noise disruptions, distractions from children, risk of electrocution or electrical fires from over burdening electrical circuits, loss of documents and leaking of sensitive materials, amongst other things that have to be accounted for in each individual remote working site.

The challenges presented by remote working in Sierra Leone are that the laws have not captured this type of working style so there are no form of regulations surrounding remote working. There are also questions relating to who takes responsibility in cases of injuries sustained at home working remotely during office hours. Other challenges may pertain to productivity in a situation where there are children present their parent is working remotely. Work sharing and delegated responsibility also provide challenges where communication proves ineffective due to constant power outages and lack of internet access.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

Employers can allow and facilitate remote working in Sierra Leone by providing employees with the

necessary tools, gadgets and equipment needed to work remotely, namely: laptops, mobile internet routers, printers and office stationery. Employers will have to budget and allocate funds to provide the necessary tools to achieve the productivity levels they are seeking from employees.

There are currently no policies, national or otherwise, in place to facilitate effective remote working. There is a need for policies that stipulate that employers are to provide the necessary equipment for employees in order to facilitate an effective remote working space.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a “safe working environment” extend to an employee’s home?

There is currently no requirement for an employer to implement health and safety measures, given the absence of legislation governing remote working. The obligation to maintain certain health and safety standards in an employee’s home where they are working remotely will only become a requirement if it is provided for in law.

8. What are the legal obligations of employees who work remotely?

The legal responsibilities of employees who work remotely are to comply with existing labour laws and to refrain from doing anything to endanger their lives and the lives those around them. The onus is also on employees to take care

of office equipment and safeguard confidential or sensitive documents containing proprietary information from being compromised.

9. Are there any tax allowances and/or benefits to remote working?

There are currently no tax allowances or benefits associated with working remotely as there are no laws that provide for remote working in Sierra Leone.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

In the event that the legal landscape of Sierra Leone is amended to make provision for remote working, the onus is likely to be on the employer to shoulder the cost of setting up remote working spaces for employees.

Employers are liable to provide mobile internet routers, printers, paper, pens, ink and the necessary software to ensure productivity and efficiency. An employer should have those cost implications mapped out. It is merely the responsibility of the employee to protect the equipment, using it wisely and return it in good working condition.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

It is common in Sierra Leone and informed by labour laws for workplace inspections to be conducted by the Ministry of Labour under its wage/labour inspection mandates. The private sector can call on the ministry to have wage/labour inspections done at worksites to ensure proper compliance and safe workspaces. When our laws provide for remote working these practices may be implemented to ensure effective monitoring and evaluation of employees working from home.

In the interim, employers may wish to implement effective reporting measures to ensure employees are productive while working from home.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

The long-term viability of remote working in Sierra Leone is debatable because we simply don't have widespread infrastructure available to support it. In addition, there is insufficient electricity supply and internet access and, most importantly, there are cost implications associated with remote working that may be too great for an employer to undertake.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Within our jurisdiction, the only way an employer may require an employee to work remotely on a permanent basis is where there are laws and policies in place that are effectively regulated. This does not seem to be a development that will occur in the near future.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

Yes of course, the employment contract between the employer and employee would dictate the terms of returning to work. In addition, the efficacy of remote working will only be determined based on research into the productivity and efficiency of remote working.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

Salary increases would only be based on cost of living, productivity increases and profit margin growth. Employers can then come up with allowances for this such as health, housing, leave and transport. These allowances are, however, at the discretion of the employer.

Salary increases would only be based on cost of living, productivity increases and profit margin growth. Employers can then come up with allowances for this such as health, housing, leave and transport.

SOUTH AFRICA





1. Has there been a move towards remote working in South Africa in light of the COVID-19 pandemic?

Yes, on 23 March 2020 the South African Government announced a nationwide lockdown, which commenced on 27 March 2020, in terms of which only people who performed essential services were permitted to physically attend work. From 1 May 2020 onwards, the Government then implemented phased lockdown restrictions, all of which encouraged employers to continue to allow for remote work, where possible, with particular reference to employees with comorbidities or those employees who are deemed vulnerable. The Consolidated Directions on Occupational Health and Safety in Certain Workplaces gazetted on 11 June 2021 (SA OHS Directions) also encourage remote working to limit employees being in close contact at workplaces. The SA OHS Directions also encourage employers to implement a system of rotating shifts to limit the number of employees at a workplace at any given time.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

An employee may only insist on remote working where they believe that there is a danger or risk to their health and safety should they be at the workplace, and this applies both during and after the pandemic. Employers have a duty to ensure a safe and healthy working environment and, as far as reasonably possible, may not allow employees to do any work unless the necessary precautionary measures have been taken to safeguard their health and safety in the workplace.

In terms of section 23 of the Mine Health and Safety Act 29 of 1996 an employee has a right to leave a dangerous workplace where circumstances arise at the said workplace which, with reasonable justification, appear to those employees to pose a serious danger to their health or safety, or whenever the health and safety representative responsible for that workplace directs those employees to leave that workplace.



Furthermore, direction 14(1) of the SA OSH Directions stipulates that an employee may refuse to perform any work if it appears to the employee or the employee’s representative, with reasonable justification, that such work poses a risk of exposure to COVID-19.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

The decision to allow remote working is at the discretion of the employer unless the workplace poses a health and safety risk to an employee. An employee may, however, motivate to work remotely on the basis of increased productivity and an overall reduced cost to company as a result of working from home. This however is not an entitlement and an employee may simply make a proposal in this regard.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

In South Africa there are two common options for remote working: (i) where an employee works exclusively from home or any other approved remote location and (ii) a hybrid system in which an employee works partially remotely and partially at the office on agreed days or at agreed times, or

where an employee makes themselves available to go in to the workplace at the direction of their employer as and when their presence is required.

5. What are some of the risks and challenges presented by remote working?

Some of the key risks and challenges associated with remote working include:

- the protection of confidential information of the employer and/or its clients;
- the protection of employees’ personal information;
- potential data breaches;
- potential cyberattacks through employees making use of unsecured networks in various remote locations;
- monitoring and evaluating employee performance and productivity;
- distractions in the remote workplace
- an erosion of company values or culture; and
- electricity outages which may interrupt an employee’s workday and result in a delay in the employee completing their work or meeting a deadline.

From an employee’s perspective, achieving work-life balance may be an issue, given that they may be expected to be working over and above normal work hours due to the fact that they are working remotely. An employee may also find that their home environment is not conducive to remote working if they have small children or a large family that is also based at home.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

In terms of section 8 of the Occupational Health and Safety Act 85 of 1993 (SA OHSA), employers are obliged to create and maintain, insofar as reasonably practicably possible, a safe working environment for their employees and all of those in their workplace, which extends to the remote working environment to the extent that the employer has control over the environment.

In accordance with this obligation, it is advised that an employer undertake an ergonomics assessment, in line with the SA OHSA Ergonomics Regulation 2019, when allowing remote working as employers are responsible for ensuring an employee’s home office has ergonomically correct furniture, proper lighting, adequate ventilation systems and emergency medical plans.

Employers should also endeavour to implement remote working policies that set out, among other things: employees’ deliverables, the remote working spaces allowed by the employer, working hours, a dress code, what employees should do if injured while working remotely, when and under what circumstances an employee must attend the workplace, and an employee’s rights of refusal to go in to the workplace in the event that the employer requests them to do so.



Employers must create and maintain a safe working environment for their employees and all those in their workplace and, as mentioned above, this right extends to remote workplaces.

Employers may also have regular check-ins with employees, set goals and targets to be achieved with clear, specified deadlines, advise employees of their rest periods and lunch times and try to ensure that the workplace environment is mirrored at the employee's remote space, where reasonably possible.

The processes and protocols adopted must, however, also take into account the right to privacy of the employee.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

Employers must create and maintain a safe working environment for their employees and all those in their workplace and, as mentioned above, this right extends to remote workplaces. This is because section 1 of the SA OSHA defines a workplace as "... any premises or place where a person performs work in the course of his (or her) employment".

Sections 8 and 13 of SA OSHA require employers to conduct appropriate hazard identification and risk assessments and to implement appropriate measures to address the identified hazards and assessed risks

based on codes of practice, standards, procedures and instructions. Employers are also required to implement appropriate health and safety training and a communication programme to communicate the identified hazards and assessed risks, and the measures to be implemented to avoid the risks from eventuating as well as appointing competent supervisors and implementing a system of inspection.

8. What are the legal obligations of employees who work remotely?

The legal obligations of employees remain the same whether they are working remotely or from the office. These generally include, performing their duties at the required standard, protecting their employer's confidential information and fiduciary interests, and obeying all reasonable instructions given to them by their employer.

9. Are there any tax allowances and/or benefits to remote working?

The most significant tax benefit that may arise in response to employers and employees adopting a remote working structure is that employees may be able to claim certain expenses incurred by them in respect of their home offices as tax deductions, thereby potentially reducing their tax liability for the relevant year of assessment.



There are stringent requirements that must be met by employees in order for them to qualify for the relevant tax deductions and it should be noted that it is only specified expenses that pertain specifically to a home office that may be claimed. To the extent that the requirements have been met by an employee, it is incumbent on them to claim the deductions in their ITR12 when they submit their annual tax return. Whether or not employees claim these home office expense deductions will have no impact on the employer's employees' tax or other tax-related obligations.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

An employer is only obliged to provide employees with the equipment and tools required to perform their duties at the requisite standards. Where an employee elects to work from home, they cannot expect their employer to be responsible for the set-up costs. However, in relation to stationery, printing and other day-to-day expenses in the course and scope of the employee's employment, it should be agreed between the employer and employee as to whether the employee will be reimbursed for such expenses.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

An employer may ensure effective monitoring and evaluation of remote working employees by:

- providing the requisite tools to ensure employees can undertake tasks meaningfully;
- setting clear expectations and deadlines;
- engaging with employees regularly;
- having one-on-one meetings with employees (or check-ins);
- engaging as often as possible and having a clear communication policy; or
- using technology to get around geographical boundaries.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Remote working may become a viable option for employers, especially when productivity has increased, employers can see a significant improvement in work output, and the cost to company is greatly reduced. However, some challenges that employers may face in organisational culture include:

- lack of alignment with the company's ethics and vision, which does not occur organically;
- team camaraderie or spirit not being the same as in an in-person context;

- communication issues;
- understanding the skills sets and personalities of different individuals, and the value they can add as a result, is more difficult in a remote environment;
- difficulties related to developing a trust relationship;
- ownership and the feeling of belonging to an organisation takes longer to cultivate; or
- building relational bonds is more difficult and opportunities for conversations that are not only transactional happen much less frequently online.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Yes, an employer may require employees to work remotely on a permanent basis. However, a change to the location where an employee is required to work constitutes a unilateral change to the employees' terms and conditions of employment and this change should therefore be negotiated and agreed to by the employee.



14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

Yes, an employer may instruct its employees to return to the workplace, provided that the SA OHS Directions issued by the South African Government do not at the time require an employee to work remotely and that all health and safety obligations contained in the SA OHS Directions are complied with. This notwithstanding that an employee may be more productive whilst working remotely. Additionally, an employer

may instruct its employees to return to the workplace if their contract of employment stipulates their place of work as the employer's workplace and provided that all the obligations envisaged in the SA OHS Directions are adhered to.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

An employee may motivate for a salary increase on the basis of an overall decrease in their cost to the company. The employer, however, has a

discretion as to whether to increase an employee's salary and on what basis. An employer is not obliged to accept such a proposal and an employee is not, as a right, entitled to an increase in salary on the basis of an overall reduced cost to company. Where an employee can show evidence that a benefit which they are entitled to is being withheld, or that they are not able to access it as a result of remote working, they can lodge a grievance with their employer or refer a benefits dispute.

SOUTH SUDAN



SOUTH SUDAN



CASE ADVOCATES was founded in March, 2013 as CASE ADVOCATES & SOLICITORS. In March 2020, the firm undertook restructuring of the partnership and the Firm's name was changed to "CASE ADVOCATES, LLP".

We are a firm of dedicated and qualified team of professional lawyers trained abroad and domestically with multidisciplinary expertise. We focus on Employment law, Banking and Financial laws, Fraud and Internal Investigations, Mergers & Acquisitions, Criminal and Civil Litigation, Commercial practice, Constitutional Law and Constitutional litigation, Disability law and Human Rights, Family Law, Immigration Law, National Security Law, Military Law & Procedure, Counterterrorism & the Law, Property Law, Oil & Gas, Sports & the Law, Post-Conflict Reconstruction, Arbitration, Mediation and Conciliation, Medical Malpractice, Intellectual Property, Complex Contracting, Insurance laws Training and Research.

1. Has there been a move towards remote working in South Sudan in light of the COVID-19 pandemic?

No directive has been issued by the Government for a move towards remote working. However, a COVID-19 High-Level Taskforce was constituted by the presidency on 24 March 2020 and this taskforce directed employers (both private and public) to make provisions for allowing non-essential staff to stay at home on paid leave. Work time in public institutions was also limited to half-day for a period 30 days.

United Nations agencies, non-governmental organisations (NGOs) and other companies privately notified their staff to work remotely from home.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

There is no legal basis in the current context of the COVID-19 pandemic in South Sudan for an employee to insist on working remotely. Legislation on COVID-19 did not come to light because the South Sudan Parliament was not functioning. A transitional National Legislative Assembly was reconstituted in May 2021 under the Revitalized Peace Agreement. If, however, the pandemic worsens and employers insist that their employees return to work, employees

could begin to call for remote working. Working remotely post the pandemic may only appeal to certain sections of the private sector and possibly NGOs, but it is unlikely to be the modus operandi of the public sector.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

An employee may claim that they enjoy independence while working remotely as there is less direct supervision. Remote work is also cost effective for an employee in terms of reduced transport costs. Employers are required to take into account certain factors such as: the severity of the pandemic, the number of staff employed, the space within the work premises, internet accessibility and airtime in case of emergency. Also, certain regulations must be considered, such as government directives to employers and labour laws in the country.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

Internet-based remote working which includes the use of applications such as Zoom, WhatsApp and video conferencing, where necessary. Phone calls are commonly used for emergencies and quick feedback.



5. What are some of the key risks and challenges presented by remote working?

Employees such as cleaners, private security guards and receptionists cannot work remotely. An employer has to pay them as they have to be present at their duty stations. If an employer has signed a long-term contract with a receptionist, cleaner or cook, it might be hard to terminate such a contract without a loss to the employer.

With regards to employees who can work remotely, an employer might find it difficult to directly supervise employees. Work might not be submitted within the deadlines given because of internet challenges. Employees might use remote working as an opportunity not to concentrate on work and may come up with excuses such as power outages at home, lack of internet and so on. Productivity and performance management remain a key challenge.

Employers' risk compliance issues may take the form of employee inefficiencies, delays in submitting reports, or dishonesty associated with not completing work, along with high expenditure risk for employers to monitor employees' phone call usage.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

Employers must put workable policies and rules in place to ensure employees comply with their tasks and deliver in

accordance with the required standard. There is, however, a need for employers to provide money or equipment such as modems for internet access in order for employees to carry out their duties remotely. Employers may use Zoom and other such applications to ensure that they are in contact with employees and to know whether they are indeed working and how they can be supervised.

The employer may need to seek clearance from government authorities such as the South Sudan Ministry of Labour, to restructure contract terms, provision of supervisory and compliance mechanisms, monitoring and evaluation of work performance, reporting and internet services policies.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

Yes, an employer is responsible for the health and safety of its employees working remotely in terms of training employees to adhere to health and safety measures and compliance norms. However, supervision becomes difficult. The duty on an employer should go as far as providing information about safety to the employees and sharing any new information at their disposal. The duty should not extend beyond that as it would be costly and impracticable for the employer to supervise all employees working remotely in different locations.

8. What are the legal obligations of employees who work remotely?

Employees are under an obligation to perform their work as required under the terms of their contract, submit reports and answer calls from their supervisors. The obligations on employees contained in their contracts of employment extends to remote working.

9. Are there any tax allowances and/or benefits to remote working?

No, there are no tax benefits for employers or employees. Remote working is a new development in South Sudan and the Government has not communicated any specific tax allowances. Employers should still deduct and remit 10% personal income tax from the employees to the Government.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

Just as the employer would provide internet services in the office, it should be the duty of the employer to make sure internet access is made available for employees so that they can achieve the objectives of the employment agreement. As with working equipment set up in offices, the employer is under obligation to provide equipment at its own expense. Stationery expenses should also be borne by the employer.



Remote working has an impact on organisational culture in terms of teamwork, employer-employee working relations, supervisor-employee working relations, technical support and the expansionist vision of the company or organisation.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

The employer can create group Zoom or video conferencing sessions with employees in order to monitor employees' performance. The employer can change monthly reporting to bi-weekly reporting to track performance more closely.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Remote working is not a viable long-term working option. Remote working has an impact on organisational culture in terms of teamwork, employer-employee working relations, supervisor-employee working relations, technical support and the expansionist vision of the company or organisation.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

The employer may, at its discretion, allow employees to work remotely on a permanent basis as long as the employer is comfortable, and the objectives of an employment relationship are met through remote working.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

Yes, an employer may instruct employees to return to work. The presence of employees at the workplace also builds the company's culture of teamwork. Certain corporate social responsibility schemes of the company or organisation may require the presence of employees.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

In the private sector, employees have been demanding salary increases given that South Sudan is land-locked and most commodities are imported from Kenya and Uganda. The prices of goods are high and the South Sudanese Pound has fallen sharply against the US dollar.

Others have even demanded that they be paid in dollars so that they can exchange their dollars at a fair rate from the black market to meet the cost of living.

Cost reduction is a legitimate reason to demand a pay rise and ensure fairness in the labour market. Employers whose costs have been reduced cannot maintain the same salary scale. However, a demand for a salary increase would be dealt with on a case-by-case basis, taking into consideration certain factors such as the number of years an employee has spent with the organisation and their position, productivity and performance.

TANZANIA



TANZANIA



Abenry & Company Advocates
legal partnership started in
year 2006.

The firm currently comprises of 6 Partners and 8 Associates with Lucy Sondo as the managing Partner. Abenry operates in Mainland Tanzania as well as in Zanzibar Isles.

Our team of lawyers has over the years been involved in several corporate transactions including private public partnerships, mergers and acquisitions, intellectual property matters, capital market transactions, project finance, banking, privatisation projects, corporate restructuring and general advisory work.

From 2006 to 2020 Abenry is listed as one the seven leading law firms in Tanzania by Chambers Global "The World's Leading Lawyers for Business". Abenry has been described therein as "successfully building a name for itself and proving a favourite among Clients".

1. Has there been a move towards remote working in United Republic of Tanzania in light of the COVID-19 pandemic?

Yes, there has been a move towards remote working in Tanzania, particularly in the private sector.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

No, an employee is bound by the employment contract and the employer's directives both during and after the pandemic and therefore, they may not insist on remote working.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

An employee may motivate for remote working if they have medical proof that they have tested positive for COVID-19.

A decision to allow for remote working is at the sole discretion of the employer. Moreover, employers are advised to take precautions in accordance with guidelines set by the Tanzanian Ministry of Health upon directing their employees to work remotely.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

Remote working options are mostly available to employers in white collar jobs. This may include working remotely while attending work in shifts or strictly working from home.

Working in shifts and working from home are the most commonly implemented options to limit the number of employees at the workplace.

5. What are some of the risks and challenges presented by remote working?

Some of the challenges presented by remote working are:

- ineffective communication between an employer and employee or among employees themselves. In Tanzania there is the challenge of poor internet supply. Employers are generally able to afford quality internet, but it is more difficult for individuals at home, and this can make it challenging for employers and employees to communicate effectively;



- poor internet connections also contribute to employees missing deadlines;
- virtual communication between employees is difficult to control;
- monitoring efficiency. It is challenging for the employers to monitor the efficiency of employees in performing their duties while working remotely, especially on matters of time management; and
- lack of motivation on the part of employees because the home atmosphere or an environment away from the workplace may be distracting or less motivating for employees. In addition, there is the problem of a lack of boundaries between work and personal life.

The following are some of the risks associated with remote working:

- clients' confidential information can easily be jeopardized;
- inconvenience or difficulty on the part of the employer in monitoring the projects or work undertaken by the employees working remotely; and
- inefficient performance, due to factors such as poor internet connections, remoteness, and distracting environments.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

The potential processes and protocols to be implemented include introducing mechanisms that will enable employers to monitor their employees efficiency and accountability during working hours. In addition, employers should provide the necessary equipment and tools such as internet supply, devices like computers, printers and scanners, and airtime vouchers etc. depending on the nature of the tasks that need to be performed.

An employer must ensure that it supplies sufficient working tools to an employee to perform his or her duties at the required standard.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

Employers are required to implement health and safety measures for employees at their workplaces or when working remotely in the course of employment and to provide a safe working environment.

The law defines a workplace as any place or premises where a person performs work in the course of their employment. The obligation is therefore, linked to work being done within the course and scope of employment and not necessarily a physical location.

8. What are the legal obligations of employees who work remotely?

Employees must abide by their employment agreements together with their job descriptions especially in relation to the following: time, confidentiality, accountability, efficiency and integrity.

9. Are there any tax allowances and/or benefits to remote working?

There are no additional tax allowances or benefits for remote working.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

The costs for setting up remote working spaces depend upon the nature of an employee's work.

An employer is required to accommodate or disburse the necessary expenses incurred to facilitate remote working. These allowances would involve things such as internet expenses, phone airtime, and so on.

Working remotely will have an impact on organisational culture because of the changed working setup.

It is the duty of an employer to set up an employee's working environment. For remote working both an employer and an employee can make arrangements to accommodate such a set up. An employer is required to provide an employee that works remotely with tools such as stationery, access to office files, email access, an internet connection and any other tools which may be necessary for delivering their work.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

Monitoring and evaluation mechanisms may vary from one employee to another. Some employers may use timesheet recording mechanisms to hold employees to account for their time. Other employers may use daily, weekly, monthly or quarterly reporting meetings. Each measure depends on the nature of work and remains at the discretion of the employer.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Remote working is not a viable long term or permanent working option due to the risks and challenges mentioned in questions 5 above.

Working remotely will have an impact on organisational culture because of the changed working setup.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Yes, subject to the terms of the employment contract, job description and nature of the work.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

Yes, the employer may, subject to the terms and conditions of the initial contract of employment and the agreement in relation to place of work contained therein.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

An employee working remotely is entitled to claim a salary increase at any time, regardless of any circumstances that contribute to lower costs of working. However, an employer is not bound to increase an employee's salary upon the claim that their overall cost to company has been reduced if an employee's salary is not below the rates of minimum wages in their particular employment sector.

UGANDA



UGANDA



Engoru Mutebi Advocates is a full service Uganda law firm which has had its expertise recognized in Legal500 EMEA and IFLR1000 Publications for its proficiency in Corporate and Commercial work.

The firm has got a remarkable and vast Employment law practice which offers extensive services across the full spectrum of employment related matters. We regularly advice and handle employment related disputes before specialised employment tribunals and the Industrial Court. In addition to dispute resolution, we also have deep expertise and experience in non – contentious matters like preparing and reviewing Human Resource Manuals; advice and implementation of sexual harassment policies; employment restructurings and redundancies; pensions and benefits advise; advice on disciplinary hearings and termination proceedings.

We also have expertise in the niche area of Trade Unions and Collective Bargaining Agreements in Uganda. Our employment team also offers support to the Corporate and Commercial team with respect to employment aspects of mergers and acquisitions including advice on collective termination and conducting of employment due diligences.

1. Has there been a move towards remote working in Uganda in light of the COVID-19 pandemic?

Uganda went into a nationwide lockdown on 1 April 2020 for a period of approximately two months. The President announced the easing of lockdown measures effective 2 June 2020 and the Ministry of Health issued standard operating procedures on the management of the pandemic, which included applying social distancing of at least 2m between people in all public places and at places of work. This directive required employers to ensure that all their employees were safe. Employers were particularly encouraged to decongest their workplaces and to put interventions in place that would facilitate flexible working hours, including using remote working for support staff and requiring employees to work in shifts to curb the spread of the virus.

The Government did not alter any laws to provide for remote working in light of the COVID-19 pandemic. However, the President and the Ministry of Health issued various guidelines in relation to the pandemic and requested employers to apply certain standards at workplaces to ensure that employees who did not necessarily need to be physically present could work remotely or in shifts.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

Generally, employers are obligated to take reasonable care to maintain a safe and healthy workplace for their employees according to the Occupational Safety and Health Act of 2006 (Uganda OSHA). During the pandemic, the Government has recommended that employees work remotely to curb the spread of the virus. However, an employee cannot decide to work from home without providing a good reason if there are precautions and measures that have been taken by their employer to prevent infections at the workplace.

The employer-employee relationship is governed by law and the contract of service between the parties. If an employee has reasonable grounds for requesting to work remotely after the pandemic, they may agree with their employer to alter the terms of their contract of service. The place of work is stipulated in an employment contract and it comes with certain implications for the employee's salary or allowances, so a number of factors may need to be considered by the employer in the circumstances. Our view is that



since the question of whether to work remotely is the subject of a contract, once an employer has addressed the risks associated with an employee being physically at the workplace, the employee's insistence on working remotely is subject to acceptance by the employer. Each case, however, has to be considered on its own merits.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

The Uganda OSHA allows for an employee to stay away from a workplace when they believe their life or health is in imminent danger. For example, in relation to the pandemic, if an employee is genuinely of the belief that working from the workplace will endanger their life, if they are infected or have been in contact with an infected person and need to distance themselves from the workplace, or if they are at higher risk due to a compromised immune system, among other things, they can insist on remote working. An employer is required to take into account the provisions of the law and the contract of service before making a decision to allow an employee to work remotely. The employer should properly consider

an employee's request and where something can be done to remedy the situation, the employer should do so. If the employer insists on the employee being physically present against the facts set out above and there is real danger to the life of the employee, it could, in our view, invite claims for unfair or constructive dismissals if the employee elects to resign as a result.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

There are no defined remote working options within the purview of Ugandan legislation. That aside, most employers applying the remote working option are using shift working options informed solely by the character and outlook of a particular workplace.

5. What are some of the risk and challenges presented by remote working?

Some of the challenges associated with remote working include:

- the law is generally silent on circumstances of remote working so all aspects have to be addressed by agreement between an employer and employee;
- employees might be required to share private health information with their employers in the event that someone gets infected or exposed while at work, or if they are at high risk of infection and require consideration for remote working;

- challenges related to the collection and disclosure of personal data of an employee in accordance with the Data Protection and Privacy Act of 2019;
- in the event that an employee gets infected with COVID-19 or is exposed to a person with COVID-19 and the employer requires them to self-quarantine and stay away from work, the employer will be faced with the challenge of the extent of information it should disclose to other employees;
- where an employee opts for remote working on the basis of fearing for their life, their employer will be required to continue paying them while addressing the reason for the employee's decision and facilitating the employee's remote working;
- there are also issues around how to manage productivity and supervision of work.
- employers must improvise means to facilitate the work of the employee outside the normal workplace and meet costs where technological equipment or movement are required; and
- the employer is faced with challenges arising from managing cyber security, data protection and confidentiality of an employee who is working remotely.



Depending on the job description, an employer may require an employee to report to work physically after certain periods of time. Proper guidelines and whether there are any associated costs should be stated clearly.

Some of the key risks associated with remote working are:

- whether an employee shall take the reasonable duty and care to protect themselves from getting infected with the virus;
- whether an employee will exercise reasonable care in relation to the equipment and tools provided by the employer;
- the risks around cyber security, data protection and confidentiality; and
- whether an employee will carry out all their duties and obligations at the required standard with minimal supervision.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

As stated above, Uganda's laws are silent on remote working conditions. Generally, the processes and protocols rely on the contractual relationship between the parties and may include the following:

- analysis and re-negotiation of a contract of service to provide for any changes to things such as working hours, place of work, incentives, salary adjustments and all other payments, leave days and so on;

- all steps taken must comply with the labour laws of Uganda and any collective bargaining agreements;
- depending on the job description, an employer may require an employee to report to work physically after certain periods of time. Proper guidelines and whether there are any associated costs should be stated clearly; and
- the employer should find ways of enforcing the required levels of confidentiality and ensuring that employees maintain reasonable care towards the protection of all property (tangible and intangible) belonging to the employer.

An employer should implement the following policies to facilitate effective remote working:

- for work entailing the use of technology, where practical, the employer should provide the means to ensure that employees adhere to confidentiality, data privacy and cyber security to protect clients' information. For example, providing employees with computers so as to avoid the use of personal computers that can expose the employer to cyber security breaches. An employer should also provide its employees with secure internet connections;



- notifying clients about the new work policy and that their work will be handled outside the work premises;
- employment contracts in most instances include a confidentiality clause. Employees should be cautioned about the breach of this clause and emphasis should be placed on the importance of working in line with confidentiality undertakings;
- reviewing employment contracts where necessary. For example, allowances that are provided when an employee is working from the stipulated workplace may be revised, amendments may be made to the place of work clause and any other aspects that both employer and employee agree on;
- preparing a COVID-19 policy that ensures employees' safety while working remotely and while working at the usual workplace;
- an employer should implement policies in relation to remote working that cover supervision and oversight of all employees. This is to ensure efficiency of the employees working remotely; and
- an employer should also implement policies on communication and work hours.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

The Uganda OSHA defines the working environment and the workplace to be the place where work is carried out.

The Uganda OSHA does not specifically consider the remote working option.

The duty for an employer to create a safe working environment does not extend to an employee's home because the employer has no authority over the environment or any other place the employee may be working from.

8. What are the legal obligations of employees who work remotely?

The legal obligations of employees working remotely are the same as the obligations of those working from the workplace and are based on the law and the contract of employment, except where they may be modified between the employer and employee.

Some of these obligations include: fulfilling their duties as outlined in their employment contract, communicating within working hours, as required by their employer, taking leave only when permitted to do so by their employer, maintaining equipment provided by their employer in good condition at all times and not tampering with any parts, and ensuring that all client information is kept confidential and that reasonable care is exercised to ensure that the computers or any other devices are not exposed to cyber-crime.

9. Are there any tax allowances and/or benefits to remote working?

No, there are no tax allowances or benefits to remote working provided for under Ugandan law.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like?

Whereas the employer is obligated to provide an employee with incentives and equipment to perform their work remotely, it is not a legal duty for the employer to set up remote working spaces for employees.

The Government recommendation for employees to work remotely is intended to minimise movement and exposure to the COVID-19 virus where someone's duties can be completed remotely.

According to section 45(3) of the Uganda Employment Act of 2006 (UEA), an employer is required to provide an employee with the equipment, tools and material necessary for them to perform their duties and the employee should not be required to pay for these. The UEA does not provide exceptions to this duty. Therefore, even in instances where an employee is working remotely, their laptop and stationery expenses should be remitted by their employer. Attention should be given to what has been provided for in terms of the employment contract.



11. How does an employer ensure effective monitoring and evaluation of employees working from home?

The employer can implement strong supervision mechanisms, communication and time schedules. For example, the employee may be required to prepare a timesheet at the end of every work week setting out the tasks they have completed, or they may be required to report to their supervisor daily.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

In our opinion and experience, remote working is neither viable nor permanent for most Ugandans. In fact, most Ugandans are back to work and operating normally today even with the existence of the COVID-19 virus.

It has already had an impact on organisational culture, especially where physical meetings are concerned. Further, some entities have resorted to the option of employees working in shifts so that the work premises are only at half capacity. This has enabled employers to save on some allowances.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

The employer and employee relationship is governed by labour laws and the contract of employment. The employer may require an employee



to work remotely permanently as long as all aspects under the contract are properly agreed upon between the parties.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

Yes, an employer can instruct employees to return to the workplace at any stage as long as it is safe to return and the employer has implemented the recommended standard operating procedures in line with the lockdown measures in effect as of 2 June 2021. The Uganda OSHA imposes a duty on employers to ensure the safety, health and welfare of all employees at its place of work.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

The terms of a contract of employment are negotiable between an employer and employee to the extent that they do not infringe on the law. An employee may seize the opportunity of a reduction in the overall cost to company to negotiate an increase in their salary. However, it is entirely dependent on the employer to accept or reject such a proposal considering the employment contract and any collective bargaining agreements in place in relation to unionised employee.

ZAMBIA



ZAMBIA



LEGAL PRACTITIONERS Corpus

Corpus is a full house corporate and commercial law firm based in Lusaka, Zambia, that aims to provide legal services to the highest international standards. We offer world class legal services to local, regional and international clients, providing a crucial legal link to the growing Zambian market based on our understanding of the law, business and industry in Zambia and the region.

We act for corporations, NGOs, financial institutions, trusts and state-owned enterprises in providing clear, relevant and timely legal advice in order to assist clients in achieving their objectives and managing their legal risks. Corpus' core competences lie in the expertise offered through our four operating practices, namely: Corporate Advisory, Banking & Finance, Dispute Resolution & Public Policy and Energy Resources & Infrastructure.

1. Has there been a move towards remote working in Zambia in light of the COVID-19 pandemic?

There are no specific guidelines or legislation for remote working in Zambia, although some employers do have policies around remote working. However, regulations and guidelines to combat the spread of COVID-19 have been issued pursuant to the Public Health Act (Cap 295). These are the Clinical Guidance for Management of Patients with COVID 19-Interim Guidelines, 2019, the Public Health (Infected Areas) (Coronavirus Disease 2019) Regulations 22 of 2020 and the Public Health (Notifiable Infectious Disease) (Declaration) Notice 21 of 2020. The interim guidelines for COVID-19 indicate that patients who test positive for COVID-19 should work from home. Further, every person, including an employer, has a duty under Statutory Instrument 22 of 2020 to ensure that an authorised officer is informed if they become aware that any person, including employees, have symptoms of COVID-19. In light of the above, it is our view that remote working is something that is being considered in Zambia.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

As there are no specific laws relating to remote working, the company's internal policies would apply in assessing whether an employee can work remotely both during and post the COVID-19 pandemic.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

An employee may motivate to be allowed to work from home where an employer has not put sufficient measures in place to ensure the safety and protection of its employees at their workplace. As there are currently no regulations on remote working (except for when one has tested positive for COVID-19), the decision is essentially up to an employer as to whether its employees can work from home or not.



4. What types of remote working options are available to employers? Which options are most commonly implemented?

There are currently no prescribed options. However, in practice, two of the commonly implemented options are rotational working, where employees alternate between working from home and working on site, and all employees working from home if their roles can be carried out remotely. Things that should be considered when assessing the viability of remote working include whether the type of work carried out by an employee can be done effectively from home; whether an employer has the necessary infrastructure to support remote working; whether there are any legal risks to be aware of, such as maintaining confidentiality and ensuring that there are no IT system breaches; and considerations around health and safety.

5. What are some of the key risks and challenges presented by remote working?

Some technology-related risks for remote working include cyberattacks and confidentiality breaches. It is advisable for employers to ensure that safe working criteria are put in place, such as data protection, confidentiality and security policies. This is especially important if employees are using their personal laptops or devices to perform official duties and to connect to the company network.

Some of the challenges of remote working include:

- ensuring and monitoring productivity and efficiency of employees;
- lack of interaction and collaboration with colleagues making team building and teamwork difficult;
- adapting to a new way of working takes time;
- negative impacts on organisational culture;
- management of leave;
- maintaining morale amongst employees;
- maintaining trust and confidentiality;
- possible abuse of a working from home arrangement;
- management of work-life balance; and
- high infrastructure costs associated with putting information technology systems in place for remote working.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

There are no specific protocols and processes that employers need to observe with respect to remote working. However, employers can consider coming up with policies that will facilitate effective remote working, such as: productivity monitoring, enhanced measures on maintaining

confidentiality, and guidelines for usage of IT equipment. Employers may find it useful to consider the five elements outlined by the International Labour Organization (ILO) in its guidelines. These are:

- set and communicate clear goals and deadlines in the same way as with employees in a physical workspace;
- form plans to increase accountability;
- analyse important tasks and track progress on a time bound basis;
- evaluate quality and quantity instead of time worked – shift the metrics to “*tasks accomplished and their quality*” versus “*hours spent*”; and
- track achievements for employees.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a “safe working environment” extend to an employee’s home?

Under the Occupational Health and Safety Act 36 of 2010 (Zambia OHSA) employers have an obligation to maintain the health and safety of their employees in the workplace. Section 2 of the Zambia OHSA defines workplace to mean: (a) in relation to a health and safety representative, any place where the group of employees that the health and safety representative represents work, or are likely to work, or are likely to frequent, in the course of their employment or incidental to

their employment; and (b) in relation to employees, any place where the employees work or are likely to work, or which they frequent or are likely to frequent in the course of their employment or incidental to it.

As the definition of a workplace is broad, it is our view that an employer's obligations to ensure the health and safety of their employees may extend to an employee's home. Section 16(1) (a)(b) of the Zambia OHSA provides that an employer must ensure, as far as is reasonably practicable, the health, safety and welfare of its employees at a workplace and place and maintain an employee in an occupational environment adapted to the employee's physical and psychological ability. Thus, in light of the COVID-19 situation, it is our view that employers must ensure that they maintain the health and safety of remote working employees by:

- providing them with adequate information on COVID-19 and encouraging them to take all necessary measures to stay safe;
- ensuring that the work they are asked to perform can be done from home;
- making necessary adjustments to tasks, if needed, to ensure that they are safely doable when remote working;

- ensuring that employees have the right equipment and tools to work safely at home, including the required protective or safety equipment, where applicable; and
- establishing a system for reporting and investigating injuries, illness or other accidents that occur because of work activities while the employees are working remotely.

Under the Zambia OHSA, employees are legally obligated to co-operate with their employer to secure a safe and healthy working environment.

Employees are equally required to take reasonable care of their own health and safety and that of other persons who may be affected by their acts or omissions at the workplace, meaning employees should also be reminded of their obligations to ensure their own health and safety while working from home.

8. What are the legal obligations of employees working remotely?

Where an employee has requested or is required to work from home, all their obligations under their contract of employment remain the same unless they have been varied by the employer.

Under the Zambia OHSA, employees are legally obligated to co-operate with their employer to secure a safe and healthy working environment.



It must be noted, however, that where the employer seeks to vary material or fundamental terms and conditions of employment, they must get prior consent from the employee. Failure to obtain an employee's consent amounts to a unilateral variation of the conditions of employment and is grounds for termination of the contract of employment by way of redundancy. Where this is the case, an employee will be entitled to a redundancy payment of two months' pay for every year served.

9. Are there any tax allowances and/or benefits to remote working?

No. An employer is still liable to ensure that all taxes are collected and remitted to the revenue authority notwithstanding remote working arrangements. There are no tax benefits associated with remote working.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationery expenses and the like

Under the Zambia OHSA, it is the duty of an employer to provide, at the employer's expense, all equipment to be used in the workplace by

employees. In addition, most terms and conditions of employment, collective agreements, or company policies would expressly place this obligation on an employer. 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 monitor, software, phone, access to the internet, headsets and other applicable equipment, as deemed necessary. In other situations, it may include the delivery of equipment and the installation of required technical devices. Our view is that stationery expenses would be the responsibility of the employer if required for an employee to carry out their responsibilities.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

This would largely depend on the type of job carried out by an employee. Usually, performance is best determined by outcomes and whether an employee is meeting measurable benchmarks, goals or targets for the day or week. The key to working well remotely with employees is to be very clear and specific with all expectations. The ILO guidelines outlined above offer a helpful starting point for employers.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Our view is that remote working in Zambia is not currently considered a long-term option and is intended as a temporary solution in response to the COVID-19 pandemic. However, should it turn out to be a long-term option, it is our view that it may have a negative bearing on work culture.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

It is our view that in Zambia, remote working is not meant to be permanent but is seen as a temporary measure in light of the COVID-19 pandemic. This notwithstanding, it is our further view that if the COVID-19 pandemic is contained, an employee may have to consent if directed to work remotely on a permanent basis as this may be contrary to the terms and conditions of employment. It is important to note that a unilateral variation to an employee's contract of employment, which is to their detriment, results in an employment contract terminating and the employee being deemed to have been declared redundant or having retired early as at the date of the variation.



14. May an employer instruct its employees to return to the workplace at any stage of the employee’s remote working, even if it is proven that employees work effectively remotely?

Remote work has been introduced as a temporary measure during the COVID-19 pandemic and not necessarily as an adopted or accepted traditional work setting. Thus, if employees are working remotely for the sole reason that their employer’s workplace is not safe, then it would be ideal for the employer to allow them to continue working remotely for health and safety purposes. However, where the employer has taken the necessary measures to prevent the spread of COVID-19, it can instruct its employees to return to their traditional workstations even if the employees worked effectively remotely. It is at the discretion of an employer to decide whether employees must return to work or not.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

Salary increments are not regulated by law but by internal company policies. Therefore, whether an employee is entitled to an increment or not depends on whether requirements in the policy have been satisfied. An employee cannot demand an increase unless it is provided for in the company’s policies.



ZIMBABWE





The law firm of **DMH** offers expert legal advice in the commercial and financial services sector, trade and investment, labour and litigation, tax and conveyancing sectors. The Employment unit of the Firm is responsible for mandates relating to employment law and has a respected labour practice that includes offering advisory services on all matters pertaining to employment law from recruitment, company codes of conduct, company constitutions, internal hearings, arbitrations, restructuring, mergers and acquisitions, downsizing, and retrenchments. The Unit has vast litigation experience in the Labour, High, Supreme and constitutional courts of Zimbabwe has resulted in significant positive changes in labour law in Zimbabwe.

1. Has there been a move towards remote working in Zimbabwe in light of the COVID-19 pandemic?

Yes, there has been a move towards remote working as most companies shut down their offices and instructed employees to work from home. Some companies plan to remain fully remote post the pandemic, while others have taken a hybrid approach, giving workers more flexibility about where they work. There are also some companies, however, that have fully reopened since the relaxation of the lockdown measures.

EMPLOYEE'S INSISTENCE ON REMOTE WORKING

2. May an employee insist on working remotely, (a) during the pandemic; and (b) post the COVID-19 pandemic where it is proven they can effectively work from home? This includes any basis in law or otherwise.

Generally, an employee cannot insist on working remotely as it is the employer who decides who should work remotely. However, the employer cannot insist on the employee coming to work if they are experiencing symptoms associated with COVID-19. In July 2021, the Zimbabwe Government has witnessed a surge in new cases and the Government announced new measures to curb the spread of the virus, including decongesting workplaces by halving the number of people on the premises, except in the case of essential service providers.

3. Where an employee may not insist on remote working, what, if any, are the reasons an employee may motivate for remote working? Is the decision to allow remote working at the sole discretion of the employer or are employers required to take into account certain factors or regulations?

Unless an employee is sick or exhibiting COVID-19 like symptoms, permission to work from home is at an employer's discretion. However, Zimbabwean law currently requires that only 50% of a company's workforce be present at the workplace, meaning employers will have to ensure that some employees work remotely.

4. What types of remote working options are available to employers? Which options are most commonly implemented?

The following remote working options are available to employers:

- hybrid remote working;
- split teams; and
- fully remote work.

The most common system being used is the hybrid model where about half of a company's employees work remotely.

5. What are some of the risks and challenges presented by remote working?

The challenges presented by remote working include career stagnancy, isolation, micromanagement, technological difficulties, poor



internet connectivity, distractions from childcare responsibilities at home, and a lack of accountability.

Some of the risks associated with remote working include:

- employees having access to sensitive company data while using unsafe networks;
- use of personal devices for work purposes;
- financial risks;
- breaches of health and safety measures; and
- a lack of supervision and performance monitoring.

ARRANGEMENTS TO WORK REMOTELY

6. What processes, protocols and policies should be implemented by employers when allowing and facilitating remote working?

Some of the processes and protocols an employer must put in place in order to facilitate remote working include meeting technology needs by ensuring employees have access to efficient communication devices and services, providing support to set up remote working spaces and allowing flexible work hours. In addition, an employer should implement a cyber security policy to ensure that all data and information remains safe and that its employees' internet connections are secure. Employers may also wish to consider training employees on how to use technology remotely.

7. Is an employer required to implement health and safety measures for employees who work remotely? Does the duty for an employer to create a "safe working environment" extend to an employee's home?

Employers should provide their remote employees with a safety checklist to help them assess the workspace risks and implement the necessary safety measures to control and reduce injuries outside the office. Employers can still be liable for remote work-related injuries. However, remote workers are responsible for taking care of their own health and safety by complying with the policies set forth by their employer. Additionally, they should report any hazards or issues as soon as possible according to their employer's reporting procedures.

8. What are the legal obligations of employees who work remotely?

Employees who work remotely still have legal obligations to take reasonable care for their own health and safety. They are also required to take reasonable care for the health and safety of others who may be affected by their acts or omissions.

Much of the employer-employee relationship is based on the moral character and conduct of the employee. An employee must act in accordance with what is in the best interests of the business instead of his or her own interests and, for that reason, misappropriation, misconduct and dishonesty cannot be tolerated.

Subordination relates to an employee's obligation to obey their employer's instructions. These instructions must, however, be lawful and morally sound. An employee shouldn't accept an order that would require them to go against their moral character.

9. Are there any tax allowances and/or benefits to remote working?

There are no tax allowances or benefits associated with remote working over and above the normal allowances and benefits to every employee. An employer does, however, have the discretion to offer such benefits to remote workers.

10. What is the position in relation to the costs of setting up remote working spaces for employees? Is this the duty of the employer? What, if any, equipment is an employer liable to provide to employees who work remotely barring a laptop? Should employees be liable for their own stationary expenses and the like?

Yes, an employer has the duty to provide for the costs of setting up remote working spaces for its employees and to provide all the tools of trade required for employees to do their work effectively. This would generally include things such as a laptop, computer monitor, mobile phone, printer and fax machine (if the job requires it), and maybe even office furniture like a chair and lockable file cabinet. Employees cannot be responsible for their own stationary expenses when advancing their employer's work.



Remote working cannot be a permanent option. It will have a negative impact on organisational culture.

11. How does an employer ensure effective monitoring and evaluation of employees working from home?

An employer may implement the following measures to monitor employees working remotely:

- technological monitoring tools;
- setting a clear remote work productivity standard;
- setting aside specific days, times and methods for team interactions;
- use of timesheets; and
- regular follow ups with remote employees.

12. Is remote working a viable long term or permanent working option? Will it have an impact on organisational culture?

Remote working cannot be a permanent option. It will have a negative impact on organisational culture. A strong culture can only grow out of strong values, but not regularly interacting with employees in person can make it difficult for leaders to clarify and entrench these values. At remote working companies, interactions in general are minimised, which leaves fewer organic opportunities for leaders to show and tell what's important, or to offer important insights into why certain decisions have been made.

These efforts to demonstrate values can still be made in a remote context, but they take special effort and don't happen organically.

In addition, if an employer is trying to cultivate a company culture that prioritises fun and collaboration, those values are easier to instil when staff meet in person for celebrations and team-building activities.

PERMANENT REQUIREMENT TO WORK REMOTELY

13. May an employer require an employee to work remotely on a permanent basis?

Yes, an employer may require an employee to work remotely on a permanent basis.

14. May an employer instruct its employees to return to the workplace at any stage of the employee's remote working, even if it is proven that employees work effectively remotely?

Yes, the employer can instruct employees to return to the workplace, notwithstanding an employee being productive while working from home. An employee has a duty to comply with their employer's instructions.

15. Would an employee who works remotely be entitled to claim an increase to their salary in light of the fact that their overall cost to company is reduced due to remote working?

Yes, an employee is at liberty to claim an increase in remuneration because of remote working but this is all subject to the employer's consent. The employer may or may not accede to the request.

CONTACTS



BOTSWANA

Yvonne Chilume
PARTNER
CHILUME & COMPANY

T +267 391 6310
E yvonne@chilumeco.com



BURKINA FASO, MALI & SENEGAL

Cabinet Maître Cheikh Fall
MANAGING PARTNER
MAÎTRE CHEIKH FALL LAW FIRM

T +221 33 821 75 79/+221 33 889 87 60
E jusandro79@gmail.com



CAMEROON

Aurélie Chazai
MANAGING PARTNER
CHAZAI + PARTNERS

T +237 6 97 02 62 43
E achazai@chazai-partners.com



ETHIOPIA

Tewodros Meheret Kebede
ATTORNEY
GeTS LAW OFFICE

T +251118546065
E tewodros@getslaw.com



GHANA

Angela Gyasi
PARTNER
BENTSI-ENCHILL, LETSA & ANKOMAH

T +233 30 2208888
E aagyasi@belonline.org



LIBERIA

Attorney J Baipaye Seekpee
ASSOCIATE ATTORNEY
CMB LAW GROUP LLC.

T +231 778835579/0886627528
E baipaye.seekpee@cmbliberia.com



MOZAMBIQUE

Michelle Langa
TRAINEE LAWYER
COUTO, GRACA & ASSOCIADOS

T +258 21 496900/+258 21 486438/40
E ga@cga.co.mz



NAMIBIA

Dr Weder
SENIOR ASSOCIATE
DR WEDER, KAUTA & HOVEKA INCORPORATED

T +264 (61) 275 550
E info@wkh-law.com/luvindao@wkh-law.com



RWANDA

Jean Nepomuscene Mugengangabo
PARTNER
LANDMARK ADVOCATES

T +250 7884 3517
E jnmugengangabo@landmarkadvocates.com



SIERRA LEONE

Mr Yillah
PARTNER
TEJAN-COLE, YILLAH AND PARTNERS

T +232 76 341 856
E contact@tcylegal.com

CONTACTS



SOUTH SUDAN

Wani Mathias Jumi
MANAGING PARTNER
CASE ADVOCATES

T +211 925889111
E casetriallawyers@tutanota.com



TANZANIA

Gladness Tupa
SENIOR ASSOCIATE
ABENRY & COMPANY

T +255 22 2129461-2
E info@abenry.co.tz



TANZANIA

Georgina Bazil
SENIOR ASSOCIATE
ABENRY & COMPANY ASSOCIATES

T +255 22 2129461-2
E georgina.bazil@abenry.co.tz



UGANDA

Ivan Engoru
PARTNER
ENGORU MUTEBI ADVOCATES

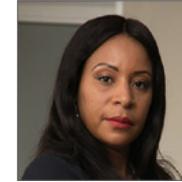
T +256 393 216 520
E engoru@engorumutebi.co.ug



UGANDA

Sarah Zawedde
ASSOCIATE
ENGORU MUTEBI ADVOCATES

T +256 772 041 727/+256 393 216 520
E zawedde@engorumutebi.co.ug



ZAMBIA

Jackie Jhala
LEGAL PRACTITIONERS
CORPUS

T +260 211 372300/+260 211 372301
E corpus@corpus.co.zm

ZAMBIA

Mwila Balungu



ZIMBABWE

Obert Kondongwe
SENIOR ASSOCIATE
DUBE, MANIKAI & HWACHA LEGAL PRACTITIONERS

T +263 4250909-11/+263 4780351-2
E okondongwe@dmh.co.zw

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2024 10010/SEP



Scan the QR code
to view our team
OR

[Click here to view](#)