

Managing the Risks of Working from Home and Flexible Working Hours

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Since COVID-19 started spreading around the world law firms have, at speed, had to develop arrangements to allow their lawyers to work from home. As many law firms have reopened their offices and are trying to find effective ways of working while maintaining social distancing and protecting their staff, it is necessary to consider the range of issues that will arise with new working arrangements which are a hybrid of home and office.

In the traditional office model, lawyers work in one location. Documents and files are safe in the office and there is effective control over who can have access to the office. For mobile phone and tablet users, working on the move is now second nature and in some cases a firm's confidentiality and security policies may not have kept pace with this new freedom.

Fortunately, the COVID-19 pandemic has, in most cases, proved conclusively that lawyers can work effectively outside the office and that a physical presence in the office is not necessarily essential in order to produce high quality legal work. This proof of concept will have important implications as to the way in which, and where, legal work will be performed. The presenteeism culture which has plagued law firms for years, which assumes that long hours in the office is a demonstration of commitment and productivity, may at last change. With so much client work now done on a fixed fee or other alternative basis of charging what should be increasingly valued is a lawyer's output (i.e. the service received by the client) rather than a lawyer's input (i.e. the hours a lawyer expended on a matter). Such a changed approach will encourage lawyers to work smarter rather

than necessarily harder. Indeed, home working has enabled many lawyers to achieve a higher level of output due to avoiding commuting time and wasted time in the office while also having more free time for their families.

But, before this new model can be fully embraced, there is a need to review the experience of working remotely over 2020 and to identify and minimise the risks inherent in such flexibility while achieving the benefits for the lawyers, the firms and the clients of operating in this new environment.

This article reviews 10 risks to consider when working from home or adopting flexible working hours.

1. Confidentiality

With client papers secure in a physical office a high level of confidentiality can usually be assumed (subject to issues as to who has access to the premises). In a more distributed environment, confidentiality is still important but can be more challenging to achieve. At home, is the lawyer the only person with access to the PC or iPad? If not, and if other users know the lawyer's password, then client confidentiality can be compromised. Even in relation to physical papers, how can they be kept secure and are they shredded when no longer needed? This is the first and primary issue to consider. In the compact living environment for many in Hong Kong, it is particularly important. Law firms may need to provide firm iPads or laptops which are only used for firm business in order to protect client confidentiality. Strict procedures need to be in place and effectively enforced in a home environment to avoid any break of client confidentiality.

2. Cyber-Security

The more distributed way of working is a great opportunity for cyber criminals. Early in the pandemic there were reports of lawyers in international firms receiving a firmwide message apparently from their managing partner. The message was opened without question thereby permitting a phishing attack. There are a range of cybersecurity tools that can and should be used but eternal vigilance is always necessary. The criminals are clever and always adapting, so firms need to be very careful and to communicate best practice on a regular basis. The damage done by breaches such as the Panama Papers demonstrates the reputational risk to a law firm of such a security breach.

3. Physical Environment

Lawyers working from home may enjoy the flexibility but is their physical environment safe? Relatively simple issues such as lighting, working distance from the screen, sitting posture when working, electrical safety, time in front of a screen and taking regular exercise breaks can be monitored in a physical office. But they are just as important at home. Firms may need to consider the lawyer's working conditions at home or, as employers, they could attract liability for such unsafe working conditions or working practices. Even more seriously, is the lawyer's home a safe environment. If in an abusive relationship, home could, both physically and mentally, be an exceedingly dangerous space.

4. Downtime

Even the most committed lawyer needs time away from work. Working from home removes the traditional physical barrier between home and the

office. To ensure a lawyer's wellbeing there needs to be credible breaks for downtime. The use of social media by clients can be especially intrusive. In such a competitive market as Hong Kong and given the demands of many Chinese corporate clients, achieving any such downtime may be challenging. But firms have to understand the pressure their people are under and to manage it appropriately. This is not just necessary to protect staff health but also to reduce the possibility of professional negligence claims or regulatory breaches due to lawyer exhaustion. Many lawyers have found adapting to the post COVID-19 working environment very stressful, so firms need properly to consider mental wellbeing issues.

5. Availability

The counterpoint of downtime is the predictability of a lawyer's availability. Again, clarity as to the ground rules will be necessary. Within reason any flexible arrangements can work with clear and consistent communication. It is however extremely frustrating for colleagues and client's not to know when the lawyer will be in the office, when the lawyer is working from home and when the lawyer is not available. Clear protocols and communication as to who deals with the client matter when the usual lawyer is not available may be necessary.

6. Team Working

Most lawyers, at least for some of their work, work with teams of lawyers of different levels of experience or different practice skills. If everyone is working remotely these teams may fragment. But, with concerted effort it is possible to overcome this. The use of platforms such as Microsoft Teams/Zoom, the convening of virtual team meetings and even virtual drink breaks can provide a forum to discuss matters as a team, to share work product and to agree work allocation and priorities.

7. Oversight and Mentoring

A key challenge of home working is oversight and mentoring. Law is still primarily an apprentice profession in which lawyers learn from working with and seeing how more senior colleagues work and interact with clients and colleagues. This informal training can be difficult to replicate remotely. A level of formality in the form of the supervisor reviewing the lawyer's work product and discussing specific issues on a regular basis may be necessary. If the lawyer is working some of the time in the office, a regular catch up and review session should be scheduled with his or her supervisor. Indeed, effective oversight and mentoring may necessitate the spending of sometime in the office.



8. Productivity

Although many law firms have been pleasantly surprised as to the level of productivity achieved during the COVID-19 pandemic, this will inevitably mask wide variations of performance. It will be necessary to be vigilant as to the level of work produced by a lawyer, the timelines of the delivery of the work and the quality of the work. Some performance issues could be linked to the lawyers home circumstances (see 3 above). Regular colleague and client feedback should be sought and underperformance acted upon.

9. Culture

Law firms are often very proud and protective of their culture. This is the set of behaviours and values that bonds the firm together. Remote working or transient working may make such bonding and development of effective working relationships more difficult to achieve. As a result, a lack of a common purpose may mean that the relationships become looser and more transactional in nature. Again, a wide range of communication tools can help to mitigate this risk but a more conscious and consistent effort will be necessary to build and defend the firm's culture. Again, some level of regular, in person, interaction may be necessary to maintain a firm's culture on a long term basis.

10. Flexibility

If lawyers are going to spend less time in a physical office and also work fewer uniform hours, there is a need for flexibility by both the firm and the lawyer. Clients still need to be attended to, training and mentoring given, business development undertaken, recruitment done, bills agreed and collected and a range of other roles that enable a law firm to operate. There will need to be clarity and flexibility as to how these roles are allocated and performed. Flexibility cuts both ways. Lawyers may need, in exceptional circumstances, to attend

the office more or to work extra hours if the client necessarily requires it. Working from home or working on different days, if rigidly applied, defeats the whole concept of flexible working.

Our experience in 2020 has probably permanently changed our attitudes to working from home and working flexibly. The benefits of doing so for individual lawyers, law firms and clients can be significant. We are however a service industry (and also a profession) so any such arrangements need to enhance the overall service that the client receives. ■