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WORKING FROM HOME AFTER COVID-19: WHAT EMPLOYERS NEED TO KNOW

Catherine Ramnarine

The Covid-19 pandemic and resulting restrictions on the operation of non-essential businesses pushed many employers into implementing temporary working from home arrangements in order to maintain business continuity. Many predict that this shift towards remote working will become more permanent and commonplace after Covid-19. Indeed, many international companies - including Amazon, Facebook and Microsoft - have already announced their intentions to adopt more expansive working from home policies.

Here are some of the legal and HR issues that you should consider when deciding whether or not to make a permanent shift towards working from home in your own business.

You Should Have A Working From Home Policy:

There are currently no employment laws in Trinidad and Tobago that are specifically geared towards working from home. While remote workers are still generally subject to the same rights and protections that apply to all employees, some of these provisions may not easily translate to a working from home arrangement, resulting in gaps and uncertainties. It is therefore a good idea for employers to develop and implement proper Working From Home policies in order to avoid any misunderstandings or disputes in the long term.

Some of the things that you might want to address in your Working From Home Policy include:

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- Working From Home After Covid-19: What Employers Need To Know?
- Debt Collection And The "New Normal".

- **The Payment of Overtime:** The legislative provisions governing the payment of overtime in Trinidad and Tobago are limited. There are currently no laws requiring the payment of overtime rates to employees earning over 1.5 times the national minimum wage, and so in the majority of cases an employee's entitlement to overtime will depend on the provisions of the employment contract, collective agreement or employment policy. Employers are not required by law to pay overtime to remote workers. However, it is important to double check your current policies to ensure that they would remain relevant in the context of a working from home arrangement and make any amendments that may be necessary.
- **The Reimbursement of Expenses:** Employers are not required by law to reimburse employees for the expenses that may be associated with working from home. That said, it is certainly in an employer's interest to ensure that its employees are contactable and have all the tools needed in order to effectively carry out their duties. There may therefore be practical reasons why an employer might wish to provide employees with a telephone and/or internet allowance or to reimburse the employee for at least a portion of those expenses. It is also important to double check your current policies to ensure that they would remain relevant in the context of a working from home arrangement. For example, employees may have a decreased need for uniforms or transportation, and so any existing uniform or travelling allowances may need to be scaled back.
- **The Provision of Equipment:** Employers do not have any general obligation to provide remote workers with electronic devices or office equipment. However, where employers do opt to provide equipment to employees for practical and other reasons, such as ensuring data security by restricting the use of employee personal devices, it would be important to ensure that this equipment is in proper working order and properly maintained. Additionally, employees with specific medical conditions may be entitled to be provided with special equipment - such as special ergonomic seating - depending on the

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DEBT COLLECTION AND THE “NEW NORMAL”

Cherie Gopie



As a country, we are starting to acclimatise to the ‘new normal’. Unfortunately, for many businesses this means grappling with how to keep their doors open, manage cash flows and keep staff employed. In this time of financial uncertainty, some businesses may find it hard to pay their debts while on the flipside others may need to collect the debts owed to them in order to stay afloat. In this environment, there are some debt collection strategies that businesses facing these issues may want to consider.

Examine The Debt

As a start, it would be prudent to review your contract clearly and the debt that is due. Are there any amounts that are in dispute? When was the deadline date for payment? Are there any contractual remedies that you may be entitled to as a result of late or non-payment such as contractual interest or penalty? Are there, conversely, any contractual remedies that the debtor may be able to rely on, such as force majeure? Understanding the context of the debt is essential to determining the appropriate avenue to manage it.

Know The Limitation Period

One issue you need to be aware of, especially in relation to older debts, is the limitation period. When a person has a right to sue someone or some entity, the law places time limits within which they can file a lawsuit. These time limits are called ‘limitation periods’. Generally, if legal proceedings are not started within this period then the right to sue is lost. In Trinidad and Tobago, the Limitation of Certain Actions Act sets out the limitation periods for different types of claims. Legal action must be commenced within four years of the accrual of the cause of the action. In certain circumstances, that time period can be extended. Generally speaking, in a debt collection matter, the period is four years from the date that the debt was due to be paid. If you initiate legal action on an invoice which became due four years or more before the date the action is filed, without legal acknowledgement of that debt or part-payment on the debt, then the Defendant can argue that your claim is ‘statute barred’ and this would be a valid defence. You will not be able to recover on this debt in these circumstances. In this regard, you need therefore to examine whether you have outstanding invoices to be paid which are approaching this time. If you do, you may want to consult your attorney to discuss how to best manage this issue.

Consider Re-Negotiation

If there is difficulty in meeting contractual obligations, it may be worthwhile to have the parties sit back down at the bargaining table and re-negotiate their contractual arrangement. For example, if a debtor is

unable to pay a sum of money that is currently due, the parties can agree to defer payments to a later time. During the deferral period, the monthly instalments, including the principal and interest payments, can be postponed but with interest continuing to accrue, perhaps compounded, during the deferral period. You may also want to consider the debtor’s real capacity to pay and the value of the long-term relationship. If in fact there is a potential for a long-term relationship, you can lock in a longer-term agreement for a fixed or graduated price. If you are the debtor and you are unable to meet the current payment agreement, it is worth investigating whether you are able to provide additional securities. It is advisable to ensure that that no false security is provided, and that the security construction is properly recorded. These are just a few strategies that might be appropriate depending on your own commercial reality.

Litigation

Recourse to the Courts remains a viable option and, in some cases, it is the only option to recover debts that are validly due and owing to you. If the debt is essentially admitted by the entity owing the debt, then the progress of the matter through the Courts may be truncated. Of course, once you get judgment in your favour, the issue of enforcement of that judgment may arise. This is something your attorney would be able to advise on.

We are facing trying times and the issue of collecting on unpaid debts may not be straightforward. Alternatively, if you are the party that has failed to liquidate a debt owing, you will be no doubt nervous of the notion that you have potentially breached your obligations under your contract and may face potential court action. However, there is no time like the present to confront our ‘new normal’ and the challenges it brings head on.

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WORKING FROM HOME AFTER COVID-19: WHAT EMPLOYERS NEED TO KNOW (CONT'D)

Catherine Ramnarine



nature of their condition and whether such equipment has been medically recommended.

You Should Understand What Your Health And Safety Obligations Are:

Employers have a general duty under the both the common law and the Occupational Health and Safety (“OSH”) Act to take reasonable steps to ensure the health, safety and welfare of their employees. While there are currently no cases or legislative provisions specifically dealing with remote workers, this general duty will still apply to them.

An employer may be liable for any injuries that an employee sustains during the course of their employment, if that employer did not take reasonable steps to prevent such injuries from occurring. The main difference is that what amounts to taking ‘reasonable’ steps is likely to be different for remote workers vs. those working out of the employer’s premises.

If you intend to transition into a more permanent working from home arrangement, it is a good idea to prepare a Risk Assessment setting out the potential HSE risks that might arise and the steps that you intend to take to mitigate these risks. Not only are Risk Assessments generally required under the OSH Act, but they are also a useful practical tool. Your Risk Assessment should be based on credible industry standards and guidelines. The Trinidad and Tobago Occupational Safety and Health Authority and Agency has very helpfully issued general working from home guidelines for employers, which are available on its website. There may also be international guidelines that are specific to your particular industry.

Some of the risks that you might want to address in your Risk Assessment are set out below, together with some ways that you can mitigate them. However, please note that this is not an exhaustive list:

- **Defective equipment supplied by the employer:** Implement an inspection and maintenance schedule and maintain proper maintenance records.
- **Injuries resulting from poor ergonomic practices:** Provide best practice guidelines and training and maintain training records.
- **Employees with pre-existing medical conditions:** Be guided by medical opinion.
- **Mental disorders resulting from stress:** Be alert for potential signs of distress or exhaustion. Implement regular ‘check ins’ so that employees do not feel socially isolated. Consider offering access to employee assistance programmes where you have the financial resources to do so.

- **‘Slip and Fall’ accidents:** Unlikely to be deemed to have occurred during the course of employment, but not impossible.

Additionally, from a practical perspective, it is recommended that employers seek clarification from their workmen’s compensation and employer’s liability insurers as to whether their existing insurance policies cover remote working, and ensure that they comply with any disclosure obligations.

You Should Be Mindful of Data Security:

For a more detailed breakdown of some of the steps that you can take, see the very helpful tips provided by Mukta Balroop in his article on Covid-19, Privacy and Data Protection in the 12th April 2020 edition of the T&T Business Guardian newspaper. However, in general, you should consider whether you wish to (a) provide employees with company devices, especially where the employee shares their personal device with other members of their household (b) install firewalls and other protections or block access to certain websites and (c) conduct sensitization training on phishing and other online scams.

You Should Approach Productivity and Timekeeping Thoughtfully:

You can find a plethora of articles online and elsewhere with tips and tools for ensuring that your employees stay productive while working from home. It is certainly advisable that employers develop productivity and timekeeping guidelines. However, from a practical perspective, it is also important to be flexible in your expectations and to understand that all employees are different. Some may work better with a set routine, while others will work better with more flexible working hours. It might be better to experiment and see what arrangements actually result in higher employee productivity levels rather than laying down overly rigid or unrealistic requirements and targets across the board.

Like most of the cultural shifts predicted to become part of the ‘new normal’ post Covid-19 working from home arrangements will present both challenges and opportunities for employers. Hopefully this Article has provided some helpful tips that will ensure that your business is well placed to deal with them.

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