



Flexible Ways of Working

Legal & Other Considerations for Employers

Here's what you need to know!

The Law?



- Flexible working is currently un-regulated under Indian labour laws.
- There is no legal right to 'work from home' or to work flexibly.
- A limited reference to 'work from home' is included in the Maternity Benefit Act, 1961.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 recognizes the concept of an 'extended workplace'.
- Separate considerations may apply if the employer is located in a Software Technology Park or Special Economic Zone or is registered as an Other Service Provider under Indian telecom laws.

Remote Workers under the Labour Codes



- As per the Draft Model Standing Orders for the Services Sector 2020, framed under the Industrial Relations Code, 2020, work from home will be subject to conditions of appointment or agreement between the employer and workers.
- The Code on Social Security 2020 defines a 'home-based worker' as 'a person engaged in, the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.'
- Home-based workers being 'un-organized workers' will not be entitled to *inter alia* provident fund, gratuity, maternity and other benefits.
- Un-organised workers including home-based workers will be covered under government framed social security schemes.

Important Considerations



- Limited ability to supervise and control
- Blurs the line of difference between employees and independent contractors
- Employee monitoring without invasion of privacy becomes a challenge
- Greater risk of data breach
- Ensuring health, safety and security of remote-working employees is a challenge
- Work hours cannot be tracked accurately - higher chances of frivolous overtime claims
- Claims for varying benefits depending on the employee location (example: leaves, holidays etc.)
- Increased moonlighting or "side hustles"
- Claims of differential treatment or discrimination
- Sexual misconduct and harassment in the virtual workplace

For more details, please contact preetha.s@jsalaw.com