



---

**March 2020**

## **EMPLOYMENT SPOTLIGHT : WORKING FROM HOME**

Working from home has become increasingly popular in the wake of Covid-19 (coronavirus). This article examines the legal implications of working from home.

### **1. Preliminary issues**

#### **a. Entitlement to work from home**

In Hong Kong, there is no statutory right to work from home. In some cases, the employment contract may provide a right to work from home. Where no contractual rights exist, it may be possible to agree to work from home in certain situations.

#### **b. What is working from home?**

Working from home is an arrangement whereby the employee performs his/her work from home. It could be a temporary feature in response to special circumstances or it could be a permanent arrangement.

However, working from home does not automatically vary the working hours or the nature of the work. The employee continues to remain bound by the obligations in the employment contract and/or employer's policies (if any). Any change to the employment terms needs to be agreed between the employer and the employee.

### **2. Factors for suitability of working from home**

The following factors should be considered when determining the suitability of working from home:-

#### **a. Role of the employee**

The employee's role and the nature of work have an impact on the practicability of working from home. Generally, such an arrangement is possible where the employee can carry out his/her work indoors and remotely with the use of technology. The level of authority of the employee, the need for face-to-face interactions and

# GALL

the line of reporting are also factors that should be considered. In addition, the employee should demonstrate that the quality and effectiveness of work is not compromised when working from home.

## b. Employee's personal attributes

In addition to the employee's role itself, the employee's personal attributes and skills should also be considered carefully when considering whether the employee may work from home. Some of these attributes are:

- i. the ability to work independently;
- ii. self-motivation and self-discipline;
- iii. the ability to effectively manage time;
- iv. employees should be comfortable and able to use technology for accessing work-related materials and for work-related communication;
- v. the ability to separate his/her work life and personal life.

In this regard, the employee's personnel record, including his/her recent conduct and performance levels and any unexpired warnings, should be taken into account before agreeing to any work from home arrangements.

## c. Home environment

The employee should have a private space without distractions which can be used as a workspace and access to strong internet and mobile telephone connections.

In respect of protecting confidential information, employees should be able to receive and make calls from a quiet space without the risk of being overheard. Employees could also be required to have document storage facilities which should mitigate the risk of confidential information being viewed by third parties.

## d. Insurance coverage / health and safety

Employers are required to have in place an insurance policy that covers the employer's liabilities under the Employees Compensation Ordinance (Cap. 282). Employers should check whether the insurance policy includes a provision for working from home, as accidents may happen whilst the employee is out of the office.

Employees should also be required to take reasonable care whilst working from home and should be under an obligation to promptly notify the employer if they suspect any health and safety concerns, or if an accident or incident takes place. Employers should also take necessary care in providing equipment to employees that are safe to use.

### **3. Setting up working from home**

#### **a. Property and equipment**

Employers should consider providing its employees with office equipment which may include laptop/desktop computer, document storage facilities, printer, shredder and mobile phone. Employees should also be directed as to whether the equipment may only be used for work-related purposes. It is generally suggested that employees should not be permitted to use personal equipment for work purposes.

#### **b. Security, confidentiality and data protection**

Whilst working from home, the contractual obligations and the employer's policies (if any) in respect of security, confidentiality and data protection will continue to apply.

Prior to introducing a work from home arrangement, it will be prudent for employers to review their confidentiality policy to ensure it is adequate to protect their business and is compliant with the law. The policy should also contain clear guidelines on authorised use and restrictions with respect to confidential information, which may also require employees to promptly inform the employers of any potential or threatened breach of confidentiality.

### **4. Managing working from home**

#### **a. Employee's considerations**

Employees who work from home are subject to the same rules, procedures and standards of conduct and performance as if they were working in the office. In addition to their day to day tasks, this could include:-

- i. Keeping up to date with news, events and developments related to the employer.
- ii. Keeping in regular contact via phone, email or video conferencing.
- iii. The annual leave and sick leave related policies continue to apply even while working from home. The employee should report to his/her employer any absence due to illness or injury.
- iv. The employee will continue to be subject to disciplinary policies of the employer. Accordingly, any conduct or performance issues that arise from working from home should be dealt with in the usual way.
- v. Employees continue to owe duties of fidelity, good faith, diligence and to act in the best interests of the employer. During work hours, the employees should not engage in personal commitments or carry out any work for any third parties. Equally, the employee should not treat working from home as taking off from work.

#### **b. Employer's considerations**

# GALL

The employer also needs to bear in mind other practical considerations that arise in the course of working from home:-

- i. There is a likelihood of employees feeling isolated or require guidance and support. Accordingly, the employee's manager and/or members of human resources team should be sufficiently trained to understand potential issues and be readily available to address issues of the employees over telephone or video-conference.
- ii. It would not be appropriate to hold meetings in the employee's home, or to give out the employee's residential address as it could amount to a potential breach of the Personal (Data) Privacy Ordinance (Cap.486).

## **5. Ending the work from home arrangement**

A work from home arrangement could be permanent or temporary. In either case, both employers and employees should have the right to terminate the work from home arrangement on reasonable notice.

It is advisable to set out the notice requirement and grounds of termination in writing. If the work from home arrangement is temporary, the duration should be clearly stipulated. Otherwise, it would be prudent to provide for a clause regarding the extension and/or termination of the work from home arrangement.

## **Concluding remarks**

It is essential for employers to implement a detailed work from home policy. The work from home policy should ideally provide the employee with sufficient information and direction to allow the employee to effectively work from home. The policy should also set out who to seek assistance from during any period of working from home. The policy may include details about when is the arrangement applicable and procedure for an employee to work from home.

Work from home is a useful arrangement to facilitate workflow even in situations like the Covid-19 (coronavirus). It can work effectively if the necessary technology and infrastructure are in place along with co-operation between both the employer and the employee.

For further information in relation to working from home and other employment law related matters, please do not hesitate to contact Andrea Randall ([andrearandall@gallhk.com](mailto:andrearandall@gallhk.com)/+852 3405 7688), or Joni Wong ([joniwong@gallhk.com](mailto:joniwong@gallhk.com)/+852 3405 7616).

All material contained in this article are provided for general information purposes only and should not be construed as legal, accounting, financial or tax advice or opinion on any specific facts or circumstances and should not be relied upon in that regard. Gall accepts no responsibility for any loss or damage arising directly or indirectly from action taken, or not taken, which may arise from reliance on information contained in this article. You are urged to seek legal advice concerning your own situation and any specific legal question that you may have.

*\*This article was first published by Hong Kong Lawyer*

# GALL

## Awards and recognition for the employment practice:

- « Very experienced in employment litigation »  
**Employment - Chambers Asia-Pacific 2020**
- « Andrea is attentive and knowledgeable. »  
**Next Generation Partner, Andrea Randall - Labour & Employment - Legal 500 Asia Pacific 2020**
- « Gall is a first-class firm, offering practical and cost-effective advice »  
« Very effective »  
**Outstanding Practice, Labour and Employment – Asialaw Profiles 2020**
- Distinguished practitioner, Andrea Randall - Employment  
**Asialaw Profiles 2020**
- « Gall is best-known for its 'superb contentious employment offering »  
**Leading Firm, Labour and Employment– Legal 500 Asia Pacific 2019**
- Winner, Firm of the Year – Hong Kong  
**Benchmark Litigation Asia-Pacific Awards 2019**
- Recommended Firm and Recommended Lawyer, Andrea Randall  
**The Doyles Guide to Leading Hong Kong Employment law firm and Lawyer Rankings 2019**
- Leading Firm, Employment and Recommended Individuals Andrea Randall, Nick Gall  
**Legal 500 Asia Pacific Guide 2019**
- Leading Firm, Labour & Employment  
**Chambers Asia Pacific Guide 2019**
- « Andrea is well-connected, highly-experienced and a knowledgeable international employment lawyer. »  
**Asialaw Profiles 2019**

## Contacts



**Nick Gall**  
Senior Partner  
+852 3405 7629  
nickgall@gallhk.com



**Andrea Randall**  
Partner  
+852 3405 7630  
andrearandall@gallhk.com



**Kritika Sethia**  
Legal Analyst  
+852 3405 7654  
kritikasethia@gallhk.com