

PRACTICE BRIEFING

# Working Remotely

## INTRODUCTION

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*The changing landscape of legal practice has meant the development of alternative ways of providing legal services. Flexible working arrangements have become far more common in the legal profession as in other fields of work, and they can come in many sizes and shapes.*

*Working remotely is one way to work flexibly. This includes working from home or anywhere else away from an employer's premises such as a 'shared workspace' (one example is a business hub centre).*

*This Practice Briefing outlines some of ethical and practical considerations relevant to working remotely as a lawyer. It applies to both lawyers in private practice (employees and sole practitioners) and in-house lawyers. The objective is to provide practical suggestions and best practice. It does not constitute legal advice.*

## FLEXIBLE WORKING

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Working flexibly is increasingly common across all industries. The Ministry of Business Innovation and Employment estimates that approximately 50% of workers have some flexibility in their work arrangements. 'Home-working', 'working remotely' or 'tele-commuting' are part of this picture.

Why is flexible working becoming popular? This is because of some of the advantages it offers:

- » Opportunity for increased productivity.
- » Advances in technology make this a viable option.
- » Reduced overheads (including rent).
- » No morning and evening commute (saving time and money, and reducing stress).
- » Improved work-life balance.
- » Increased staff satisfaction and the opportunity to retain employees who may find more traditional ways of working difficult to reconcile with other commitments.

However, there are some potential drawbacks which need to be considered, including:

- » Potential for isolation and lack of regular face-to-face interaction with colleagues, clients, or other members of the profession.
- » Problems with home life impinging on work life, and vice versa.

- » Possible risks to confidentiality, privacy and the safety of customers or clients and other people living at the residence.

## HAVE A POLICY FOR WORKING FROM HOME/ REMOTELY

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If you decide to work at home or if you employ lawyers planning to work from home, ensure that the arrangement is discussed and clearly agreed (and ideally, documented). This is so that everyone understands what the expectations are. These might include:

- » The hours and days to be worked remotely;
- » Times the lawyer will need to be available (via skype, email or telephone);
- » Confidentiality measures in place to protect client information;
- » When to review the arrangement; and
- » Practical ways that supervision and communication between employer and employee is maintained.

Any arrangement should benefit both the employer and employee. Its success will be determined by clear expectations and ongoing regular open communication.

MBIE has a *Flexible Work Toolkit* which includes ‘Working from home guidelines’ (see <https://www.employment.govt.nz/assets/Uploads/tools-and-resources/publications/flexible-work-toolkit.pdf>).

## SEPARATING WORK AND HOME LIFE

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A fundamental question for anyone looking at working from home is ‘am I well equipped to work from home?’ This includes whether the person is able to easily psychologically separate home and work life and has a well set up space to do this.

Perhaps the best advice for lawyers working from home is to create a dedicated work space.

As one lawyer said: “When I started working from home, the kitchen table became my desk. Big mistake. Now I’ve got a dedicated workspace to help me clearly delineate the difference between ‘working Jay’ and ‘not working Jay’.”

Having a dedicated work space will not only minimise disturbing members of your family, it will also assist in enhancing your privacy and that of your family members and clients.

Set a work day routine. Consider setting the same type of routine as you would in the office with scheduled breaks. This can assist with keeping you on task and focused on your work. Taking scheduled breaks is important to assist productivity and creativity and prevent work related fatigue.

## YOUR HOME AS A WORKPLACE

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Having a dedicated work space can assist when people need to come to your “place of work”.

Where lawyers notify the New Zealand Law Society and their clients of their home address,

the lawyer (and others at the address) will need to be prepared for visits by a variety of people related to the lawyer's practice. These could include clients, potential clients, couriers, process servers, other members of the profession, trust account inspectors, and possibly the police if the lawyer is acting in criminal matters. If the place of business is in an apartment block, consider if this might cause any access issues.

Lawyers who have a PO Box as their business address need to ensure that they are readily contactable by clients and members of the profession by other means. They need to make arrangements for a suitable address for service. A secure letterbox will be required if your home address is also your work mailing address.

If you are establishing a law firm at your home address you may need to consider:

- » Are there any restrictions on using your property for business purposes (for example local authority zoning laws and mortgagee consent requirements)?
- » Are there any taxation implications?
- » Are there any insurance implications? Check your position regarding home owners and household insurance. Your policy will likely need to change if part of your home is used as a business premises.
- » If running a trust account, consider how to handle matters such as receiving cash. Where is the cash to be kept?
- » Firms who operate controlled bank accounts will need procedures in place for employees who have control over client money.
- » How will you ensure compliance with regulatory regimes such as the Anti-Money Laundering and Countering Funding of Terrorism Act 2009, FATCA and CRS obligations?
- » What will happen in the event of prolonged illness, death, or a relationship break-up? It is important that ownership of the practice computer or computer system remains with the practice (or its winding up) in any of these events.

Speaking to your accountant and other professionals may be advisable.

## LOOKING AFTER YOUR CLIENTS AND THEIR INFORMATION

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If your work involves seeing clients, it is important to make provision for their needs.

Perhaps foremost is **client confidentiality and privacy**. If clients come to your home or a shared workspace, provide a space where they can talk to you and discuss matters with you privately and confidentially.

Confidential and private discussions can happen in a variety of ways, however. Provided you are using a private space, you can discuss matters with clients using technology such as Skype or the telephone. Alternatively, you may visit clients at their homes or places of work. Or you can hire a meeting room.

As well as keeping face-to-face contact with clients private, it is also important that files and

documents relating to clients' affairs are kept secure - whether the files and documents are in hard copy or are electronic files.

Nobody else in the household or a shared workspace should see client files, and ideally, files should not be taken into your living area. Deeds such as wills should be stored in a fire rated safe. Archived files should be stored in a secure, safe environment.

A series of **security issues** need to be addressed when working at your computer from home or in a shared workspace. Computers should be secured and protected with security programs and passwords. Consider two-factor password authentication. Domestic grade data networks may not be appropriate for handling confidential client information. You should have a separate computer or laptop (or network) for work. Obtaining specialist advice about wi-fi security might be required. As well as a separate network for your practice, it might be advisable to have a separate phone or system for your practice.

If you are an employed lawyer, check with your organisation's or law firm's IT staff or managing partner about the firm's 'BYO' device policy and any extra security measures that are required.

**How clients will be met** at your remote place of work needs some consideration. Will you have a reception area or a waiting area, for example? Ideally your reception area should be separate from your private living area.

Ensure there is **adequate parking** for clients close to your house or meeting space.

## LOOKING AFTER YOURSELF

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Lawyers who work remotely may need to take steps to prevent isolation from setting in. You can establish and maintain a programme of activity to actively engage with other members of the legal profession in both formal and informal contexts. This programme can include:

- » Participating in Law Society branch/section and Continuing Professional Development activities and networking events.
- » Establishing your own network of colleagues practising in similar fields.
- » If you are an employee consider scheduling time to go into the office to catch up with colleagues.

## PERSONAL SAFETY

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Providing people with knowledge about the location of your home and access to it can raise a risk of personal safety.

Lawyers should reduce or eliminate any contact between people attending the premises as a visitor to the law practice and the other occupants of the home.

Lawyers have a statutory obligation to protect the health and safety of people coming onto the premises, as well as themselves and any staff they may have. Lawyers who work from home must adhere to the provisions of the Health and Safety at Work Act 2015 (HSWA).

Ensure that the working environment is safe (for example, ensuring that cables are not a tripping hazard). The HSWA requires you to ensure the health and safety of you, any staff you

have, and any visitors to your workplace. An introduction to the HSWA is available at <https://worksafe.govt.nz/managing-health-and-safety/getting-started/introduction-hswa-special-guide/>.

Employers and employees should discuss HSWA compliance issues. Employers should consider implementing a specific health and safety policy for employees working from home or remotely.

## DUTY TO THE COURT AND CLIENTS

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Lawyers who conduct a law practice from home must be ever mindful of their paramount duty to the court and the administration of justice.

When acting in a litigated matter this might mean ensuring that the court and the representatives for the other parties are provided with a reliable and monitored means of communicating with you in an emergency, and an address for service.

A failure to do so may create delays in the conduct of the matter before the court, create unnecessary expense, and could expose you to costs.

Ensure that you are readily contactable by the client and other parties, acknowledge all contact as soon as possible, and respond in substance to all contact from clients and other parties within a reasonable time frame in the same manner you would if working from an established office.

## SUPERVISION OF EMPLOYEES

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Lawyers in practice on own account must ensure that all employees are supervised. A law firm has a general duty to supervise lawyers and other employees who are performing legal or paralegal work for which the firm is ultimately responsible. Rule 11.3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC) states:

“A lawyer in practice on his or her own account must ensure that the conduct of the practice (including separate places of business) and the conduct of employees is at all times competently supervised and managed by a lawyer who is qualified to practice on his or her own account.”

For managers of in-house lawyers, supervision and quality assurance are also vital.

Firms should consider the following points in relation to supervision of employees working at home:

**Systems and Procedures:** Have appropriate systems and procedures in place to ensure proper administration and supervision is carried out in respect of the firm's obligations under the RCCC.

**Manager catch-ups:** The supervising manager should run through the employee's work regularly and make him/herself available to answer any questions the employee may have. Firms may wish to undertake this via conference calls with the rest of the team. It may also be important to have in-person team catch ups at least once every two weeks. This will make the employee working from home feel less isolated and assist with team cohesion.

**Leave:** If an employee's supervising partner is on leave or absent, arrange for another practitioner to be available to supervise.

## PROMOTING AN ENVIRONMENT FOR SUCCESSFUL FLEXIBLE WORKING

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For employers in any business, the success of flexible working depends on establishing and maintaining an environment which accommodates and promotes the model. This includes fostering a culture in which managers and leaders understand and support flexible working.

It is also important that those working remotely are not “out of sight/out of mind”. Employers and employees are both responsible for ensuring that remote workers are not forgotten when allocating work, organising professional development or arranging social opportunities.

## CONCLUSION

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Working remotely can provide great opportunities for lawyers and their employers in terms of work-life balance, staff satisfaction and productivity. Opportunity also lies in providing services in alternative ways which meet client needs such as costs sensitivity. Having clear expectations and a plan before embarking on this style of working will ensure that professional obligations are met and the chances of success for the arrangement are optimised.

The Law Society’s regulatory team is always happy and available to discuss innovative ways to structure legal practice and the relevant regulatory consideration.

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### NEW ZEALAND LAW SOCIETY

Law Society Building  
26 Waring Taylor Street  
WELLINGTON 6011

PO Box 5041  
Lambton Quay  
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

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