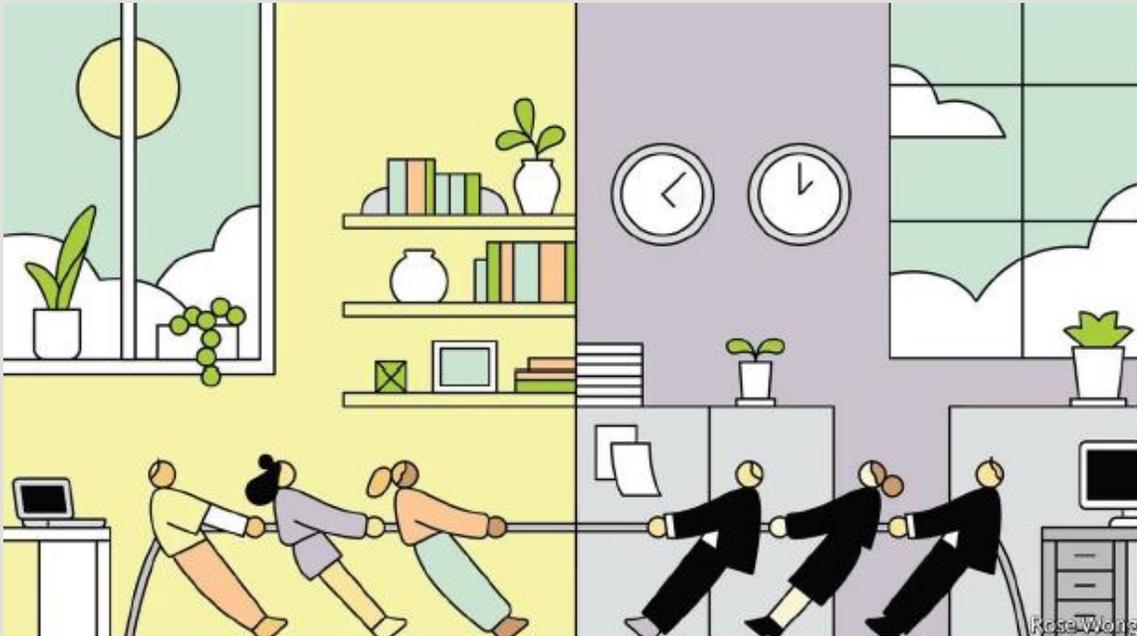


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# The Post-COVID workplace – Return to the office? A European Legal Perspective

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Thursday 10th March, 2022, 6pm  
Radisson Blu St. Helen's Hotel



Source: The Economist, Nov 8<sup>th</sup> 2021, The fight over the hybrid future of work

- I. Transitions in the world of work
- II. Advantages & Challenges of hybrid approaches
- III. Remote work & return to work in Ireland
- IV. European countries in comparison
- V. Practical steps to be taken by employers

Telework used to be the **privilege** of well-paid and highly skilled workers with significant work autonomy

# I. Transitions in the world of work

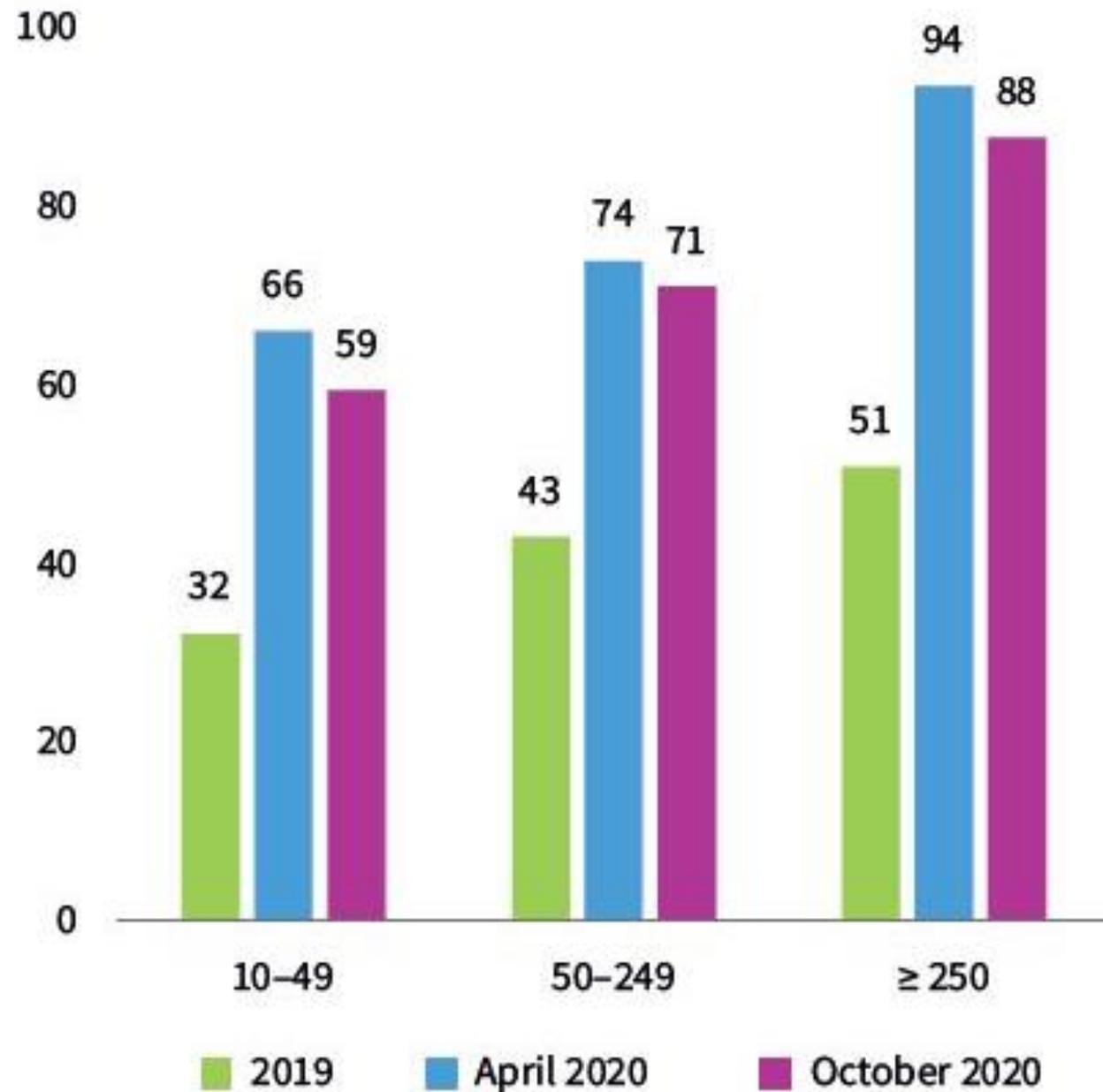
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- **2017**, only **5%** of the EU working population worked regularly and 10% occasionally from home
- **April 2020**, **37%** of employed people had started working **from home** because of the pandemic
- **July 2020**, the share had increased to **48%** (34% working exclusively and 14% working partially from home)
- **March 2021**, telework had become slightly less prevalent (**24%** working from home only, 18% working in a hybrid mode)

# I. Transitions in the world of work

## Telework by establishment size

About 37% of EU employees work in occupations that are technically 'teleworkable'



# I. Transitions in the world of work

## Conductivity to working from home index

- Concentration of occupations more conducive to working from home
- Internet access and quality
- Percentage of workforce occasionally working from home
- Households with children



Source: Ranking How National Economies Adapt to Remote Work, MIT Sloan Management Review, June 18<sup>th</sup> 2020

## II. Advantages & Challenges of hybrid approaches

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- Better **work/life balance** → higher employee retention & less geographical recruiting-barriers
- Less **commuting** & carbon emissions and air pollution
- Less accommodation pressures & improved economic activity in **rural areas**
- Less barriers to employ **people with disabilities** (Mobility, transport and physical access issues)
- Opportunity to work globally, accessing **more diverse or specialised expertise**

## II. Advantages & Challenges of hybrid approaches

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- Requires focused **effort and time to implement** (investment in infrastructure)
- **Unsuitability** for certain workplaces
- Irregular working time patterns and **blurred boundaries** between work and private life
- Remote management requires **different skills & training for managers** (Reduced control on remote workers)
- Building and maintaining a distinct **organisational culture**
- Ensure a **fair & equitable** workplace

# III. Remote work & return to work in Ireland

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- April 2021: Code of practice for employers and employees on the **right to disconnect**
- January 2022: revised public health guidelines, including the **phased return to the workplace**
- January 2022: **Right to Request Remote Working Bill 2022** published
- It is planned to pass it into law by mid 2022

# III. Remote work & return to work in Ireland

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The request must include:

1. The proposed working **location**
2. The proposed **start date** for arrangements
3. The proposed **number of days** to be worked remotely, along with hours
4. Any previous requests made by the employee for remote working, and
5. A self-assessment of the **suitability** of the proposed remote working **location**, including a plan for addressing concerns like confidentiality, connectivity, **data protection & health and wellbeing**

Statutory provisions of the bill

Entitlement to **request remote work** after 6 months of service.

# III. Remote work & return to work in Ireland

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## Responding to the request

Employers may

- **seek further reasonable information** or evidence relating to the request
- request a meeting with the employee to discuss their proposal

Employers must

- **consult** with the employee when considering their request
- **return a decision in writing** within 12 weeks from receipt of the request

### III. Remote work & return to work in Ireland

Business grounds relied upon by the Employer to decline a request may include, but are not limited to —

- (a) The **Nature of the work** not allowing for the work to be done remotely
- (b) Cannot **reorganise** work among existing staff
- (c) Potential Negative impact on **quality** of business product or service
- (d) Potential Negative impact on **performance** of employee or other employees
- (e) Burden of Additional **Costs**, taking into account the financial and other costs entailed and the scale and financial resources .....of the employer's business
- (f) Concerns for the protection of business **confidentiality** or intellectual property

### III. Remote work & return to work in Ireland

**Business grounds relied upon by the Employer may include, but are not limited to —**

(g) Concerns for the suitability of the proposed workspace on **health and safety** grounds

(h) Concerns for the suitability of the proposed workspace **on data protection** grounds

(i) Concerns for the **internet connectivity** of the proposed remote working location.

(j) Concerns for the **commute** between the proposed remote working location and employer's on-site location

(k) The proposed remote working arrangement conflicts with the provisions of an applicable **collective agreement**

(l) **Planned structural changes** would render any of (a) to (k) applicable

(...)

# IV. European Countries in comparison

	Ireland	United Kingdom	Belgium	Luxembourg	Germany
<b>Legal Framework Re flexibility</b>	✗	2014: Flexible Working Regulations	2017: regulatory framework for structural telework	2021: convention on the legal regime of telework	✗
<b>Right to request remote work</b>	✗	✓ after 6 weeks service	✗	✗	✗
<b>Draft Legislation</b>	Right to Request Remote Working Bill 2022	Flexible Working Bill 2022	<i>Right to disconnect</i> for private sector (currently only civil servants)		2020: Bill on mobile work
<b>Right to request remote work according to draft legislation</b>	after 6 weeks service, employer must return his decision in writing	from day one	only in cases of force majeure or personal reasons		rejection within 2 months, otherwise <u>deemed approval</u>
<b>Appeals process according to draft legislation</b>	Right to appeal only concerning procedure				

# V. Practical steps to be taken by employers

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- Review the impact of remote working on the business
- Assess current working practices and ability to facilitate requests in **anticipation of Bill's enactment**
- Have a **written policy** on working from home in place
- Consider **confidentiality and GDPR** when employees are working from home
- Ensure **health and wellbeing safeguards** are in place for employees working remotely
- Review **insurance policies**
- Set up additional **training for managers** in managing remote employees
- Invest in **IT infrastructure**
  
- **Changes to the draft bill are likely**

# Time to get the banana skins out

● A German court has ruled that a man who fell while walking from his bed to his home office can claim on workplace accident insurance, as he was technically commuting, *The Guardian* reports.

While moving between the connecting rooms, the man slipped on a spiral staircase

and broke his back.

The federal social court noted that the employee usually started working in his home office “immediately, without having breakfast beforehand”. It later said that statutory accident insurance was only afforded to the “first” journey to work, suggesting that a fall on the way

to get breakfast after already being in the home office could be rejected.

Two lower courts had disagreed on whether the journey was a commute, but the federal social court sagely found “the first morning journey from bed to the home office [to be] an insured work route”.

Source: The Law Society Gazette Jan/Feb 2022

...and to ask questions



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