

GETTING OUT OF THE OFFICE

by Michael Hanson

Running a Bermuda office is inherently expensive, and with businesses looking at alternative ways to reduce overheads the concept of employees working from home is gaining real traction. Employers should be cognisant of some of the practical issues they could face in this regard.

There is no specific legislation in Bermuda that encompasses flexible or home-working. Indeed, the term "home-worker" (or similar) is not defined in the Employment Act 2000 (the Act). However, irrespective of where someone works, if a person is employed for more than 15 hours a week wholly or mainly in Bermuda for remuneration under a contract of employment, they are an "employee" for the purposes of the Act and fall under its remit (save for a few exceptions), wherever they work.

Some practical tips for employers looking at home-worker contracts is to set out:

- The employees place of work, that is, their home;
- The requirements regarding any attendance at the office (client meetings or disciplinary issues, etc.);
- Their holiday entitlement, paid sickness and other benefits (which should not be different to that of any office-based employee);

- That the employer reserves the right of re-entry, reasonably exercised, in the employee's home in specific circumstance (installation of computer equipment or to recover confidential information for example); and
- An express confidentiality clause making clear what information is confidential and how the employee should keep that information secure at their home.

An employer will still be able to impose significant protection concerning the work an employee does, even if this is at their home, but it must be reasonable. For example, a clause providing that an employer can enter an employee's house at any time, day or night, to check their home computer, would not be reasonable.

Allowing employees to work from home requires a large amount of trust as they cannot be monitored to any great degree. This should be mitigated by well drafted contracts of employment.

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