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Denis O'Brien will not like the latest Australian court decision on remote working

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8–10 minutes

[Remote working](#) and its cousin, [flexible working](#), look like they are here to stay, despite the criticism of some senior business figures [such as Denis O'Brien](#).

The most recent [Central Statistics Office](#) figures show that almost 36 per cent of people worked at home at least some of the time around the middle of this year. This was up from 20 per cent in the same period in 2019, before the pandemic hit and upended working arrangements.

The proportion of people working from home has stayed relatively steady since 2022, when some normality returned after the pandemic. There has, however, been a bit of a fall in the numbers working from home “most of the time” in favour of those working there “some of the time”.

For some, in other words, three days a week working from home has turned into two. The [2025 survey](#) by the Chartered Institute of Personnel and Development (CIPD) shows that around 15 per cent of employers intended to increase the amount of time employees should work in the office this year.

There is also a trend, the survey shows, towards greater central control in organisations of remote working policies, rather than leaving it to line managers. Anecdotally, many report their employers are now monitoring attendance more closely.

A lot of this is a normalising of new work arrangements which started in an emergency setting during the pandemic. That’s according to Caroline Reidy of the HR Suite, a human resources consultancy. But she believes the situation is still settling.

After a clampdown on remote working from some international companies early this year – JP Morgan called staff back full-time and employees pushed back against a tightening of rules in organisations [such as AIB](#) – Reidy feels “we are not there yet”.

Companies need to keep consulting their staff as new arrangements emerge, she says. Many are reviewing their policies ahead of next January, according to Reidy. However, she does not foresee a general pullback from remote working in 2026, with the model of three days in the office and two at home increasingly common.

[[Workers unlikely to be the winners as new norm on working from home takes shape](#)[Opens in new window](#)]

In the public service, meanwhile, many employees continue to work from home three days a week, a point underlined by O'Brien in his speech at a conference organised by the Business Post in Dublin on Tuesday.

Employees have a legal right to apply for remote or flexible work under 2023 legislation. The [Workplace Relations Commission](#) (WRC) has published [a detailed code of practice](#) on how these rules should be applied.

Flexible working refers to those who have caring responsibilities for young children or other family members requiring care. The remote working rules, meanwhile, are intended to set down a framework for the post-Covid working world.

To date, almost all of the cases brought to the WRC by employees to complain about the way their applications for remote working have been dealt with have gone in favour of the employer.

Only one of the 56 complaints brought by employees have been upheld, leading to a [€1,000 compensation payment to a worker by Salesforce](#), which was seen to have breached the rules in how it dealt with his request.

The role of the WRC under the legislation is to oversee the process applied by companies, rather than judging the merits of the argument on whether the employee is required at the office. However, there has been criticism of the way the rules operate and there may be a push in a review to be undertaken next year to allow the WRC to take a wider role.

Jennifer Cashman, partner with RDJ solicitors, points out that the review will be wide-ranging, including considering extending the right to seek flexible working – currently confined to those with caring responsibilities – to all employees.

[[Women and hybrid workers face more obstacles to promotion, data shows](#)[Opens in new window](#)]

Emer Currie, the Fine Gael TD who chairs the Oireachtas group on remote working, has called for the legislation to be strengthened to ensure company decisions in this area come under more scrutiny.

[In a briefing paper](#) on the decisions made by the WRC, Rachel Jones of lawyers Lewis Silkin says they show “a key reality that employers maintain full discretion over whether to approve or deny requests”.

Decisions, she said, “have confirmed that the WRC can only assess whether an employer followed the correct process, not whether the refusal was justified.

Ultimately, the decision reinforced that employees have the right to request but not to be granted remote work”.

In this context, an interesting recent decision by the Australian National Workplace Tribunal, the equivalent of the WRC, has, according to RDJ, drawn interest from similar jurisdictions, including Ireland, where employees have a similar right to seek flexible or remote working.



A Westpac bank in Melbourne. Photograph: Asanka Ratnayake/Getty Images

[A briefing written by Nathalie King and Cashman](#), employment lawyers at the firm, outlines the case of Karlene Chandler, an employee at Westpac, one of Australia's biggest banks.

Chandler was seeking to remain working remotely rather than return to work two days a week, as the company wanted. When this was refused, she offered to go two days a week to a bank office outside of Sydney, rather than the company headquarters in the city centre where the company wanted her to attend.

The basis of the request was to allow her to look after her two six-year-old children and take care of school drop-offs.

The bank responded in an email that “working from home is no substitute for childcare” and that her working arrangements were at the company’s discretion. The tribunal decided that her request should be granted as Westpac had failed to establish business grounds for refusing the request and that ruling in her favour would be fair in the circumstances.

Key to its finding were submissions from Chandler about how she could successfully work and interact with her team from home.

[[Hybrid work: ‘We get the buzz of being together but without the pressure of five days in’Opens in new window](#)]

While in Ireland the WRC cannot order an employer to agree to a request, RDJ says the case carries important lessons for employers. Westpac was criticised by the tribunal for being somewhat sloppy in the way it responded to Chandler and for taking a “one-size-fits-all” approach, where it did not make a specific case in relation to why the employee should be in the office by referring to her particular job.

The case also shows the need for employers to be mindful of the employee’s needs and assess potential alternatives, the lawyers say.

It also opens up the question of how the Irish system may be reformed in 2026 and whether employers may face a more onerous situation where employees have a right to challenge not only the way their application for remote or flexible working was dealt with, but also the merits of the argument.

Cashman says that on balance, she does not believe the WRC will be asked to examine whether a company decision was fair, or that it be given powers to rule on what arrangements should be put in place.

[[Are workers really enthusiastic about going back to the office?Opens in new window](#)]

However, with criticism that the rules are too favourable to employers, legal experts will closely follow next year’s review by the Department of Employment.

According to Jones of Lewis Silkin: “One of the biggest criticisms of the code continues to be the high degree of discretion that employers have when refusing employees requests to work remotely or flexibly based on business needs.”

She says it is possible that the WRC will evolve into a forum where employees can appeal the fairness of the employer’s refusal and that “there is also a need for clarity on whether employees can re-request a remote or flexible working arrangement following an initial refusal”.

Either way, this new world of work looks to be here to stay. As Reidy of the HR Suite says, companies find they have to offer some kind of hybrid arrangements to attract the best staff.

The question is what happens if the jobs market turns down and more power moves back to employers? This will perhaps be the acid test of how much of the Covid-19 world of work will survive in the longer term.