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HR Highlights Series.

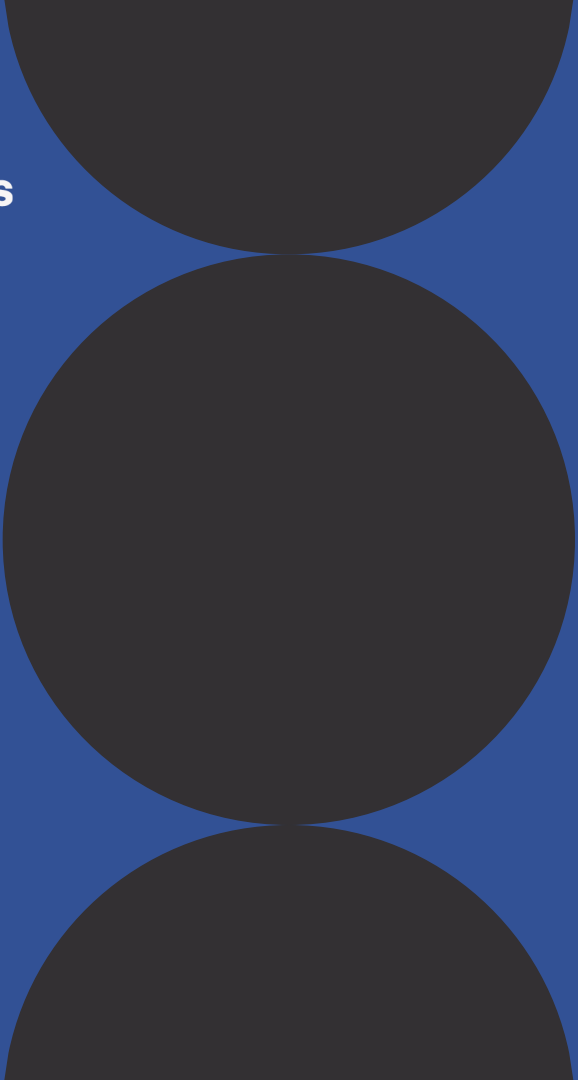
WFH: Will Flexibility Hold?

Kristen Lopes



Contents

The Evolution of Remote Work	03
Legal Framework	08
Recent FWC Decisions	13
Key Considerations	20
Future of Flexible Work	28
Key Takeaways	31



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The Evolution of Remote Work

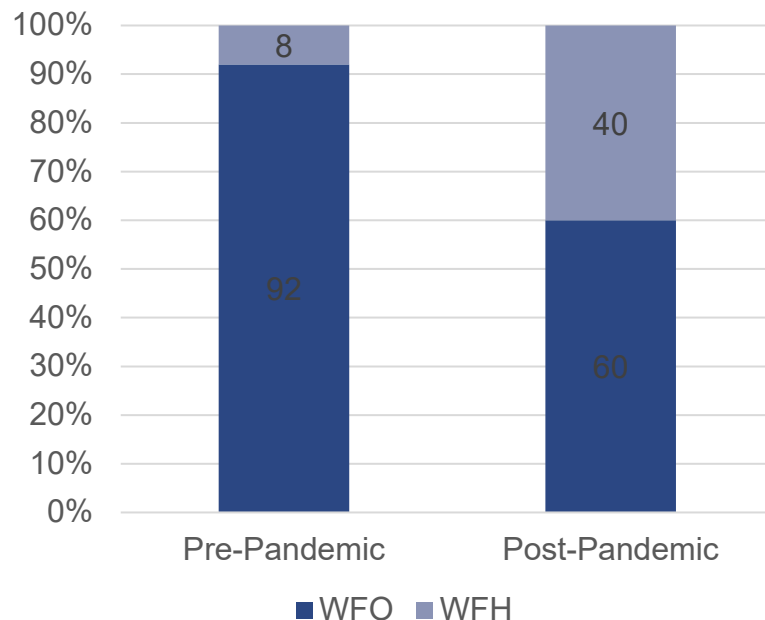
Introduction

- Traditional model of work was established in the industrial era.
- Telework engaged in for more than 20 years on an ad hoc basis.
- Remote work surged during COVID-19.
- Post COVID-19 employee demand for remote work continued.
- Now hybrid work models are common.



Remote Work - Pre vs. Post-Pandemic

- Before COVID-19 approximately 8% of Australians regularly worked from home.
- Since COVID-19, more than 40% of employees regularly work remotely, at least on a part-time basis.
- Globally alternate models of work are being trialled.



Pilot Project

Why Bunnings is trialling a four-day work week for thousands of its employees

Bunnings will be the first major Australian retailer to trial a four-day work week for its full-time workers.



Employee and Employer Perspectives

Employees

- Work-life balance
- Reduced commuting
- Improved productivity



Employers

- Employee engagement
- Legal risks
- Performance tracking



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Legal Framework

Legal Considerations

- **Fair Work Act & National Employment Standards:** No automatic right to work from home, but flexible working rights exist for eligible employees.
- **Award and Enterprise Agreement Variations:** Some have specific provisions for flexible work.



Eligibility for Flexible Work Requests

Eligibility Criteria - section 65(1A) of the FW Act

- parent of a school-age child, carer, disability, aged 55 or over, experiencing family violence, supporting family member facing family violence, or being pregnant

Formal Requirements for Requests

- Must be in writing
- Detail the change sought and the reasons
- Informal requests, such as a Microsoft Teams message, do not meet requirements

What has changed?

- Employer must now *discuss* an employee's request.
- Employer to *consider* if there are any other changes to assist the employee.
- If refuses a request, must provide reasons in writing setting out “reasonable business grounds” within 21 days of the request.



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Recent FWC Decisions

Charles Gregory v Maxxia Pty Ltd [2023] FWC 2768

Background

- Employer hybrid policy required 40% of time in office.
- Mr. Gregory submitted request for 100% remote work because of custody dispute and he suffered IBS.
- Employer considered request and offered 20% of time in office.
- Mr Gregory rejected offer.

Ruling

- IBS not established as a disability but carer responsibilities considered.
- Reasonable basis for refusal: low productivity and team culture.

***Bal Krishna Chapagain v St Basils* [2024] FWC 2332**

Background

- Mr Chapagain employed as a part time aged care worker, 30 hours per fortnight.
- He has a second job and made a request to accommodate his second job.
- Employer declined the request.

Ruling

- FWC refused the request given that the reasons for the request did not align with section 65 of the FW Act.

Shane Gration v Bendigo Bank [2024] FWC 717

Background

- The Bank informed staff that they must return to the office at least two days per week on 4 July 2023.
- Mr Gration made a request to WFH because he cared for his wife who suffered a foot injury and cared for his daughter.
- The Bank declined the request given its goal to re-establish work relationships and social interaction post COVID-19.

Ruling

- FWC refused the request given that Mr Gration's wife taught yoga and held that the benefit of face-to-face interaction in the workplace was a "reasonable business ground".

Elizabeth Naden v Catholic Schools Broken Bay Limited [2025] FWC 317

Background

- Religious Education Co-Ordinator sought part time return from parental leave for the first two school terms.
- School stated required full-time presence for continuity in teaching and leadership to maintain quality education.
- School offered alternative proposals in alternate roles.

Ruling

- FWC held alternate offer of reduced paid role for two terms was reasonable.



Michael Fogo v Boeing Aerostructures [2024] FWC 3037

Background

- Mr Fogo was employed as one of two Planning Engineers which is a factory facing role.
- He made request to WFH on Mondays and Fridays due to age 61 to allow him to transition into retirement (did not state an intention to retire).
- Employer declined the request but offered WFH 3 days per month which Mr Fogo declined.

Ruling

- Jurisdictional issue - application held not valid because not sufficient nexus between age and WFH on Mondays and Fridays; denial for "reasonable business grounds".

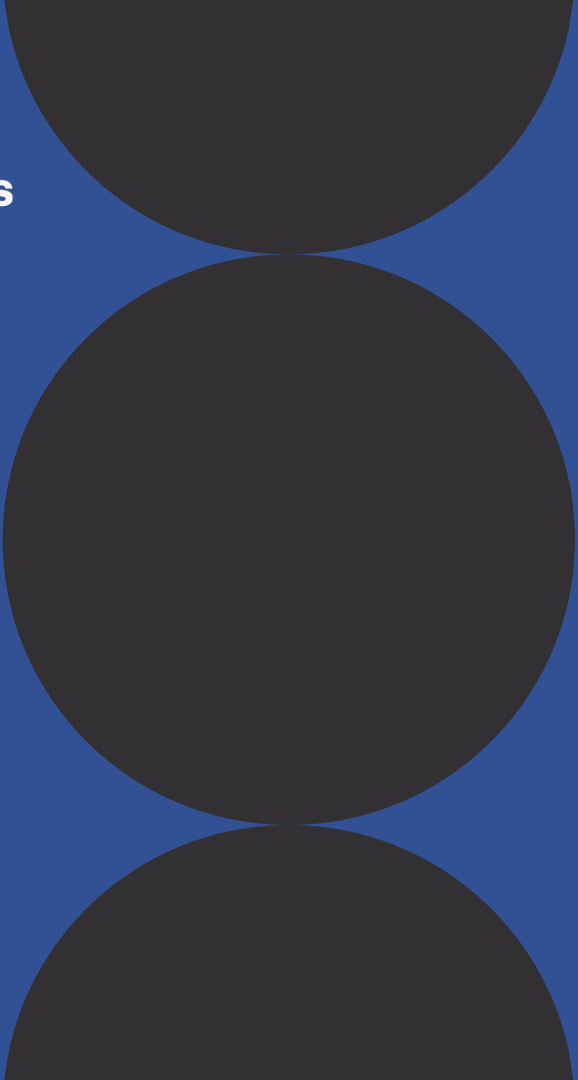
Kent Aoyama v FLSA Holdings Pty Ltd [2025] FWC 524

Background

- Mr Aoyama returned from parental leave and sought to formalise his WFH arrangement.
- He had worked 2 days per week remotely for 2 years and sought a 3rd day per fortnight.
- Employer declined the request citing client demands, performance issues and being distracted by caring for his child.

Ruling

- FWC accepted the flexibility request because of past practice until child commenced day care.



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Key Considerations

Challenges for Employers

- Measuring output vs time spent online.
- Lack of engagement/collaboration.
- Lack of supervision.
- Communication barriers.
- Social isolation.
- Underpayment resulting from failure to track hours.

Employment Contracts

Key Considerations:

- Location flexibility clauses
- Changes to work hours and monitoring expectations
- Data security and confidentiality

Best Practice:

- Review and update contracts and policies
- Provide training to ensure consistency

Ability to monitor

- Can monitor employees online pursuant to limitations of relevant surveillance legislation.
- Employers must inform employees of monitoring prior to commencement.



WHS Responsibilities

- Employer Obligations:
 - Ensure safe work environment at home
 - Risk assessments should be individualised
- Employee Responsibilities:
 - Maintain a safe home office
 - Report hazards to employer



Vercoe v LGAWCS [2024] SAET 91

Background

- Ms Vercoe was a Council employee who WFH.
- She tripped on a pet fence during a break and injured her shoulder and knee.
- Her workers compensation claim was declined.

Ruling

- SAET allowed her claim and held: *A private residence of a worker may have unique risks not usually found in the employer's workplace.*

***State of NSW v Knight* [2023] NSW PICPD 63**

Background

- Ms Knight was employed as a case worker by Western NSW Local Health District providing phone and video counselling, WFH.
- She cared for her daughter's puppy who was kept outside to minimise distraction during counselling sessions.
- She sustained an injury when she intervened as a dog attacked the puppy and lodged a worker's compensation claim.

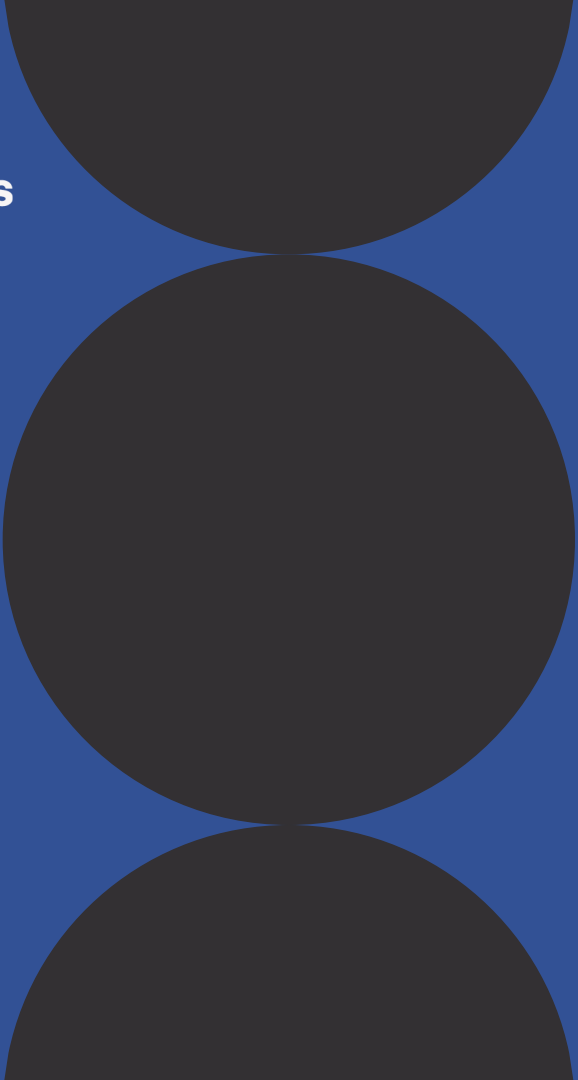
Ruling

- PIC accepted that injury was sustained at home, at Ms Knight's *place of work*.
- Employer's appeal was rejected.

Overseas remote working - concerns?

- Visa requirements? eg. can respond to emails or answer phones on UK visitor visa
- Taxation obligations?
- WHS and workers compensation obligations? eg. time zones
- Cyber security and data breach?
- Insurance coverage?





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Future of Flexible Work

What to expect

- Modern Awards to be varied to include working from home provisions.
- Continuing demand for flexible and hybrid work arrangements.
- Increase in disputes lodged in the FWC
- Potential penalties for unreasonable refusals of requests.

Clerks Private Sector Award, 2020

- FWC has commenced a review of working from home arrangements within the Award.
- Parties were provided with opportunity to file submissions by 12 March 2024.
- Anticipated the term will serve as a "model clause" for other awards.
- Key issues include:
 - Definition of remote work;
 - Potential expansion of ordinary hours for remote work;
 - Providing flexibility with respect to breaks

Key Takeaways



Working from home is here to stay!



All employer obligations (including WHS) apply in a home setting.



Employers should proactively manage legal risks through policies and procedures.

Practical Tips

- Review and update policies and procedures.
- Communicate expectations with respect to hours of work and availability expectations.
- Conduct regular virtual check-ins.
- Hybrid work to maintain in-person connections.
- WHS risk management:
 - Risk assessment templates
 - Employee self-checklists
 - Training on home office ergonomics

Presenter



Kristen Lopes

Partner | Employment & Safety

Colin Biggers & Paisley

Kristen.lopes@cbp.com.au

**Colin
Biggers
& Paisley**

Thank you.

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