

PayePass eGuide

# HYBRID WORKING

IS YOUR BUSINESS PREPARED  
FOR IT?



Since Covid hit in 2020, Hybrid working has taken the business world by storm. Businesses all over the world had to adapt to the new way of working and for many, it's ended up becoming a staple within how businesses operate today. Hybrid working has given millions across the country a chance to balance their time in the office and at home. But how many really know what it means, how to implement it and what the potential business and legal implications could be?

### What is hybrid working?

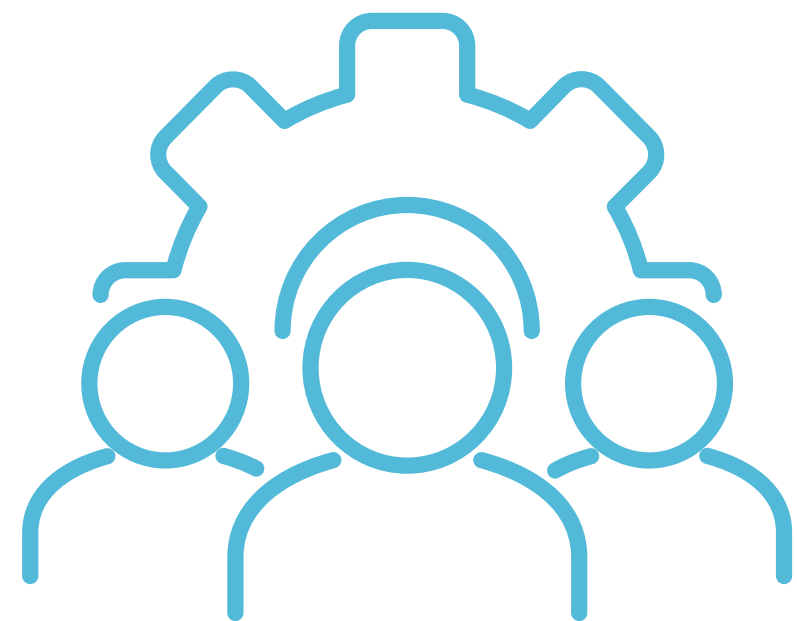
By definition, it cannot be one thing, so it will develop into many things: many potential different ways of working between home and the workplace with a blending of work/life balance.

The potential variation will very much depend on how different businesses function as well as the appetites of them and staff to embrace change. Deciding which hybrid working option to adopt is important, but not straightforward as businesses will need to balance multiple commercial, practical, legal and potentially regulatory factors.



### What are the options?

**Not to allow it** – It will always be an option not to permit any form of hybrid working, but businesses need to consider that employees have the right to make a request from their first day of working with you. So keep that in mind.



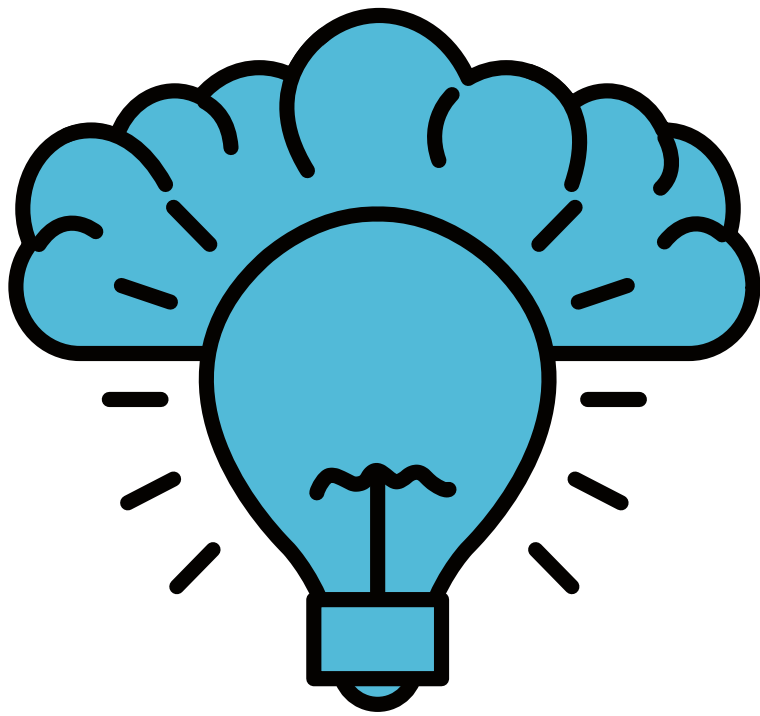
**Split days and times** – perhaps a little trickier than other approaches to orchestrate from a calendar and timetable perspective. This option can also bring some significant cost savings, so it is still worth consideration.

**Workforce autonomy** – This is by far the most flexible option as staff will be allowed to pick and choose where they work from, on which days and for how long at different locations.

**A week about** – This approach is one week working from home and then one at the workplace. This option will be viable for many businesses and can allow for 'hot desking' that could, in theory, significantly reduce many overheads including the cost of premises.

**Trialling** – An obvious option for many businesses will be to trial one or more options for a given period and with different groups of staff before implementing any final decisions.

This is likely to be an attractive option for newer businesses or employees.



### How should a business decide?

There are multiple different factors to weigh up when deciding how to implement hybrid working practices in your business. The decision will ultimately be based upon the wants, needs and expectations of the business and staff. Here are four key areas of consideration that all businesses will need to take into account:

1. What does the business want to achieve

What is the ideal position for the business? One way to answer this vital question is to consider how the sudden shift to large-scale remote working throughout the pandemic may have negatively impacted your business (for example, culture, innovation, creativity, productivity, customer satisfaction), and then examine how those issues might be addressed by a new model of working.

The stance may differ depending on teams/departments. That being so, it might be that a less

centralised approach to hybrid working is required, for example team managers are given discretion to set working patterns for their own team.

Taking time to reflect on and identify the problems your business may have encountered during the height of the pandemic allows you to think creatively about the possible solutions. For example, many businesses have identified the impact virtual engagement (via platforms such as Zoom or Teams) has had on collaboration and creativity. This may result in setting nominated set days (e.g. weekly or fortnightly) where everyone within a particular team or department is brought together in one physical space.



Having clear rationale behind any decision (particularly those that are likely to reduce individual autonomy and therefore may face resistance) will also be helpful when it comes to explaining the new policy to employees and may help to mitigate the legal risks associated with these decisions (see section 3 below).

## 2. Is your IT infrastructure sufficiently robust and flexible?

From the start of the pandemic, few businesses will have been able to properly function without making some adjustments to IT infrastructure. For some, it might have only included a few laptops but for many, it will have required significant and urgent investment in hardware, software and development.

Whichever solutions a business had to implement and refine during the stricter stages of the pandemic, they may need to be adapted to cope with new flexibility requirements for a hybrid-style workforce with, perhaps, staff using laptops at home for a few days and then desktops for other days with all assets being interchangeably used by different people on different days.



Although it should always be, data security will continue to be a significant concern requiring constant review. Taking IT assets away from the workplace and remotely accessing systems brings cyber security issues that should be ignored.



For more in depth comments on how to protect your business, read our 101 guide on how to avoid cyber attacks.

## 3. What does your workforce say?

Before getting into the details of the commercial, legal and regulatory landscape, it makes sense to invest some time and effort into understanding whether, and if so to what extent, your staff (at all levels) actually want to work on a hybrid basis.

If the views of your workforce reflect those of the wider population, the likelihood is that a sizable portion of your staff are keen to retain some level of home-based working.

Surveys, together with group and individual consultations, can be helpful to gauge what it is your staff want and how strongly they feel about these issues (including the underlying reasons).

In practice, there is likely to be divergence in views amongst your workforce as to exactly what they want – based on a wide variety of factors including (but not limited to) age, personal or living circumstances and personality type (e.g. introverted vs. extroverted).

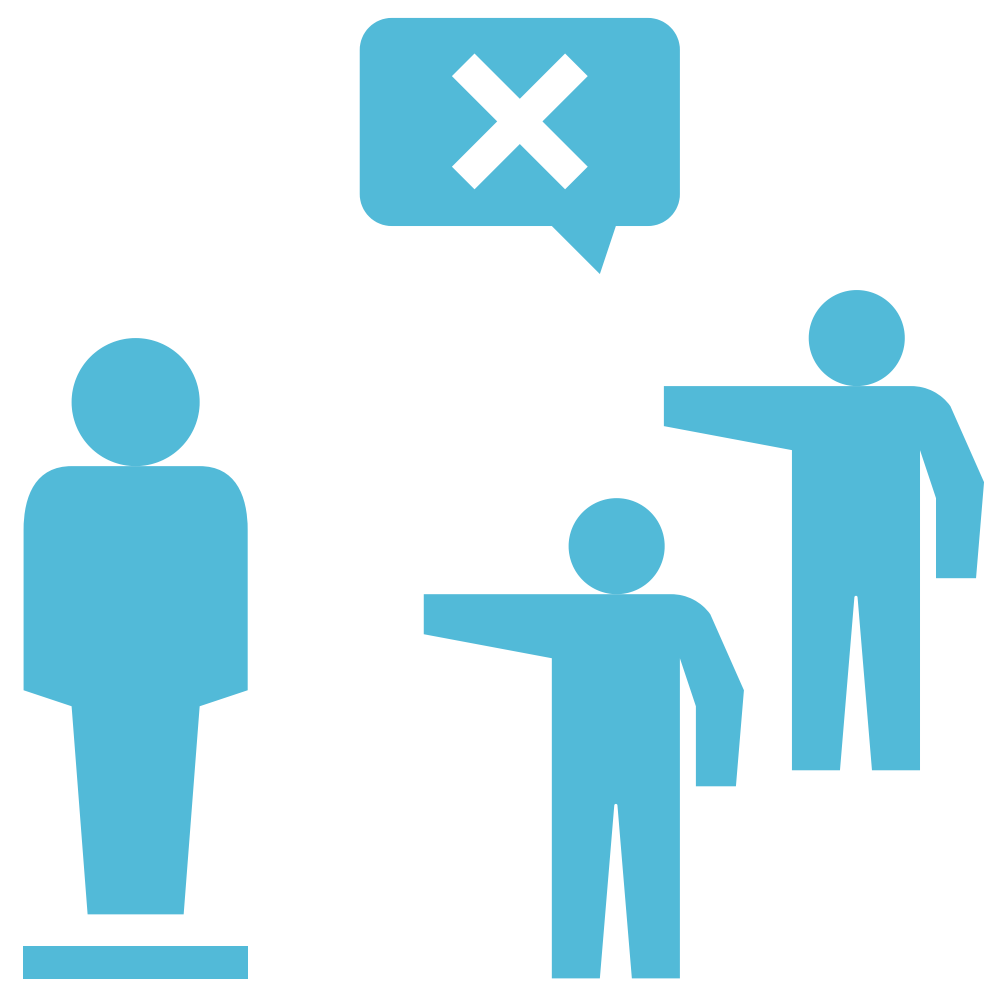
A variety of viewpoints is not something to get disheartened or put off by; it could be a sign of a diverse workplace (which is an overwhelmingly good thing) and listening to and honouring the viewpoints of all (rather than shrugging off the divergence as an administrative headache) is an important aspect of inclusivity.

#### 4. What are the legal issues?

Before taking any steps to implement a proposed new way of working it is important to consider, and possibly seek specialist advice on, the potential legal (and if relevant, regulatory) risks of your chosen approach. These may include:

##### a. Discrimination

As employees do have some rights to work flexibly or on a hybrid basis, there is a risk that an employer's refusal to allow this may constitute indirect discrimination if it adversely affects a protected group. As tribunals generally accept that women are more likely than men to have caring responsibilities, it follows that any flexible (including hybrid) working policy (or refusal to adopt a certain policy) which puts those with childcare responsibilities at a particular disadvantage could be argued to be indirectly discriminatory against women.



Businesses should tread cautiously where they wish to refuse a particular flexible or hybrid work pattern (both in relation to a specific individual, and/or more generally) to ensure that this does not expose them to the risk of potential indirect sex discrimination claims.

##### b. Health and Safety

Employers have common law, statutory and implied contractual duties relating to the health and safety of their staff and contractors which will need to be considered in the context of any proposed new working model. It is likely that any risk assessments which may have been carried out as part of businesses' transition to remote working in the pandemic will need to be revisited if a different and permanent hybrid working model is being introduced.

Businesses should give particular consideration to the potential impact of longer-term home-working (even if on a hybrid basis) and mental wellbeing and give thought to what steps might be necessary to ensure that.

For example, appropriate boundaries of working time are established, and that home / hybrid workers are given adequate support and opportunities for connection with co-workers.

### **c. Data protection and information security**

Hybrid working gives rise to a range of data protection and information security risks which employers need to recognise and address. For example, where staff are printing and storing work-related documents at home it is important that they are adhering to the relevant principles under data protection legislation.

Educating staff on their obligations in this regard (and ensuring that relevant policies are updated to reflect these) will be a vital step to take.



Also carry out a data privacy impact assessment of the data protection implications of any new working model; put in place adequate security measures and take appropriate steps to ensure data protection compliance standards are being met is important to avoid potential enforcement action by the ICO and/or reputational damage.



Don't overlook that any hybrid working policy should oblige staff to comply with rigorous information and cyber security measures when working from home.

### **d. Contractual**

When entering into hybrid working arrangements with your staff, employers need to ensure that relevant provisions of the employment contract are updated as necessary to allow for and reflect new models of working. Where changes to contractual terms and conditions are required, unless there is a specific flexibility clause on which the employer is able to rely, it is likely that employee consent will be required. In addition, company policies (for example, absence or sickness, disciplinary, or performance management etc.) are also likely to require updating, and it is likely to be beneficial to introduce a specific hybrid working policy clearly outlining what is expected of employees.

### **e. Regulatory?**

For businesses in certain sectors it will be important to consider any regulatory requirements that may impact the proposed model of hybrid working and ensure that measures are put in place to mitigate any risks.

### **In conclusion**

Deciding on a future way of working (whether hybrid or otherwise) is undoubtedly a major organisational decision involving a tricky balancing of a wide array of factors. It is, however, also a potentially exciting opportunity to revamp working practices in a way that works for both the business and its people. By carefully considering the potential implications at the outset and implementing new working practices in a prudent manner (including, for example, with a trial period and supportive technology in place) you can maximise the likelihood that it will be a success for both the business and its workforce.



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