



**Professionals
Australia**

RETURNING TO OFFICE BASED WORK

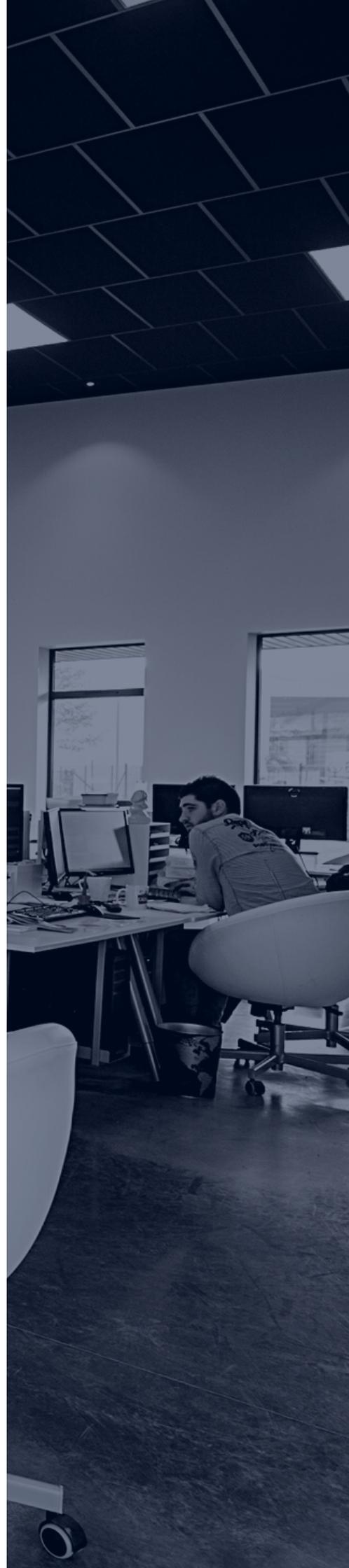
With the lifting of several state government recommendations related to working from home, many employees are now being asked to return to the office.

Professionals Australia believes employers should acknowledge the incredible co-operation, flexibility and productivity that employees demonstrated throughout the pandemic and must engage in meaningful consultation with employees and their union about returning to office based work.

Research consistently shows that many employees still want flexible working arrangements, including adequate working from home options. Employee concerns in terms of future working arrangements should be addressed in the consultation process and employee needs should be met, as well as business needs.

Employees also have rights under federal and state legislation as well as some enterprise agreements in terms of requesting flexible working arrangements.

Professionals Australia answers some frequently asked questions about returning to office based work.



WHAT IF I DON'T WANT TO RETURN TO WORK?

Many employers updated their employment policies during the pandemic to accommodate flexible working arrangements, including working from home provisions. Check your employer's policies to see if they cover working from home. These policies might contain clauses that enable you to continue working from home if you wish. You could also ask for the employment policies to be updated to enable working from home in the future. If the policies do not cover this issue, you may still be able to negotiate a work from home arrangement by agreement with your employer.

CAN I MAKE A FLEXIBLE WORKING ARRANGEMENT REQUEST TO WORK FROM HOME?

A working from home request represents a flexible working arrangement request. [Section 65](#) of the Fair Work Act 2009 (Cth) provides that an employee can make a flexible working arrangement request if:

- the employee is the parent, or has responsibility for the care, of a child who is of school age or younger.
- the employee is a carer (within the meaning of the Carer Recognition Act 2010).
- the employee has a disability.
- the employee is fifty-five or older.
- the employee is experiencing violence from a member of the employee's family.
- the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence.

Flexible working arrangements can be refused by the employer based on 'reasonable business grounds'. Also, disputes in relation to whether the employer has reasonable business grounds to refuse such a request cannot be taken to the Fair Work Commission (FWC) unless the enterprise agreement, contract or other written agreement expressly provides for the FWC to deal with such a dispute.



IS IT DISCRIMINATORY FOR AN EMPLOYER TO REFUSE A WORK FROM HOME REQUEST?

If you have a protected attribute under anti-discrimination laws, for example status as a parent or carer or a disability, it may be possible to argue that your employer's refusal to allow you to continue to work from home is discriminatory.

In general, an employer must make reasonable accommodations for an employee's protected attribute so long that does not cause unjustifiable hardship on the employer and so long as the employee can still meet the inherent requirements of their role. However, the threshold tests for what is discriminatory varies based on the anti-discrimination legislation in each state and territory.

DO I HAVE ANY OTHER OPTIONS?

If you work for a public sector agency, you may have the right of review in relation to a decision made about your employment, subject to legislation and regulations in your state.



WHAT IF I HAVE HEALTH AND SAFETY CONCERNS ABOUT RETURNING TO THE OFFICE?

An employer must also, so far as is reasonably practicable, provide a workplace that is safe and free from harm.

This does not necessarily mean that you have a right to work from home. However, workers can use the existing health and safety laws to ensure that their employer is providing a healthy and safe workplace when they return to the office.

This means that you can:

- Ask your employer to identify and assess safety risks in consultation with HSRs and workers
- Ask your employer to take active measures to control any safety risks in consultation with HSRs and workers (including, for example, providing RATs)
- Ask your HSR to issue a provisional improvement notice (or PIN) in relation to any outstanding health and safety concerns.

CAN I BE FORCED TO RETURN TO WORK?

An employer can ask you to perform any reasonable and lawful directive in relation to your employment. What is reasonable can vary from case to case. This could include being directed to work from the office where the state government no longer recommends working from home. It is worth checking your employment contract too, as it may specify a defined work location and require compliance with whatever workplace policies are in place.

HOW CAN I GET HELP?

If you have a grievance about returning to the office members of Professionals Australia can get advice and support from the Workplace Advice and Support line on 1300 273 762 or was@professionalsaustralia.org.au

