

Case study

Understanding an employer's legal responsibilities to colleagues working from home

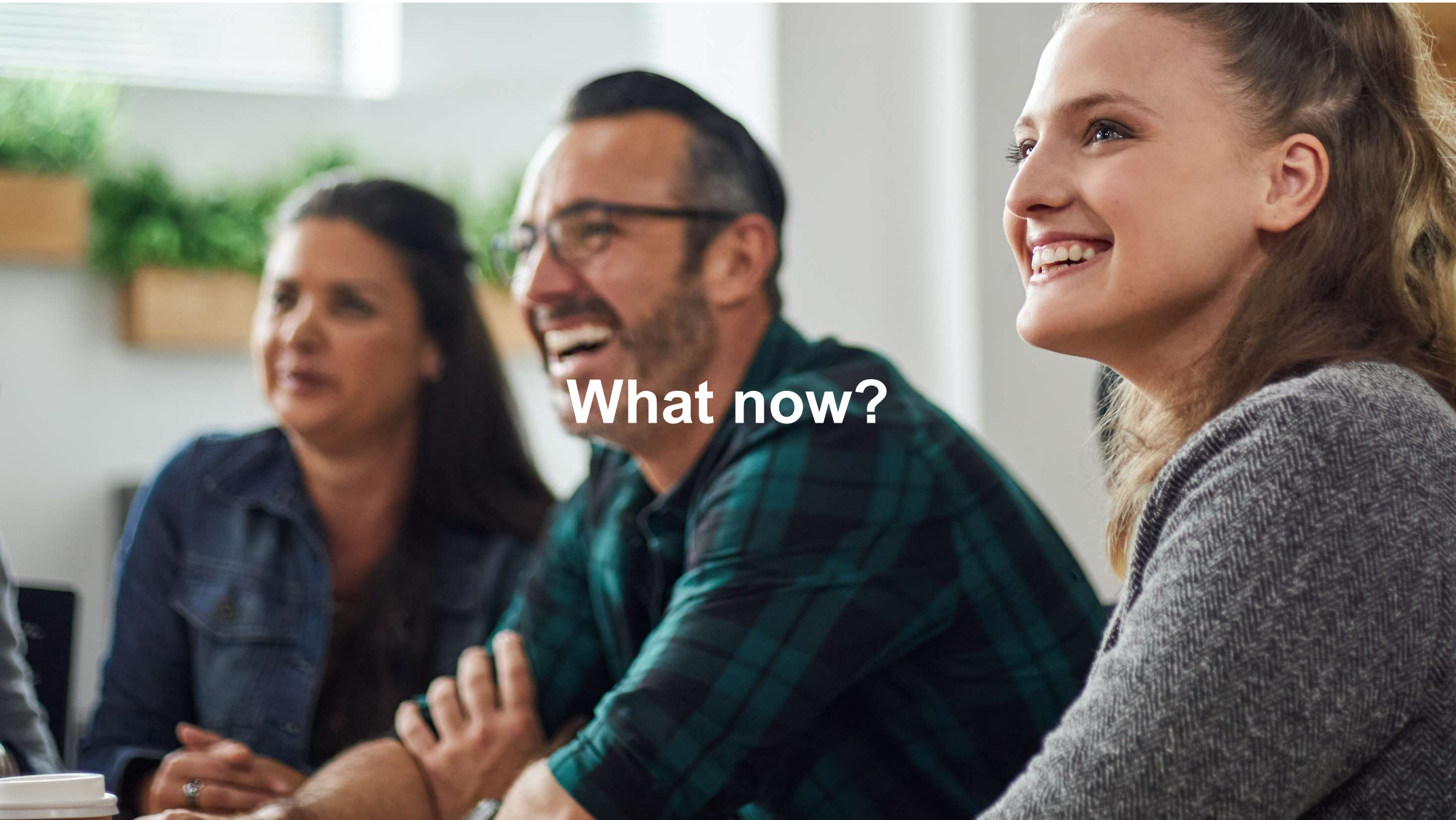
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Case study: Company X

- Operates in the financial services sector.
- Employees largely office-based.
- Remote working during the pandemic at short notice.
- Temporary measures still in place 16 months later.
- Restrictions due to be lifted shortly.





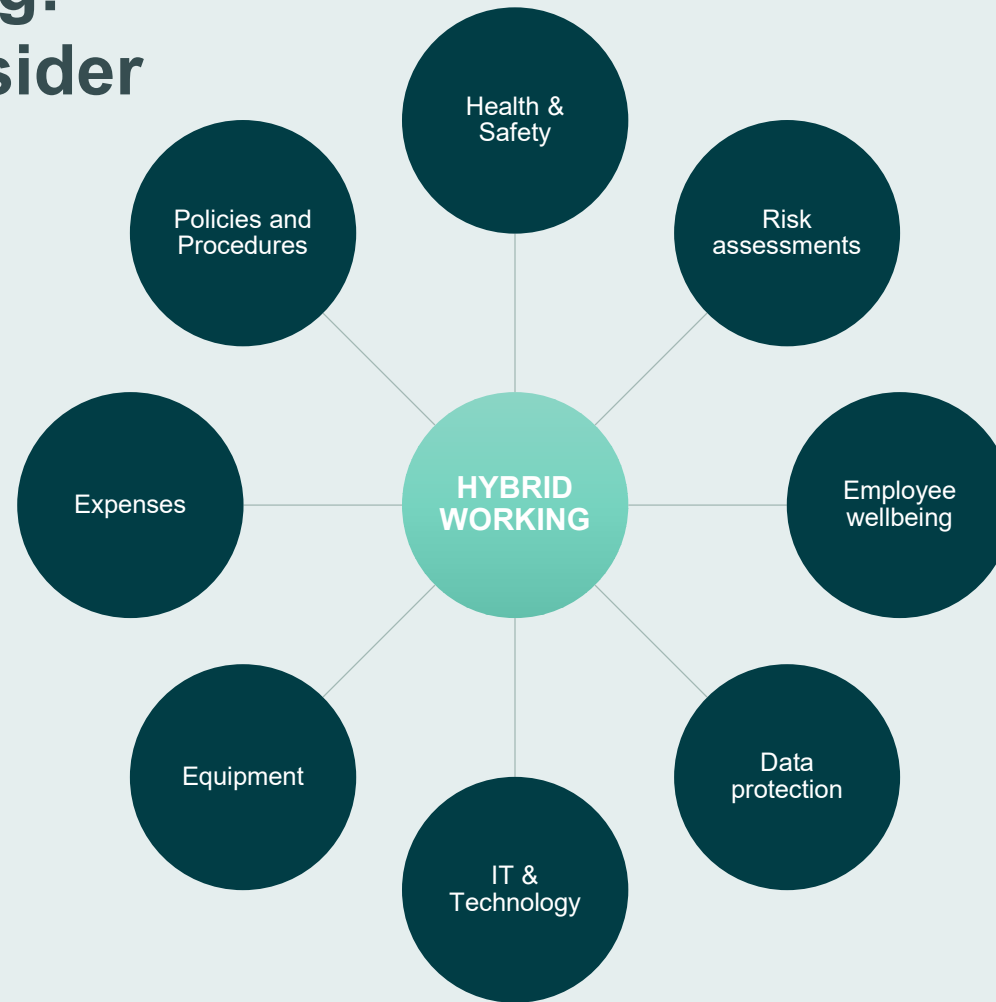
What now?

Hybrid working: an introduction

- Office space available for those who want to use it.
- Employees may be expected to spend a certain amount of time in the office.
- Attendance for certain events, training etc.?
- Working from home to be facilitated where possible/appropriate and on a longer-term basis.
- In the past, WFH only permitted for a day here or there when needed.



Hybrid working: issues to consider



Health and Safety: an employer's duties

An employer must ensure, as far as reasonably practicable, the:

- Health;
- Safety; and
- Welfare of its employees, regardless of where they are physically working.

Additional requirements for DSE users.

Risk assessments (at the outset and periodically) are key.



Health and Safety: practical considerations

- Risk assessments and COVID-19 restrictions. Consider using a questionnaire format which covers whether:
 - There are any risks arising from the type of work being done at home;
 - The work can be done safely; and
 - There are any special measures needed to remove any risks identified.
- Measures may include:
 - Additional supervision, particularly for junior staff;
 - Arrangements for keeping in touch;
 - Clear expectations on communication/working hours/availability; and/or
 - Check-ins and channels to report wellbeing issues (physical and mental).
- Ensure policies are clear and up to date

Data Protection: duties in the workplace

- In spite of changes to the way of working, data protection responsibilities for employers and employees remain the same.
- Employees also still have a duty to protect the Company's confidential information, just as they would do in the office.
- Personal data should be processed in a manner that ensures *'appropriate security'* of the data by using *'appropriate technical or organisational measures'*.
- This includes protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.
- The ICO recognises that there will be additional challenges and heightened risk and intends to take an empathetic and proportionate approach to breaches during the pandemic, but employers will nonetheless need to ensure that both they and their employees are complying with their duties.



Data Protection: practical considerations

- Ensure internal data protection policies and template documents are up to date and reviewed regularly.
- Stress test and future-proof IT systems and equipment.
- Communicate procedures for safe disposal of documents when at home.
- Remind employees of confidentiality requirements e.g.:
 - Making calls in a private place (including away from family)
 - Locking laptop screens
 - Using privacy screens
 - How to report a breach

Equipment and Expenses: an employer's duties

- There is no general legal duty for an employer to provide/pay for equipment for employees to work from home.
- Government guidance during the pandemic encouraged employers to take every step possible to assist employees to work from home.
- Provision of IT equipment will assist with communication with employees and, of course, data protection obligations.
- What about disabled employees? Duty to make reasonable adjustments may include the provision of auxiliary aids.



Equipment and Expenses: practical considerations

- Will the Company be covering or making contributions to employees' utility, internet or phone bills, as they will increase when working at home?
- Will the Company be providing any equipment to employees? Will this only be IT/telephone, or will it extend to cover desks, chairs, anything else?
- There may be additional pressure from employees for the employer to provide these, particularly where there are additional financial/personal stresses for employees to contend with such as illness or caring responsibilities.
- It is also in the interests of both parties to ensure that the work environment is suitable to maintain productivity/wellbeing.
- HMRC offers tax relief to employers/employees in relation to equipment/expenses in some circumstances.
- How much office space is required? Can savings be made?
- Reassess expenses policy to ensure it is clear what is and is not available in terms of equipment and reimbursements.

Policies and Procedures

- Data protection policy
- Expenses policy
- Risk assessment paperwork
- Working from home policy:
 - How home working requests will be dealt with
 - Who will be responsible for equipment/expenses – with reference to full policy
 - Rules around storing information/data protection – with reference to full policy
 - H&S, data protection and confidentiality obligations – with reference to relevant full policies
 - Keeping in touch
 - Performance management
- Ensure consistency between policies
- Insurance policies?

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