The Future of Work

Changing Places:
Uplifting, measuring and managing hybrid work performance

pwc

A legal perspective on making the future of work, work

The message is being sent loud and clear - workers no longer want to be in the office five days a week.

Now that the dust is settling after a period of enforced remote working, many organisations are considering normalising hybrid working as an ongoing organisation-wide policy. At the same time, the question of performance by individuals and their immediate teams is shifting in focus from one of business continuity as a benchmark of success to uplifting workers in this new environment - and mitigating new risks.

Enabling and managing productivity in a hybrid workforce relies on a number of critical factors including adapting management styles and skills while addressing issues of mental health and wellbeing, safety in the workplace and at home, and access to data needed to get work done.

These all have profound industrial relations implications that not everyone is aware of. Though there's no 'one-size-fits-all' approach when it comes to the role of industrial relations in uplifting, measuring and ensuring performance, there are definite opportunities to be taken advantage of - and some clear watch-outs.

Asked 'what would your ideal work environment look like?' some **76 per cent** of Australian respondents said they would like either wholly virtual work **(16%)**, mostly virtual work **(25%)** or a mix of face to face and virtual work **(35%)**.[2]
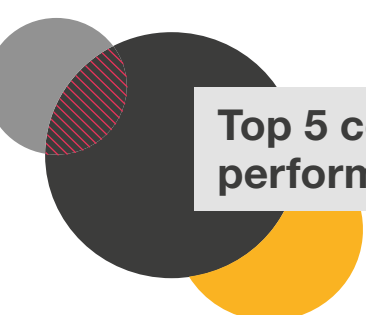
[2.] Upskilling hopes and fears', Australian data, PwC

51%

Remote working can uplift productivity

51% of managers said their direct reports had been more productive working remotely. Half (50%) of overall respondents felt they had worked more productively while remote.

[1.] Remote work is now a make-or-break recruitment decision: Qualtrics survey' Dynamicbusiness.com.au

Top 5 considerations for uplifting, measuring and ensuring performance in a hybrid work environment

01 **Get clear on what flexibility means for your organisation - and for different categories of employees**

Enforced remote working saw a blanket shift to working from home for many organisations. But the reality for some employees is this flexibility may need to be evaluated on a more nuanced basis. For others, enhanced visibility over hours and days when employees work may be critical.

This is particularly true for employees working remotely and covered by a modern award or enterprise agreement, which set minimum entitlements to things such as minimum wages, overtime, penalty rates and allowances. Clerical employees or employees in the banking and finance industry are particular examples of where working outside of core hours (which is often considered a benefit of hybrid working) may involve penalty rates or overtime coming into play.

While many modern awards were varied by the Fair Work Commission to allow greater flexibility, these all have an end date, unless they are further extended by the Fair Work Commission. The flexibility is limited, so employers need to ensure they comply with the obligations set out in the applicable award.

With hybrid working increasingly an expectation for workers, striking the right balance between flexibility and control and avoiding wage compliance risks will require a keen awareness of obligations.

Check

- Are you clear on which of your employees are covered under a modern award and what your remuneration obligations are under those awards if employees work outside of 'normal' office hours?

- Have you let employees know what the restrictions are on the hours when they can work?

- Do you have an adequate system in place to track when employees are working so that if flexibility is allowed, costs are kept under control? For example, do you have visibility over how many hours a day or week employees are working? Do you record those hours or do employees have to notify you if they work in excess of a certain number of hours a week?

- Do you conduct a reconciliation to ensure that employees are still being paid in excess of award rates having regard to the actual hours that they are working?

- Have you ensured that your contracts of employment contain an appropriate provision that allows you to set off over award payments against award entitlements, or have you considered whether an Individual Flexibility Arrangement might be appropriate for your employees?

- If some employees are provided greater flexibility than others, have you considered how this difference in treatment and concerns around equity of experience could be addressed?

02   Manage differently

In a hybrid environment, traditional modes of management are not going to cut it. Uplifting and adapting managers' performance measurement approaches and communication skills will be fundamental to enabling performance of dispersed teams. It's critical that organisations take steps early to ensure that certain employees do not end up 'out of sight, out of mind' while others gain prominence and favour out of proximity to those with influence.

If equity and bias risks are left unacknowledged and unaddressed, organisations risk exposing themselves to legal risks through discrimination claims, constructive dismissal claims, or redundancy claims.

⊕ Check

- Do leaders have the skills and ways of working to ensure staff are connected virtually, feel supported, and are continuing to connect their inputs to the success of the team overall? If this was not well established physically, it is even harder to embed virtually.

- Are you measuring a number of different perspectives of performance in a simple and standardised way, reducing opportunity to hide poor performance while while clarifying opportunities for improvement for all staff.

- Are you increasing emphasis on the way managers are communicating over email and chat channels, with steps taken to ensure that it can't be misinterpreted by employees? Without appropriate care and attention, people may feel left out or discriminated against, and legal challenges such as bullying claims could arise due to misinterpretation.

- Are you making sure that managers are educated on the risks and how important clear communication and setting of expectations is in a hybrid work environment, including where possible, backing up written communication with verbal communications to test understanding and provide an opportunity to ask questions? This is where good team culture comes in, creating physiological safety within virtual teams.

- Are managers being upskilled and empowered to become aware of and minimise the opportunity for proximity bias? Without acknowledgement of this risk, and explicit steps being taken to mitigate against it, wider disparities may appear in your organisation. Are you, for example, keeping track of any gender disparity between those returning to the workforce - if it is predominantly men returning and managers are displaying proximity bias, this could lead to a lack of inclusion, and discrimination claims may ultimately result.

- Are you on top of what staff are working on and ensuring that there's equity in how work is apportioned? Keeping track of what people are working on will be key to managing performance and mitigating risk. Bullying can take many forms, including excluding someone, or not giving them meaningful work to do.

03   Make mental health and wellbeing a priority

Navigating mental health in the workplace has long been a hugely challenging and sensitive topic for organisations and this has only intensified since the pandemic and the widespread adoption of remote and hybrid working.

While remote work has been shown to bring with it some positive impacts in terms of engagement and productivity in the initial stages, particularly for those more introverted employees who may prefer to be away from large, social office environments, there's risk from a mental health perspective as well. This includes an increased prevalence of mental health issues when people are isolated, including working from home.

The management of workers with mental health issues that may affect their ability to carry out their function is a hugely sensitive challenge. There are many overlapping obligations for employers when it comes to mental health and getting it wrong can come at a significant cost to both employees and employers.

⊕ Check

- What are you doing to support people's mental health and wellbeing in a hybrid environment? It's important to be across what the specific risks are for mental health for those who are working in isolation or in apart from their teams for extended periods and to ensure company mental health support is adapted to address this. For example, do you have systems in place for regular check ins with remote workers, are you ensuring that they are aware of all of the resources that are available for them.

- Are you able to track people's mental health and wellbeing? Do you have appropriate systems in place to catch red flags and quickly offer tailored support where needed?

- Do you have a legally-verified plan in place to deal with longer term absences of employees due to mental health challenges? In some cases, mental health challenges will get too much. Don't leave it until this happens to have a plan developed for how you fill the gaps if the worst case scenario plays out, as this can have a knock-on effect on the broader team and organisation.
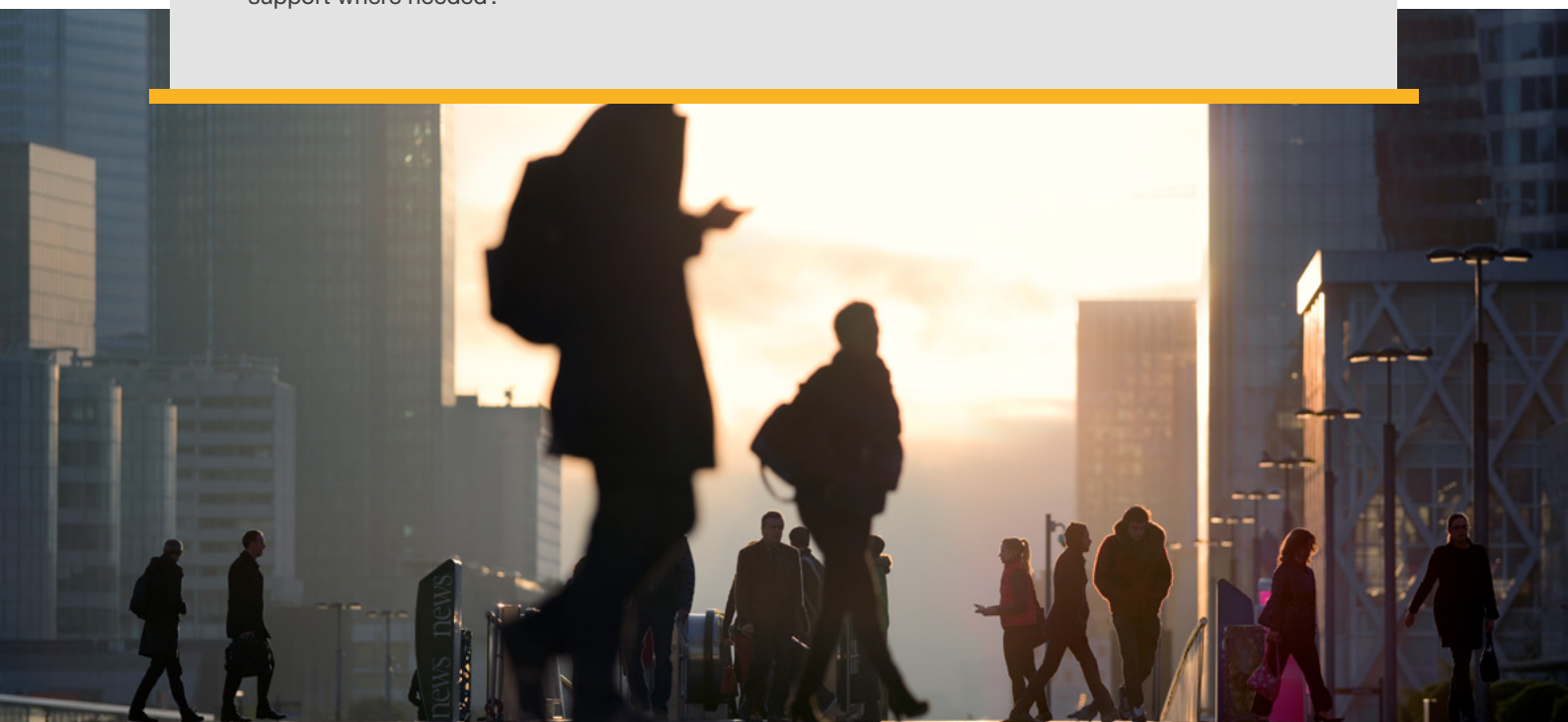
04   Adapt approaches to safety in the workplace

While uplifting performance in a hybrid environment can be achieved by augmenting employees' experience through better management or mental health support, it also depends on ensuring employees have freedom from unsafe situations.

Beyond implications for performance, employers have a legal obligation to ensure the safety of their employees at work, so far as reasonably practicable - one which extends to working from home.

While employers generally aren't obliged to provide and pay for office equipment for employees working from home, if an employee is not set up properly and is injured while working from home, this could constitute a safety breach. This is also likely to give rise to a workers compensation claim.

When assessing risk for employees working from home, employers also need to be attuned to the risk of domestic and family violence (DFV). Working from home, in close contact with abusive family members or partners could both increase the chance of DFV while also making it harder to identify. Signs of DFV in workers may initially appear as performance issues, such as arriving (or logging on) late to work, increased absences, concentration problems and not engaging with colleagues socially.

◈ Check

- Do you have a work from home policy and a checklist for employees to complete to demonstrate a safe working environment?

- If an employee does not have a safe working environment at home, are there provisions in place for them to work from the office, until any safety issues are resolved?

- Are you aware of the signs of domestic and family violence? Are you able to monitor those signs when employees are working remotely?

- Are you maintaining regular communication with staff and do you have a safety word or phrase in place for enquiring about workers' welfare and if they require immediate help? Employers should avoid asking workers about DFV issues directly because that can unintentionally place victims at risk if their communications are being monitored.

- Do you have a DFV policy that creates a non-judgemental environment and enables employees to feel they can disclose DFV issues safely and in confidence?

- Do you have a plan in place to address workers' safety if DFV is revealed to be taking place?

- Do you have an ongoing system for reviewing control measures around risks associated with working from home to ensure they are effective and working as planned?

05 Rethink data protection and privacy issues

Hybrid working and the flexibility to work at home brings with it a number of potential risks from a data protection and privacy perspective. In order to help workers be productive, access to company documents outside of the office environment is critical. There's little more undermining to productivity and engagement than when staff are unable to access information they need to do their jobs in a timely fashion.

However, this access as well as other challenges around breakdowns in team cohesion and organisational connectedness in a hybrid environment could also increase the threat of data protection and confidentiality breaches.

Staff outside of the four walls of the office may feel somewhat more disconnected from their organisation's purpose and values and more willing to share information with a competitor. Or they may simply leave data accessible - in a cafe or shared living environment - in a way that could expose it to bad actors.

Remote access also carries with it inherent data protection and security risks, particularly if organisations have moved quickly to a remote access environment without putting in place appropriate technical and process security measures. Cyber risks are as significant today as ever before and organisations need the confidence that fundamentals are in place to ensure they remain protected from this increasingly prevalent risk.

Anxieties over managing productivity may also encourage some organisations to implement new surveillance technology. While this may be supported in various states, it's important to bear in mind that there are limits to such surveillance.

⊕ Check

- Have you adapted your protocols around use and sharing of company data and equipment in line with the new reality? For example, a policy reinforcing the importance of confidentiality, not storing confidential information on personal home computers, not emailing information over unsecured wifi and not discussing confidential information in a public space, including shared houses.

- Are you engaging in regular training about what employees can and can't do in this respect?

- Are you tracking sentiment to understand if there is a breakdown in a sense of connectedness to the organisational purpose which could indicate a growing threat of data breach issues and addressing this in a timely way?

- If you are monitoring your employees' online usage, are you doing so legally? The law in relation to the surveillance of employees varies from State to State, and it is important to ensure that the monitoring of employees' systems is in accordance with any legislative limitations.

Navigating the maze

Uplifting, managing, measuring and ensuring performance in a hybrid environment brings with it a maze of complexities.

When it comes to enabling and ensuring performance, flexibility is a two-way street. Teams should be empowered with flexibility in the way they work, but your approach to performance-related challenges must also be malleable. Ultimately, there needs to be enough flex in your framework to wind back decisions if outcomes aren't favourable.

This can be achieved by avoiding a rush to build in clear contractual rights to flexible working. Leaders can respond to the needs of workers by enabling flexibility in working, but need to address expectations through policy changes that make clear their openness to change if circumstances shift and an employee fails to perform as required.

Getting legal input early will be fundamental to success. Understanding your obligations, constraints and risks will allow you to set the right foundation for successful performance of your teams, no matter where they may be working. This goes hand-in-hand with adaptation of leadership style, approaches, and systems to maximise productivity - and minimise the chance of worst-case scenarios playing out.

Take the next step

For more information about the research in this paper, or to talk about how we can help your organisation create a productive hybrid workforce, contact our Future of Work leaders:

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