

Thought Provokers

A Right to Work from Home

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INTRODUCTION

COVID-19 has completely transformed the way that we work. Many of us are working from home, or have lost work because it cannot be undertaken from home. For those working from home, we have found new freedoms as well as new stresses, and probably new distractions. Employers are also navigating these new waters of how to engage employees and maintain productivity. This Thoughts Provokers piece explores the idea of a Right to Work From Home (WFH).

The Melbourne School of Government posed the following questions to three experts from the University of Melbourne. We also approached the broader University of Melbourne community to capture their views and experiences.

COVID-19 has raised the idea that a ‘right to work from home’ should be enshrined in law. Some organisations have already announced that employees can work from home for the foreseeable future, and possibly forever. Is this something Australia should consider, and what impacts do you think it would have across society?

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GENDER AND WFH

The structures and values of labour law developed in the 20th century centred upon the firm distinction between work (the public space to be regulated by law), and home. The home was seen as the realm where unpaid feminine labour would be excluded from the scope and reach of legal rules.

The assumptions and ideologies of the male standard worker came under pressure as married women with children moved in greater numbers into the paid labour market. A discourse around work and family evolved, focusing on possible mechanisms by which women and increasingly men could adapt their working time to meet their caring duties at home. From the 1970s, awards permitted part-time work, but was dependent upon the employer's approval.

The union movement has twice sought to create something approaching a right to part-time work. In 2005, the federal government and employers strongly opposed any firm right, and the result was a 'right to request part-time work', which, if refused, could not be challenged in any court or tribunal. In 2018, the unions unsuccessfully sought a hard right to part-time work in all awards of the Fair Work Commission.

How does a putative right to work from home fit in the context of these older battles about the right to work part-time for work/life balance?

It's a myth that working from home necessarily means people can combine work and care in a seamless, effective way. It doesn't solve the work/family problem when those needing care are also at home demanding, well, care.

However, working from home may permit a creative interplay of work and care which could be effective: perhaps a parent can snatch an hour's work while primary school children are online in their class, or while the baby sleeps. Reduced 'getting ready for work' and commute time may support this creative interplay.

The risk is that the enormous task of working out how to juggle work and care at home, not to mention doing the care work, may fall largely to women. A right to work from home needs to be accompanied by a large shift in the gendered division of labour within the home.

With the pandemic, the old cultures of presenteeism, rigid schedules and a preference for full-time work at work, common reasons given for refusing women's requests to work part-time, have been exposed as artificial barriers to change. Regulators, employers and governments no longer have the excuse of not being able to imagine a completely different way of doing work, which bodes well for any coming battle about new worker rights.

Dr Jillian Murray

PRODUCTIVITY AND WFH

As much as a social license to operate is applicable to businesses today, a productivity permit may become the counter-compact necessary between organisations and their employees. A majority 63.9% of employees surveyed by technology provider Citrix, cited productivity gains with respect to remote working.

Some disagree.

Gilbert + Tobin's Dianne Banks told AFR in July, "If I get a flexibility request under the Fair Work Act for someone to work from home one day a week their approach to me will be 'how do we say no?'. How do we find the reasonable business grounds to legitimately reject this request."

For Australia's private sector to support 'a right to work from home', a new measure of productivity must be found. The industrial standard of measuring a worker's value based on the hours contributed is outdated but lacks an alternative. For executives feeling they're losing influence in the virtual realm and finding it impossible to trust employees working out of their kitchens, surveillance technology must be tempting!



However, if Australia is to bounce back from economic meltdown, our knowledge economy must be supercharged. In many respects, a remote revolution makes sense: repurposed commute time; more inclusive structures; an almost infinite talent pool, and; virtual recognition lending itself to outcomes rather than activity. The Life after lockdown survey records 81% of employees wanting to be able to work from home, even after the crisis has eased. Is this a right to productivity? Or a right to party?

And should it be a right at all? Only if the right productivity tool is in place.

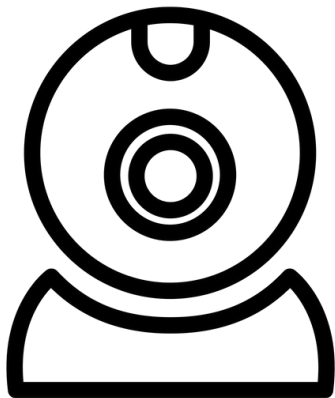
Holly Ransom

WFH & WORKPLACE SURVEILLANCE

Employer acceptance of working from home during COVID 19 has been underwritten in part by data collection and people analytics technologies and software applications that facilitate remote monitoring of employee activities at home, rather than a sense of trust that unsupervised employees will continue to be as productive. Recent reports suggest that working from home during the pandemic has been associated with a growing use of technologies to record and track employee movements, time spent on computers, work-related apps and websites, more closely monitor emails and other communications platforms, often in real time. These developments raise significant ethical and legal issues in terms of privacy at home as well as what constitutes appropriate levels of work surveillance, which itself may induce stress and other adverse psycho-social and physical outcomes for employees.

Any 'right to work from home' needs to address the rise of workplace surveillance and people analytics technology. The regulatory environment in Australia concerning surveillance in the workplace has not moved with the times. Regulation of workplace surveillance is a state responsibility, and there is wide variation in the level of regulatory sophistication. The most comprehensive laws are in NSW and the ACT and seek to balance the need for security and safety in workplace with an employee's right to privacy. In Victoria, regulation of workplace surveillance is only one element of a wider regulatory regime, the Surveillance Devices Act 1999 (Vic), and was last amended in 2006, shortly before the release of the first iPhone. The use of surveillance devices in Victoria is otherwise covered by general privacy and surveillance laws.

Workplace surveillance does come up as an issue in the context of other areas of labour law, such as unfair dismissal. But it is fair to say there is not currently a universal and coherent approach to the serious issues raised by increased workplace surveillance.



Professor John Howe

PERSPECTIVES

COVID-19 has precipitated the Working From Home (WFH) 'symptom'. In many cases, it has lots of positives - which might be the reason for examining it as a legal or human right. With rights of course there are responsibilities too. What are the responsibilities of the employee? Employer? Government? One thought is, who is bearing the operational costs of WFH in the home? If it becomes a common fixture, how does the employer benefit from shifting operational costs onto employees with WFH? How is (sustainability in its broadest sense: social, financial, cultural, governance, environmental) justice achieved in WFH in medium-long term period?

**Josephine R. Lang, Associate Professor,
Melbourne School of Professional And Continuing Education**

Given the rapid progress in automation and machine learning technologies, rich and messy, direct, and serendipitous human interaction is a valuable contribution that employees make to their organisations and the economy. A legal right to (completely/exclusively) work from home could create a new tier of low-interaction or transactional-interaction work-from-home jobs with lower pay, fewer social/developmental benefits of work, and less attractive career paths. Australia should instead incentivise innovations of mixed modes of work.

Franz Wohlgezogen, Senior Lecturer, Faculty of Business & Economics

As a professional that has explored people, process and data approaches across a range of industries and teams, I am very concerned with this suggestion. While certain roles and job types are well suited to working from home, the benefits of face-to-face contact for others are huge. I see that today, concerns some people have around health are severely limiting most people's ability to maintain their health. While I'm sure we could adapt, perhaps appropriate in some areas, and safety is always important, I don't think all of society should be forced to allow the fears or personal circumstances of individuals to limit the ability for some teams to perform.

Kyle Grace, Senior Business Analyst, UniMelb Business Services

PERSPECTIVES

If enshrined in law it would potentially have fundamental repercussions on the shape and economy of cities across the country, and especially on major metropolitan areas, whilst presenting an extremely interesting evolution of planning, policy and legal arguments already well-rehearsed globally on the 'right to the city' - which often ends to the public and shared space in many cases - and on the necessity for not just affordable but workable housing. Perhaps against major critiques of the current neoliberal underpinnings of our cities, this could muster sizeable private sector and financial support. Yet it would have to be done in clear engagement with right to the city, right to adequate housing and right to urban wellbeing discussions and advancements already ongoing globally not to become (perhaps 'once again') a limited/localised initiative affected by shortsightedness typical of much Australian urban planning/policy.

Michelle Acuto, Professor, Connected Cities Lab



The ability to work from home has made me appreciate the technologies that have enabled us to continue to produce high-quality research and teaching materials, manage stakeholder relationships, and enjoy collaboration and camaraderie with colleagues. For some of us, there are some tangible benefits in Australia legislating the 'right to work from home', such as greater flexibility in terms of achieving work-life balance. No longer will vacancies in Melbourne be open only to those residing in Melbourne. It could enhance opportunities for those with caring responsibilities or mobility issues. However, we also need for that legislation to ensure that employee rights are not being eroded, working hours and conditions are safe, and that staff development opportunities remain prioritised. On a personal note, even though working from home is a privilege, nothing can replace the buzz of students on campus or incidentally bumping into a colleague in the office kitchen and having a random chat about a book they recently read!

Belinda Spagnoletti, Research Fellow, Nossal Institute for Global Health

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