



## Work from home request refused by employer - decision upheld by QIRC

**Date: Sunday March 13, 2022**

In the matter of [Hair v State of Queensland \(Queensland Health\) \[221\] QIRC 422](#), a Queensland tribunal has affirmed the decision of a public hospital to refuse an ongoing 'work from home' ("WFH") arrangement for its HR staff, which was introduced during the height of the coronavirus pandemic. The decision to refuse the WFH request was heavily influenced by the hospital's view that face-to-face contact is a necessary aspect of the employee's role.

### Background to the request to work from home

The employee is an HR advisor at West Moreton Hinterland Hospital and Health Service. In 2020, the hospital introduced a full-time remote working arrangement, due to the pandemic. In a 2021 performance review, the employee was found to be meeting or exceeding all leadership standards while working fully from home.

In September 2021, the employee requested to work remotely from New South Wales, where she wanted to relocate permanently with her partner. The employee was willing to work one week per month in Brisbane and to cover any associated travel costs herself.

This request was refused. The hospital explained that full-time remote working was a temporary arrangement connected to the COVID-19 public health emergency.

While many of the employee's functions could be performed remotely, the hospital maintained that certain responsibilities required in-person attendance. This included:

- interviewing;

- coaching assistance for clients;
- giving performance feedback; and
- assisting with facilitated discussions.

The hospital considered that living permanently in NSW would prevent the employee from responding to requests for in-person support in a timely way. In addition, the demands of the role were often unpredictable and could change at short notice. Spending one week a month in Brisbane was therefore not an adequate solution.

Although the employee offered to fly up to Brisbane on short notice as needed, the hospital considered that travel time would reduce her productivity and her ability to cover for colleagues. Moreover, the hospital was worried that fluctuating border restrictions and quarantine requirements might hamper the employee's movements.

The hospital also drew attention to the likely impact on the employee's colleagues. The hospital was concerned that the remote-working arrangement would distribute duties unfairly throughout the team. The hospital was conscious that in-person responsibilities are often more emotionally draining, which might exaggerate this imbalance.

## Decision

The Queensland Industrial Relations Commission upheld the hospital's decision.

The hospital's workplace policy required that flexible working arrangements are to be 'equitable' to the whole work unit and are not to compromise client service and patient care. Commissioner Pidgeon accepted the hospital's objectives to 'find the optimal blend of remote and in person working' as the public health emergency improves. Her Honour recognised the hospital's view that working remotely from NSW was unviable from a practical and operational perspective.

The Commissioner supported the hospital's ability to determine the operational requirements of the HR advisor role. She observed that this will not always align with the preferences of employees.

Moreover, while accepting that the employee had worked effectively from home during the COVID-19 pandemic, the Commissioner observed that the role of HR advisor encompasses 'complex case management' and an expectation of in-person availability. The Commissioner concluded that it was therefore fair and reasonable for the hospital to decide that in-person attendance at the hospital will be required in the near future.

## Significance of the Tribunal decision

Workplaces across Australia and the world were forced to adapt dramatically during the early stages of the pandemic. As we emerge, better equipped to combat the challenges of COVID-19, a readjustment towards 'normality' is looming.

For employees, this decision demonstrates that not all pandemic-induced work conditions are necessarily permanent. On the issue of working from home, the decision signals tribunal support for limitations around remote working in certain roles, even where

employees have proven that they can work capably from home in the past. However, it will always be the case that the circumstances of the position, and the employer, will be central to whether an employee could challenge such a decision.

## Get help from an employment lawyer

As we emerge from the height of restrictions during the pandemic, there are a number of things that have changed, either permanently or temporarily, in workplaces across Australia.

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