

# ARE OUR LABOUR LAWS STILL RELEVANT FOR TELEWORKING?

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# Executive Summary

Many of our labour laws and regulations were established in an earlier era when the economy was vastly different than it is today. Just as technological change has made many of our production procedures and skills obsolete, it is not surprising that many of our labour policies would be obsolete. And just as there is resistance to technological change, there will be resistance to changes in labour policies. Luddism can apply to policy change just like it applied to the Luddites who resisted technological change in the early 1880s.

A major change that has been spurred on by the pandemic is teleworking or working remotely from home. For Canada, about 40 percent of the workforce has the potential to work *entirely* from home, and this corresponds to the proportion that was working from home during the early part of the pandemic. An additional 10 percent could work *partially* at home, so that around 50 percent of the workforce could work entirely or partially from home. The rate of working from home will likely drop, but only to about half those rates after the pandemic as both employers and workers have experienced the benefits including:

- reduced commute times with social benefits from reductions in traffic congestion, air pollution, and energy consumption;
- savings in house prices and rents if they can move to cheaper locations and connect online;
- productivity gains, or at least not the productivity losses that were often anticipated;
- fostering work-family balance that can benefit females who have a disproportionate share of household work;
- better control over one's work environment with respect to such factors as temperature, lighting, music, and colleagues dropping by;
- improved worker satisfaction and hence improved recruitment and retention;
- accommodating disability limitations;
- providing a cushion against future contagions that are likely to re-occur.

Furthermore, those working from home have generally invested in their home working environment as well as technology and are familiar with the new arrangements that are also rapidly improving. Employers will likely use hybrid models—mixtures of working from home and at the workplace—to deal with such factors as team-building and corporate culture, as well as training and career development, that benefit from personal interaction. And they will adjust to the concerns that can arise if working from home involves 24/7 constant availability with little opportunity to disengage. Working from home is not for everybody or for every workplace.

Many of our existing labour laws are ill-fitted for working from home. Employment standards legislation on *hours of work and overtime*, for example, is difficult for government to monitor and enforce for persons working from home. The same applies to regulations on *break times*. *Minimum wage legislation* will be difficult to enforce because employers may respond to a higher hourly minimum wage by simply expecting longer worktime in a day. *Workers' compensation* requirements will be complicated by the difficulty of determining whether the accident or injury occurred while conducting work for an employer or doing personal activities at home, especially because most injuries have now shifted from physical injuries to repetitive strain and musculoskeletal injuries that are difficult to diagnose and have long latency periods, multiple causes, and complex interactions. *Health and safety regulations* will also be extremely difficult if not impossible to enforce for working from home and this is already recognized in some jurisdictions. *Pay equity legislation* will be complicated by the difficulty of evaluating the working conditions component of jobs when some work at home.

Because of these difficulties, this paper outlines various policy considerations and issues to be wary of in extending our labour regulations to where they do not fit. Rather than extending our labour regulations, the emphasis should be on removing barriers that inhibit working from home. Such practices include extending broadband infrastructure, flexibility in zoning to enable market adjustments to the new reality, and providing information on best practices in this area to facilitate market adjustments to such best practices. Reducing rather than extending regulation in teleworking should foster the growth and competitive markets that facilitate employers and workers making the mutually beneficial choices that can come from this growing workplace arrangement.

# Introduction

Many of our labour laws and regulations were established in an earlier era when the economy was vastly different than it is today. The old world of work was often characterized by large fixed worksites with male-dominated blue-collar workers in lifetime jobs protected by tariffs and unions in manufacturing firms with large internal human resource departments. Today's new world of work, especially since the 1970s, is vastly different. It is characterized more by mobile worksites, outsourcing, non-standard work (including teleworking), and lower unionization, operates under global competitive pressures, and is polarized into high-skilled, knowledge-based services and low-skill personal services.

Just as technological change has made many of our production procedures and skills obsolete, it is not surprising that many of our labour policies would be obsolete. And just as there is resistance to technological change, there will be resistance to changes in labour policies. Bureaucracies have been built up, with jobs dependent upon implementing such policies just as jobs depended upon old technologies. Vested interests can be protected by the continuance of earlier policies. This can apply not only to unions that want to reduce competition from non-union employment, but also to firms that already meet costly regulations, but want them applied to competitors that may struggle to meet them. Luddism can apply to policy change just like it applied to the Luddites who resisted technological change.

The purpose of this paper is to examine whether the existing litany of labour policies still applies to one growing aspect of non-standard work—teleworking. [1] The paper begins by documenting the extent of teleworking and its characteristics as well as predictions about its future growth in a post-covid world. It then discusses the effects of teleworking, especially on the labour market. The current litany of labour policies is briefly outlined, with particular attention to the extent to which they are relevant for teleworking in a post-covid world. The paper then shifts to a discussion of alternatives to regulating the employment environment, and concludes with a discussion of the policy implications.

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[1] Governments are still in the process of adjusting their labour laws and regulations to reflect pre-covid technological change that has resulted in much more non-standard work including the growth of the gig economy and the fissured workplace in which more work is done by contracting agencies. Prominent issues that likely will be exacerbated by any post-covid increase in working from home include the distinction between employee, dependent contractor, and independent contractor, and especially the right to disconnect. Government sponsored reports that grappled with these issues include Green, Kesselman and Tedds (2020), Mitchell and Murray (2017) and Johai (2019).

# Teleworking: Its Extent, Characteristics and Future

The phrase teleworking is used here to refer to work that is done outside of the conventional working environment of the employer, often in one's home and usually for the same employer, although it can involve different employers. Alternative phrases include working from home, remote work, mobile work, distributed work and flex-place work.

## Extent of Teleworking and Ability to Work from Home

As documented below, the extent of teleworking has exploded because of the 2020 pandemic. But working from home is a phenomenon that occurred earlier, such as with the Putting-Out system in 17<sup>th</sup> and 18<sup>th</sup> century Europe. It was common as an alternative to the early factory system, especially when sewing machines enabled production from home. [2] It was slowly replaced by the scale of the more modern factory system of mass production driven by steam and waterpower.

Its modern incarnation has resulted largely because of the digital revolution that has facilitated communicating between home and regular workplaces. It has also been prompted by other pressures such as extensive commute times, expensive office space, and a desire to facilitate work-family balance and to be able to recruit from a larger pool of talent, many of whom want to work from home. Gajendran and Harrison (2007), for example, reviewed 46 earlier studies that dealt with the growing role of telecommuting well before the current pandemic. The extent to which telecommuting will replace much of the old office system is an open and interesting question.

The pandemic was an exogenous shock that prompted more working from home. Descriptions of the extent of teleworking are complicated by the fact that some sources report the extent to which individuals do *some* teleworking (and of varying amounts), while other sources report the extent to which they *entirely* work from home or are restricted to full-time workers; others are based on assessing the tasks to determine the *potential* for certain *jobs* to work from home. As well, the picture can be clouded by the fact that some self-employed persons work entirely out of their household, and they are distinct from employees who have an employer, but work entirely or partially at home. Nevertheless, the studies are uniform in indicating that there is substantial *potential* to work from home as well as *actual* working entirely and especially partially from home, and these dimensions have increased dramatically as a result of the pandemic.

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[2] Earlier discussions of working from home as an alternative to the earlier factory system are given in Allen and Wolkowitz (1987), Boris and Daniels (1989), Christensen (1988), and Johnson and Johnson (1982). Those books outlined both the exploitive nature of the arrangements as well as the empowering aspects, giving individuals the flexibility of working from home, especially to escape the oppressive nature of the early factory system.

Based on the American Time-Use Survey, Krantz-Kentkrantz (2019) reports that *prior* to the pandemic 20.5 percent of workers spent *some time* working from home and 11.4 percent *entirely* worked from home. Based on their own survey Brynjolfsson et al., (2020) report that 15 percent worked *entirely* from home prior to the pandemic, but during the pandemic 35 percent switched from commuting to work to working from home, so that during the pandemic about 50 percent of the workforce was working from home.

Ozimek (2020a) reports that *prior* to the pandemic the percent of the U.S. workforce that worked remotely was 9.5 percent entirely, 7.3 percent mostly, 10.8 percent some, and 8.5 percent a little, so that 36.1 percent worked entirely or partially remotely.

In a subsequent survey Ozimek (2020b) finds that 13.2 percent reported working *entirely* from home prior to the pandemic. During the pandemic he reports 56 percent to 74 percent “being remote.” He does not describe this as partial or entirely but given the high numbers it suggests entirely or partially. He finds that 56 percent of hiring managers feel that the shift to remote work has gone better than expected, while only one in ten feel it has gone worse than expected. The greatest perceived benefits reported by 40 percent or more of respondents were a lack of commute, fewer unnecessary meetings, and reduced distractions at the office. The single biggest drawback was technological problems likely fostered by the rapid and unplanned shift, but that could be dealt with over time. One-third of managers reported that productivity had increased, a greater share than found productivity decreased, and 62 percent say that remote work will increase, with full-time remote work more than doubling over the next five years.

Based on US data, Bloom (2020) and Barrero et al. (2020) report that prior to the pandemic, 5 percent of paid *working days* were worked from home, increasing to 60 percent by May 2020 during the pandemic, and expected to fall to 25 percent after the pandemic. In March 2020, 42 percent of the workforce worked at home. Weighting the 42 percent who worked from home in March by their pay indicates that two-thirds of *paid economic activity* involved working from home, reflecting the fact that higher-paid workers are more able to work from home. The average employee wanted to work at home about two days per week and firms were planning to meet that demand after the pandemic.

Based on US data prior to the pandemic, the US Bureau of Labor Statistics (2019) reported that 25 percent of the workforce indicated that they occasionally worked from home, while 15 percent had some days when they would work from home.

A McKinsey report (Lund et al., 2020) indicates that 26 percent of the US workforce *could* work remotely 3–5 days per week, 22 percent for 1–2 days per week, and 52 percent less than one day per week. The percentages tend to be smaller for less developed economies.

Dingel and Neuman (2020) estimate the *potential* for entirely working from home based on assessing the tasks involved in different jobs. [3] They estimate that about 37

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[3] Jobs have the potential for working from home if they do not require tasks such as the need to perform work for the public, or to work outdoors, or operate or repair machinery and equipment, or inspect equipment, structures or materials, or wear common or specialized protective or safety equipment, or handle or move objects, or perform general physical activities.

percent of jobs in the US have the potential for working *entirely* from home. Based on employer data, Bartik et al. (2020) estimate that 30–60 percent of jobs could be done at home.

Using a similar methodology, Deng, Morissette, and Messacar (2020) estimate that 39 percent of jobs in Canada potentially can be done entirely from home; this corresponds to the percent of jobs that were entirely working from home in March of 2020 during the pandemic.

For our purposes of the relevance of legislative initiatives, the main points are:

- About 40 percent of the Canadian workforce has the potential to work *entirely* from home and this corresponds to the proportion that was working from home during the early part of the pandemic;
- An additional portion, perhaps an additional 10 percent, could work partially at home so that around 50 percent of the workforce could work entirely or partially at home.

## Characteristics of Teleworking

The above studies and others (e.g., Messacar, Morissette, and Deng (2020) for Canada) provide a consistent picture of the characteristics of workers and workplaces where remote work is feasible and more prominent. This is the case with:

- High-paying skilled jobs, especially in professional, administrative, and managerial services as opposed to low-paying personal services, production, and sales;
- Higher educated workers in the knowledge economy;
- Dual-earner families at the higher end of the earnings distribution;
- Women, in large part because they are in jobs that can be done from home;
- Higher income households that can afford the required space and equipment.

These characteristics suggest that working from home exacerbates income inequality since it is the better educated and higher income families that can work from home. As well, even though women may have a greater ability to work from home, they are subject to greater childcare responsibilities while trying to work from home (Heggeness, 2020; Zamarro and Prados, 2021).

Interestingly, the OECD (2020) points out that although a substantial share of workers in public administration teleworked occasionally, this share was low relative to other sectors where employees performed similar tasks. The report indicated that in public administration, “[t]his comparatively low share may partly reflect a reluctance, or fewer incentives, to adopt novel working models” (p. 6).

## Future of Teleworking

The extent to which the high-level of teleworking that has been experienced during the pandemic will continue into the future depends upon whether the pandemic will result in a tipping point that will sustain high levels, or whether there will be a reversion towards the mean level of a slight upward trend that prevailed in the past. Initial conditions and state dependence are powerful forces, as evidenced by the continued prevalence of the QWERTY keyboard on computers even though its original purpose of locating keys on typewriters to minimize jamming is no longer relevant. There are reasons to believe, however, that the pandemic may be a tipping point to shift us to a new equilibrium involving much more working from home.

Such reasons, which often reflect the benefits of working from home, include:

- Individuals have invested in home offices and work arrangements as well as remote equipment and internet capability and can amortize that investment by continuing to work from home.
- Working from home is like an experienced good (Nelson, 1970) whose attributes must be revealed by experiencing its usage. Once experienced, people are nudged into continuing its usage.
- Working from home enables individuals to better control their work environment with respect to such factors as temperature, lighting, music, and colleagues dropping by (Montreuil and Lippert, 2003).
- Individuals have learned and adapted to technology like Zoom and MS Teams, so they are past the learning curve.
- Market supply and technology has responded quickly to the increase in demand. In addition to Zoom, Teams, and Skype, new collaborative software includes Cisco Webex Meetings, Google Meet, Slack, GoToMeeting and Bluejeans.
- Markets have also responded quickly to supply new features including: greater capacity for attendees; transcription through machine learning algorithms; screen sharing; breakout rooms; white-board capabilities; live video editing; meeting scheduling; recording; active speaker detection; audience interaction features; and activation through multiple devices.
- Markets have also responded with advances in software that enable employers to monitor the activity of employees who work remotely (e.g., ActiveTrak, Time Doctor, Work Examiner) should that be desirable.
- Freed of long commutes (Clancy, 2020) workers may not want to go back to such commuting or using public transit with its risks of contagion (Bloom, 2020: 5).
- Reduced commuting can have broader social benefits in the form of reduced carbon and greenhouse gas emissions and traffic and transit congestion externalities (Clancy, 2020; Morissette et al., 2021), and these are becoming increasingly important issues.

- Younger persons coming out in the market have likely experienced *studying* from home and hence can easily make the transition to *working* from home, although any negative legacy effects may carry over to teleworking.
- Working from home is no longer regarded as a stigma or signal of shirking as it was when working from home was regarded as “shirking from home” and working remotely was regarded as “remotely working.”
- Individuals and employers have experienced the benefits (outlined below).
- Remote working in such forms as telehealth, which has been prompted by the pandemic, has shown itself to be very cost-effective, especially for more remote areas.
- Many firms have already altered their office space and having workers return may require special distancing and other safety procedures (Bloom, 2020).
- Human resource practices increasingly emphasize worker autonomy and trust-based practices (Bérastégui, 2021); teleworking is consistent with that trend.
- Working from home may be insurance by cushioning adjustment to future contagions or pandemics, and the forecast is for more to come (Gulland, 2016).

For these reasons, the general view of the studies cited previously is that working from home will fall off somewhat from its pandemic levels, but will not return to its earlier trend. US survey data from PwC (2020) and Morning Consult (2020) indicate that over half of the workers who worked at home during the pandemic want to continue it even after their workplaces re-open. Another US survey indicates that corporations are developing plans for more work-from-home options beyond the pandemic. Hybrid models are expected to prevail. Ozimek (2020b) reports US survey evidence indicating 62 percent of hiring managers expecting more remote work after the pandemic than before. Barreo et al. (2020) predict 25 percent of workdays will be worked at home after the pandemic.

Whatever the *exact* picture for the future, teleworking will be a much more prominent feature of the work environment. This in part reflects the fact that various studies (outlined below) have documented positive effects from working from home, and such positive effects appear to dominate the negative effects. Or, at least, the strong negative effects that were anticipated have not come to fruition so that employers are more willing to somewhat continue the practice that skyrocketed during the pandemic.

### Effect of Teleworking

The effect of teleworking is difficult to measure because of selection bias. That is, individuals who work from home, and employers who allow working from home, are likely to be those for whom teleworking has net positive effects in terms of costs and benefits. It is the case that some individuals who are “shirkers” may prefer to work from home where their shirking cannot easily be detected. But employers would be a check on this and allow it only if there were offsetting benefits or costs (e.g., saving in office space or ability to pay a lower wage in return for the work flexibility).

The pros and cons of teleworking have been reviewed even prior to the pandemic (Allen et al., 2015; Anderson et al., 2015; Dockery and Bawa, 2018; Monteiro et al., 2019; Montreuil and Lippet, 2003; Nakrošienė et. al., 2019). Gajendran and Harrison (2007) review 46 studies of remote work and document a wide range of positive effects. These include increased job satisfaction, reduced work-family conflict, stress, and turnover, and positive or no net impact on work performance and productivity.

Telecommuting has social advantages in terms of reductions in traffic congestion, air pollution, and energy consumption (Morisette et al., 2021; Safirova, 2002; Rhee, 2008). It can foster work-family balance that can benefit females who have a disproportionate share of household work (Edwards and Field-Hendrey, 2002; Gimenez-Nadal and Sevilla, 2012; Gimenez-Nadal and Molina, 2016).

Some recent studies have used estimation procedures that better capture cause and effect rather than simply association. In one of the earliest and oft-cited studies in the area, Bloom et al. (2015) examined the effect of call-centre workers in China being randomly assigned to working from home or at the office. They found that working from home increased performance by 13 percent, of which 9 percent was from working more minutes per shift (fewer breaks and sick days) and 4 percent from more calls per minute (attributed to a quieter and more convenient working environment). Employee job satisfaction increased, attrition was cut in half and total factor productivity increased by 20–30 percent. The one noticeable negative effect was that their promotion rate conditional on performance fell, highlighting the importance of “face-time” and interpersonal interaction for career advancement. Interestingly, they also found that when employees were allowed to choose, performance increased by 22 percent compared to 13 percent when they were randomly assigned. This highlights that workers were able to sort themselves into home or office work based on whichever method worked best for them individually. Bloom et al. (2015) also cited earlier case studies that showed positive effects of working from home, although these were not causal estimates.

Similar positive productivity effects for working from home are documented in Choudhury et al. (2021) for the US, and in Sherman (2019) for the UK.

Angelici and Profeta (2020) randomly assigned Italian workers to a treatment group of flexible working remotely and traditional work and found positive causal effects on worker productivity, well-being, and work-life balance, especially for women.

Based on US survey evidence, Ozimek (2020b) reports that 56 percent of hiring managers felt the shift to remote work has gone better than expected, while only 10 percent felt it has gone worse. One-third found that productivity had increased while 22.5 percent found it had decreased.

Based on data from a US national call centre, Mas and Pallais (2017) provide estimates of the value that workers have for flexible work arrangements including working from home. They find that “of the employee-friendly alternatives we consider, working from home is the most valued. On average, job applicants are willing to take 8 percent lower wages for the option of working from home.” They further indicate that such workers who don’t yet have the option “would be willing to take 21 percent lower wages for

the ability to work from home.” In essence, employers should be able to gain substantially by paying lower wages in return for the option to work from home, or if they did not lower wages in return for that option, employees would benefit substantially. Clearly, such mutually beneficial options should not be discouraged by regulations.

An important effect of working from home is that it has dramatically facilitated workers adjusting to the pandemic, and this flexibility can be important should similar situations occur in the future. Workers who can shift to working from home have been able to adjust to the pandemic in terms of maintaining their employment in a relatively safe environment (Beland, Brodeur, and Wright, 2020; Kalenkoski and Pabilonia, 2020). In contrast, workers who cannot work from home because of a need for personal interactions or because they are required to meet social distancing practices have seen their employment reduced or continue to work under risky conditions (Benzeval et al., 2020; Guadagno, 2020; Papanikolaou and Schmidt, 2020).

Working from home can also accommodate disability limitations on the part of persons with a disability (Campolieti, Gomez, and Gunderson, 2009; Schur, 2003). This is the case since persons with a disability likely have adjusted their home environment to accommodate their disability.

While working from home can have these positive effects, there are negative aspects (many of which are discussed in the articles cited above) that must be weighed against these positive effects. Such potential negative aspects include the possible loss of team-building and corporate culture as well as training and career-development that comes from personal interaction. Also, concerns can arise over the disproportionate burden faced by women with childcare responsibilities, as well as growing income inequality because low-income individuals cannot often work from home. Concerns can also arise if working from home involves 24/7 constant availability with little opportunity to disengage.

## Labour Laws and Regulations

Labour laws and regulations in Canada tend to be under provincial jurisdiction, with slightly under 10 percent under federal jurisdiction. This leads to variation in such laws both across jurisdictions and over time, as governments change (Taras and Gunderson, 2009: 12–13). It also adds a further complication for teleworking when the employer is in one province, but the individual's home is in another province. Some jurisdictions indicate that their laws apply to workers who work outside the province of their employer while others are silent, in which case it can depend on the nature of the contract, and if the contract is silent it can be determined on a case-by-case basis (Fillmore-Riley, 2020).

Many of our labour laws are increasingly difficult to enforce in the new world of work with its mobile worksites characterized by outsourcing, supply chains, platform work in the gig economy, non-standard work, small employers without sophisticated human resource departments, as well as global competitive pressures and polarization into high-skilled, knowledge-based services and low-skill personal services (Gunderson, 2020: 22–25). Adding working from home compounds that difficulty of monitoring and enforcing on the part of government.

Employment standards legislation on *hours of work and overtime*, for example, is difficult for government to monitor and enforce for persons working from home. Monitoring log-in and log-out time is feasible (the equivalent of the old punch-in, punch-out time clocks at factories) but monitoring the actual hours worked in between is difficult without oppressive surveillance and monitoring procedures. Regulations on *break times* are not feasible to enforce while working from home. As indicated by Bloom (2020: 7) this will likely foster some shifting into payment on the basis of output (e.g., piece rates) rather than inputs (e.g., hours working) but output cannot always be easily measured for individuals, and contentious issues surround determining the appropriate piece rates.

*Minimum wage legislation* is relatively easy to enforce in the old world of work with standardized work times and punch clocks or their equivalent to record hours of work. But such hours of work are difficult to monitor for working from home, and employers may respond to a higher hourly minimum wage by simply expecting longer worktime in a day.

*Labour relations laws* in Canada govern the certification of new bargaining units, changes to the make-up of existing bargaining units, the bargaining and administration of collective agreements, strikes, and lockouts, and the removal of unions, as well as the actions of unions, employers, employees, and others whose actions may bring them under the scope of the relevant legislation. They are based on the American Wagner model of majoritarian representation whereby a union has the exclusive right to represent the employees in the bargaining unit. Bargaining units are based on a common community of interest. While complexities already exist around that concept, they become compounded when some workers are working exclusively or partially from home. Certification of the

bargaining unit is based on a majority vote or in some jurisdictions by a sufficient number signing cards, by a Board order based on employer misconduct, or because of a merger, acquisition, or restructuring of the workforce. Certification can become more complex when some workers are working exclusively or partially from home. There is wide agreement that this model is increasingly archaic for the new world of work (Secunda, 2012, and references cited therein). Working from home adds to that concern.

*Health and safety regulations* will be extremely difficult if not impossible to enforce for working from home. Such regulations relate to factors like adequate lighting, heating, and ventilation, as well as washrooms, safe passageways, handrails, fire detectors and extinguishers, protective clothing, and dealing with toxic substances. Some health and safety regulations (e.g., Ontario) recognized these impossibilities and exempt private residences from the regulations. But this highlights the inappropriateness of extending all regulations to a working-from-home environment.

*Workers' compensation* requirements, however, generally do continue to apply to working from home despite the difficulty of determining whether the accident or injury occurred while conducting work for an employer or doing personal activities (WSIB, 2021). The problem is compounded by the fact that most compensable injuries have now shifted from the physical injuries associated with the old world of work to repetitive strain and musculoskeletal injuries that are difficult to diagnose, and have long latency periods, multiple causes, and complex interactions (Gunderson, 2000: 44–48). Isolating any effect of working from home as opposed to general household activities or activities in other environments will be extremely difficult. The problem is further compounded by the fact that income replacement rates under workers' compensation can be very high. The Ontario Institute for Work and Health (2016: 1) reported that “[t]he average earnings replacement rate, when taking labour force earnings, workers' compensation benefits and Canada Pension Plan Disability benefits into account, was 104 per cent of the average earnings of workers with similar characteristics who were not injured.” When compared to income replacement rates of 55 percent under Employment Insurance, this has led to workers substituting into accessing the more difficult-to-monitor workers' compensation system (Fortin and Lanoie, 1992, 2000).

The criteria used in workers' compensation tend to be that of place, time, and activity (WSIB, 2021). The difficulties of applying these criteria to working from home when there is only self-monitoring are obvious. Did the injury occur at home or perhaps elsewhere? Did the injury occur during worktime or at other times? Did the injury occur because of work activity or other activity while at home? In the old world of work where the employee was at a fixed worksite during regular work hours and engaging in (often physical) work activities, such criteria were easy to apply. In the new world of work where extensive (and growing) amounts of work are done at home, the difficulty of applying these general criteria are obvious. In such circumstances, compensation decisions related to working from home are made on a case-by-case basis. This is costly for the system and creates uncertainty with respect to precedence.

*Pay equity legislation* generally involves a requirement to pay equal wages for work of equal value, with value determined by an administrative procedure whereby a committee assesses the value of job in terms of its component of skill, effort, responsibility, and working conditions. Typically point scores are attached to each of these components with the total score summed to get the “value” of a job. The pay in jobs that are female dominated are then compared to jobs that are male dominated, with gender dominance being defined by some criteria such as 70 percent or more of males or females. The pay in female dominated jobs is then raised to the pay of male dominated jobs of the same job evaluation score through different possible procedures. Presumably people working from home would be considered as part of the employer’s workforce for pay equity purposes. Comparing in-house with remote workers may be complicated, however, especially with respect to the working conditions component of a job. If workers value working at home at 21 percent of their pay as in the Mas and Pallais (2017) study cited earlier, will that be factored into to the value of their work?

These are meant to be illustrative of the complications associated with applying and enforcing our labour laws to working from home. They are on top of the existing complications that have arisen from the increase in non-standard employment that has occurred in the transformation of the old world of work to the new world of work.

## Policy Options

If our labour laws and policies designed for the old world of work are increasingly inappropriate for the new world of work, and especially for working from home, what are their potential consequences and what are best feasible policy options?

### Be Wary of Extending the Old Policies

A common thrust is to simply *extend the old policies* to the new work environment. Policies are often designed by lawyers, and politicians are often lawyers, so laws and regulations are a natural solution. This is especially the case since bureaucracies and vested interest groups can benefit from the existing regulations. Such recommendations to extend existing regulations were made when there was early recognition that the workplace was being transformed (European Commission, 1999; Supiot, 2001) and the thrust of such recommendations has continued in many circles. While the old policies were established for a reason, the danger, highlighted here, is that such policies do not often fit with the new world of work. Extending existing policies can be like fitting square pegs to round holes. The problem is compounded by the fact that costly regulations imposed on employers can foster them moving jobs offshore and into jurisdictions with less costly regulations, given the increased mobility of capital that is no longer tied to large fixed worksites that have to be located near resources or product markets. Transporting by the internet is easier than by sea or land.

### Be Wary of Unintended Consequences

A first step in designing new policy options is to recognize that well-intended policies often have unintended consequences that often harm the very persons they are designed to help. The extensive regulations governing the standard employment arrangement can protect “insiders” who have such jobs, but it can foster the underground economy with negative consequences on disadvantaged “outsiders” who do not have such protection, such as youths and immigrants. The extensive regulation of defined-benefit pension plans have fostered the shift towards the riskier defined-contribution plans as well as the decline of pension plans in general.

### Be Wary of Cost-Shifting and Forum Shopping

The variety of labour market and other regulations that prevails can encourage forum shopping into programs that are the most generous and the least restrictive to access. If access to a particular program is made more stringent or benefits less generous, workers will understandably try to shift to other programs that are easier to access or more generous. Evidence of such substitution across programs has been documented for unemployment insurance, disability compensation, workers compensation, and social assistance or welfare (Campolieti and Krashinsky, 2003; see also an extensive review in Fortin and

Lanoie, 2000). This also implies that if labour regulations price some jobs out of existence, then the income support programs will be accessed more intensely. For example, if workers' compensation becomes more difficult to monitor for those working from home, there may be a substitution into that program.

### Be Wary of Protection for Whom

Employment regulations are generally rationalized to protect particular groups, raising the issue of protection for whom? Regulations to protect women and youths in early industrialization were designed in part to protect male jobs from such competition (Malles, 1976). Regulation of occupational licensing is rationalized as protecting consumers from unscrupulous practices, but also protects the incumbent professionals from others who could perform the services. Wage extension legislation that extends wages in union contracts to the non-union sector protects unionized workers from lower-wage competition in that sector. Lobbying for higher minimum wages on the part of big-box stores (e.g., CNN Business, 2019) protects them from competition from the “mom-and-pop” stores and low-wage retailers since such large stores already pay above the minimum wage. Clearly, actions to protect vulnerable individuals can be thinly disguised activities to protect advantaged incumbent interest groups from competition.

### Be Wary of a “One-Size Fits All” Solution as Opposed to Targeting

As previously discussed, the new world of work is extremely heterogeneous, and teleworking adds to that heterogeneity. In such circumstances it is unlikely that a “one-size-fits-all” solution of trying to regulate *all* jobs, including those done remotely, is appropriate in the new world of work. Otherwise resources are dissipated and benefits spill-over to non-target groups who are not in need of protection. Given the pressures associated with costly forms of regulation, targeting initiatives towards the most vulnerable individuals who are *involuntarily* and more *permanently* in undesirable low-wage jobs seems most appropriate. There is evidence, for example, that non-standard jobs are often stepping stones to more permanent jobs for youth [4] so that deterring such jobs through excessive regulation would deter such stepping stones. As indicated previously, those who work from home tend to be more advantaged higher-income persons who would be less in need of protection. Protection that does not involve protecting incumbents from competition would better focus on those more vulnerable disadvantaged workers who may need protection.

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[4] Evidence of the positive stepping-stone aspect for Canada is given in Fang and MacPhail (2008) and Kapsalis and Tourigny (2004), and for the US in Autor and Houseman (2006), Davis, Blake, and Broschak (2000), and Fisher and Connelly (2017).

## Be Wary of Focusing on Jobs as Opposed to Individuals

Regulations typically focus on jobs. This emphasis may be misplaced given that individuals can no longer be assured of the lifetime jobs that were typical of their parents, and that vulnerability tends to be associated with individuals and not necessarily jobs. This implies more emphasis on portable benefits given the portability of employment. It also implies more emphasis on active labour market programs, like labour market information and training, that facilitate the adjustment of individual workers in the direction of basic market forces away from declining sectors and into expanding ones. This has the twin benefit of reducing unemployment in the declining sectors as well as structural labour and skills bottlenecks in the expanding sectors. This is in contrast to passive income maintenance programs like employment insurance and make-work projects, that can encourage the option of staying in declining sectors, thereby exacerbating the adjustment when it ultimately occurs.

This concern with labour market regulation is being raised in several circles. For example, Busby and Muthukumaran (2016) argue for moving away from labor market regulation, which can stifle growth and job creation, and into initiatives that can mitigate risk for individual workers, including access to education and skills training programs. Policy Horizons Canada states: “Labour standards, regulations and dispute mechanisms could become harder to implement where people can work for anyone, anywhere, and where work is task-based rather than time-based” (2019: 10–11).

The previous discussion focused on being wary of conventional labour regulations as being applicable to the new world of work, including the increased importance of teleworking. But if conventional regulations have such problems, are there alternative initiatives?

## Reduce Barriers to Working from Home

Rather than adding barriers through regulations on working from home, governments could reduce barriers that inhibit workers and employers from *choosing* their own best arrangements. As stated by Bloom (2020: 5): “Choice is key—let employees pick their schedules and let them change as their views evolve.”

Bloom (2020) articulates such barrier removal practices. The first is to increase access to broadband infrastructure to enable such remote working. This would facilitate individuals moving to more remote locations and ease the rental and housing crises as well as the congestion in many cities. It would also increase access to remote working for more disadvantaged groups that are subject to the digital divide without access to internet services. OECD (2020) also recommends investing in such broadband infrastructure. Second, Bloom indicates that “towns and cities should be flexible on zoning, allowing struggling shopping malls, cinemas, gyms, and hotels to be converted into offices. These are almost all low-rise structures with ample parking, perfect for office development” (p. 6). An additional policy that could facilitate teleworking is to provide information on best practices (OECD, 2020).

## Foster Growth and Competitive Markets

Fostering growth and competitive markets can give rise to social problems for those who do not share in the benefits and are harmed by the adjustments associated with Schumpeter's "gale of creative destruction" from market forces. The negative aspects are evidenced by growing income inequality and "deaths of despair" from such market adjustments (Case and Deaton, 2020). A rising tide may raise all boats, but more so for yachts rather than dinghies, and it may not raise those anchored to the bottom.

Nevertheless, a growing economy can be a workers' best friend since it increases their employment and career opportunities, and the increased demand for their services increases their wages. [5] The need to hire and retain workers in a growing economy means that employers have to meet the increasingly heterogeneous needs of workers, including their desire to work partially or completely from home. Meeting this need is facilitated by the fact that workers are generally willing to pay for such flexibility by accepting a lower compensating wage for this positive aspect of the job to facilitate work-family balance and avoid commute costs.

Excessive regulation can inhibit such growth. This applies especially to areas like working from home where labour regulations are difficult to apply and enforce. The need for protective regulations in this area is minimized by the fact that working from home is disproportionately done by higher income and higher educated persons who are less in need of protection. Applying it to this area of complexity dissipates resources that could otherwise be devoted to more vulnerable disadvantaged workers.

Competitive markets can also help reduce discrimination by putting pressure on employers to hire the best person for the job. There is little survival value in competitive markets for firms to pay a favored group more than a minority group of equal productivity. Competitive market forces would pressure them to hire and retain the lower-paid minority group and this increased demand will increase their employment and wages. There is ample evidence that competitive forces dissipate discrimination. [6] Such forces will also pressure employers to meet the heterogeneous demands of workers to work from home.

Fostering a growing economy and competitive market forces can facilitate the optimal degree of working from home and balance the needs of both employers and workers in this area of growing importance. Excessive regulation in this area, where it is difficult to apply and enforce, can inhibit such growth and competitive market forces. It is important to recognize situations where it is best to "get out of the way" and not add barriers that inhibit the private actors from working out their own best arrangements. Teleworking appears to be one of those situations.

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[5] Evidence that a growing economy disproportionately helps the most disadvantaged and vulnerable is provided in Boulware and Kuttner (2019) and in Hines, Hoynes, and Krueger (2001) and further references cited therein.

[6] Evidence that competitive market forces dissipate discrimination is given in Ashenfelter and Hannan (1986), Black and Brainerd (2004), Black and Strahan (2001), Hellerstein, Neumark, and Troske (2002), and Meng (2004).

The pandemic has led to a quantum leap in working from home, and much of the practice will continue given the benefits that have been revealed for both employers and workers. Such mutually beneficial arrangements should not be squelched by excessive regulations where they are not needed and where they are exceedingly difficult to apply and enforce. Again, teleworking appears to be one of those situations.

## Conclusion

Remote working has been on an upward trend with the pandemic leading to a quantum leap in the trend. For Canada, about 40 percent of the workforce has the potential to work *entirely* from home and this corresponds to the proportion that was working from home during the early part of the pandemic. An additional 10 percent could work partially at home so that around 50 percent of the workforce could work entirely or partially from home. The rate of working from home will likely drop, but only to about half those rates after the pandemic as both employers and workers have experienced the benefits.

There is a temptation to think in terms of how best to *extend* our conventional regulations designed for the old world of work into the new world of work involving teleworking. Reasons to resist that temptation have been outlined in the paper. Rather, the emphasis should be on removing barriers that inhibit working from home. Such practices include: extending broadband infrastructure; flexibility in zoning to enable market adjustments to the new reality; and providing information on best practices in this area to facilitate market adjustments to such best practices. Reducing rather than extending regulation in teleworking should foster the growth and competitive markets that facilitate employers and workers making the mutually beneficial choices that can come from this growing workplace arrangement.

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