Revisiting the “workplace“ definition: challenges in the era of hybrid and remote work

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TITLE

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Abstract

The workplace definition has always been confined to a site where employees’ presence is a must so that employers can have control over them. The definition was based on spatial fixed site comprised of bricks and mortar. This spatial focussed definition has been upset by the existence of the digitalization of the working space. The occurrence of the Covid-19 pandemic forced many employers to embark on a remote and hybrid working arrangements. It has also changed the notion of how and where work is to be done. It is therefore vital that the workplace definition must embrace the existence of remote and hybrid work. This research aims at re-examining the concept “workplace” considering the use of remote and hybrid work as well as the implications thereof on employees’ health, safety and injury on duty benefits in a labour law perspective. It also highlights the need to make provisions for these work models in the labour law legislative framework. The method of study is the Qualitative approach where primary and secondary legal sources are exposed to content analytic review. There is a need for statutory reform in South Africa to regulate the occupational health and safety and compensation for injuries and diseases of employees working in remote and hybrid arrangement. This study contributes to labour law by presenting the existing gaps, pinpointing the need to include the new patterns of work which are remote and hybrid work in labour legislation framework.

Keywords

Hybrid working, remote working, workplace

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Chapter 1

1.1 Background

The meaning of “workplace” has long been anchored in an industrial model that equated employment with presence in a fixed, employer-controlled location. In classical labour relations, the workplace was the bricks-and-mortar site where supervision, collaboration, and risk management occurred; this spatial fix made it straightforward to allocate rights and duties in legislation, contracts, and policy.[1] Digitalisation, mobile connectivity, and the Fourth Industrial Revolution (4IR) have steadily eroded that spatial certainty. Cloud tools, enterprise platforms, and asynchronous collaboration shifted significant portions of productive activity away from the traditional office even before 2020, but the pandemic catalysed a step-change. Fourth industrial revolution is associated with a lot of changes that intends to enforce digitalization, network and virtualization in every aspect of life. It has to do with automation and data exchange in manufacturing technologies which are based on digital technology.[2]

The Covid-19 global pandemic (is a disease caused by the SARS-CoV-2 coronavirus. There are a range of signs and symptoms, but the most common symptoms reported for currently circulating variants are fever, chills, and sore throat)[3] has impacted the world in various ways, including changing the way work is done. Earlier work was generally done in the fixed workplace. As lockdowns rolled out, organisations adopted emergency work-from-home (WFH) arrangements, and many subsequently institutionalised hybrid schedules. The occurrence of the Covid-19 pandemic accelerated the rate at which employers resort to work from home, remote working Comprises workers carrying out remote work from their own residence. The physical location where the work is carried out is thus the worker’s own home, that is, an alternative location to the default place of work,[4] hybrid working is a flexible work

[1] Department of Employment and Labour *What Every Worker and Employer Should Know about Health and Safety in the Workplace*
[2] Olubiyo O P *2024 International Journal of Library and Information Science studies* 62-72
[3] https://www.who.int/news-room/fact-sheets/detail/coronavirus-disease-(covid-19)
[4] Covid 19: Guidance for labour statistics data collection 2020 *International Labour Organization*

model that supports a blend of in-office, remote, and on-the-go working. It offers employees the autonomy to choose to work wherever and however they are most productive. Hybrid work also promotes inclusiveness, engagement, and well-being for all employees.[5] Teleworking Comprises workers who carry out work defined as telework in their own residence. Similar to remote work from home, the physical location where the work is carried out is the worker's own home, that is, an alternative location to the default place of work, but in addition the worker uses personal electronic devices as part of carrying out the work., telecommuting, and work from anywhere. That significantly necessitates the redefining of the concept of workplace. In parallel, global scholarship began to re-interrogate assumptions about supervision, productivity, surveillance, equality of access, and the distribution of occupational risks across home and shared spaces.[6] This development has triggered a rethink of the traditional office-based paradigm in South Africa. In South Africa, the shift was rapid and measurable. As of 2020, more companies adopted home working policies during the pandemic, which can be observed as a drastic change in work. According to the U.S Bureau of Labour statistics, establishments in larger firms increased telework at higher rates than establishments in smaller firms during the COVID-19 pandemic. Approximately 46 percent of establishments in firms with more than 5,000 employees increased telework for some or all employees Before the pandemic and the harsh lockdown that ensued, only about 4% of knowledge workers in South Africa identified as remote workers. During the initial lockdown, almost 40% of eligible workers were compelled to work from home.[7] The changing trend did not merely relocate workers; it displaced the idea that statutes and policies use to determine who must do what, for whom, where, and with what safeguards. Consequently, the traditional, location-bound definition of "workplace" sits uneasily with dispersed work practices.

Against this backdrop, the dissertation interrogates the existing South African labour instruments (e.g., LRA, OHSA, COIDA) so that they can sufficiently protect employees whose "place of work" is variably at home, in transit, or in shared premises, and how a modernised definition might guide compliance, enforcement, and compensation in an era of hybrid and remote work.

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[5] https://www.cisco.com/site/us/en/learn/topics/general/what-is-hybrid-work.html?utm_source=chatgpt.com#tabs-9da71fbd27

[6] Glavin P 2024 *They See Your Ever Move: Surveillance and Worker Well-being*

[7] Winkler-Titus, Gerber and Ngalo 2025 *SA Journal of Human resource* 9.

1.2 Problem Statement

The workplace definition must, due to the existence of remote and hybrid work, shift, because it should include and recognise the existence of home as a place where work can be done by employees. Covid-19 pandemic lockdown has increased the rate in which employees resorted to hybrid and remote working. The COVID-19 pandemic brought about dramatic changes in the work environment. Although 6.5 percent of workers in the private business sector worked primarily from home in 2019, the pandemic was the start of a massive experiment in full-time remote work for most workers and firm.[8] This resulted in the need for a relook in the definition of the "workplace". Traditionally workplace was regarded as a physical space where employees go to work and discharge their responsibilities. Location flexibility allows employees to choose where work-related tasks are completed or work remotely from their traditional places of employment.[9]

This traditional view is strongly entrenched within organisational systems and employment legislations. The Labour Relations Act defines the workplace as the place where the employees of an employer work.[10] Any place where the employees of an employer work should be regarded as a workplace, including the home. Labour laws relevant to the workplace need to be complied with by the employer; such compliance must be extended to employees working remotely from the employer's fixed workplace.

The transition towards hybrid and remote work environments has made this definition less relevant in the present time. Unlike the fixed, heavy, work done in industrial workplaces, the type of work done in remote work is highly portable, which means employees can more easily take work with them wherever they go.[11] It is necessary that the definition of workplace should be revised so that it can include the evolving workplace dynamics. It should include the working space, like a home, and shared space. The inclusion and recognition of such working space in the definition of the workplace is necessary to address gaps pertaining to the safety and health of employees.

This change poses a challenging issue, requiring research into the matter's nature. The concept of workplace needs to be redefined afresh to capture these changes, considering new work patterns

[8] Pabilonia S.W, Redmond J J 2024 *Bureau of Labour statistics*
[9] Jeffrey Hill et al 2008 *Community, Work and Family* 153.
[10] Section 213 of the *Labour Relations Act* 66 of 1995
[11] Snyder *The disrupted workplace: Time and the moral order of flexible capitalism* 7

together with the effect such changes would have on labour law. The challenge lies in how the safety and health labour law compliance is maintained in the "home" and during travelling. The *Occupational Health and Safety Act* requires that the employer ensure that the workplace is safe and adheres to health standards.[12] On the other hand, the *Compensation for Occupational Injuries and Diseases Act* make provisions for compensation of employees who get injured while on duty.[13] How does an employee who gets injured on duty while working from home or while working in transport get compensated? The OHS provides that occupational health is the application of work-related organizational and medical measures to prevent damage to the health of an employee, adaptation of work to the abilities of an employee, and promotion of the physical, mental and social well-being of an employee.[14] The physical, social and mental well-being of an employee in the workplace is the responsibility of the employer.[15] The provision of the OHS through section 2 requires prevention of any occurrence which may endanger the health of an employee. Section 4(4) further requires the workplace to be in good technical condition and regularly maintained. The safety equipment and devices need to be regularly maintained and checked. This brings conflicts with the constitutional right to privacy of employees.[16] A home as a workplace is required in terms of the OHS to be assessed for any faults which may affect the health of an employee who is working from home. An employer is also obliged to conduct regular controls of the working environment and to monitor the occupational and safety situation.[17] The monitoring of the working environment by an employer may result in the infringement of an employee's constitutional right to dignity.[18] The Labour Relations Act definition of the workplace as provided in section 213 does not in any way envisage the recognition of remote or hybrid working[19]

Based on such considerations, there is a need to align the labour laws to give protection to employees who work remotely, considering occupational health and safety and injury on duty. This research seeks to address this gap by critically discussing the workplace and the

[12] Section 8(1) of the *Occupational Health and Safety Act* 85 of 1993
[13] Section 22 of the *Compensation for Occupational Injuries and Diseases Act* 130 of 1993.
[14] Section 2(1) of *Occupational Health and Safety Act* 85 of 1993
[15] Section 2(1) of *Occupational Health and Safety Act* 85 of 1993
[16] Section 14(a) of the *Constitution of South Africa* 1996
[17] Section 13 of the *Occupational Health and Safety Act* 85 of 1993
[18] Section 10 of the *Constitution of South Africa* 1996
[19] Section 213(a)(ii) of the *Labour Relations Act* 66 of 1995

challenges that are currently experienced by hybrid and remote workers because of the absence of regulatory policy or legislation.

1.3 Research Question

What changes should be made to the concept of the 'workplace' in the context of the South African environment, considering the widespread hybrid and remote working models?

1.4 Research Aim and Objectives

1.4.1 Research Aim

The purpose of this study is to re-examine the concept of workplace in a South African context, given the advances in technology that have resulted in hybrid and remote working arrangements. The purpose of this research is to establish the effects of these work models on employees' occupational safety, health, and injury on duty benefits regulations, labour law legislative framework, to make provisions for these work models.

1.4.2 Research Objectives

- To examine the traditional concept of the workplace and its evolution in response to changing work patterns, specifically remote and hybrid working.
- To analyse the challenges that workers in hybrid and remote work arrangements encounter.
- To investigate the effect that the inclusion of the new work trends will have on the employee's safety, health, and injury on duty, the legislative framework.
- To propose a legislative framework that includes provisions for remote working models while protecting both the employee and the employer.

1.5 Motivation

This research is important on several grounds. First, it contributes to filling the gap in knowledge about how work arrangements, such as hybrid or remote work, redraw and reshape the boundaries of workplace work and their legal ramifications. It responds directly to constitutional and statutory imperatives to ensure an environment that is not harmful to well-being, and to provide clear standards for employers whose legal duties must be practicable across multiple sites of work. The academic significance lies in reconciling doctrinal definitions with socio-technical change, thereby strengthening the coherence of labour law.

From a justice perspective, hybrid and remote models can unevenly distribute risks related to ergonomics, psychosocial strain, and commuting or in-transit hazards; a modernised definition can clarify responsibilities, reduce disputes, and improve access to compensation where harm occurs “at work” beyond the employer’s premises. This study gives direction on how the risks and hazards that workers who are remotely working encounter can be legally addressed. It also advances policy alignment by benchmarking South Africa against a jurisdiction with emerging practices in this domain.

The study supports sustainable employment relations by equipping employers and employees with clearer rules on safe-work systems, incident reporting, and compensation pathways in non-traditional workplaces. It aims to offer precautions to promote effective working from home and other hybrid and remote arrangements so that both employees and employers can effectively address the new issues of the work environment by protecting the employees’ labour and constitutional rights to a safe environment. This research will offer information on how the legal framework can be improved to make provision for these changes, especially with the health and safety of the employees and the issue of benefits for injury on duty. The outcome is intended to guide legislative refinement and practical compliance

1.6 Scope & Limitations

The focus of this study is on hybrid and remote working models in the South African legal context as well as a comparative study of the United States. The analysis concentrates on defining “workplace” and assessing implications for safety, health[20] and benefits for injury on duty in dispersed settings. It does not attempt economic quantification, productivity measurement, or a full review of HR practice beyond legal relevance, and it excludes areas of employment law unrelated to definition-linked compliance. It will not look at every other aspect of employment law beyond the definition of the workplace, the effect of the hybrid and remote working on the legal definition, and assessments as provided above. Dynamic policy evolution is acknowledged as a contextual limitation.

1.7 Research Methods Overview

The research method in this study will be qualitative. A content-analytic review of primary and secondary legal sources (legislation, case law,

[20] Occupational Health and Safety Act 85 of 1993

policy) and scholarly literature will be combined with a comparative legal analysis. A comparative legal study will be conducted to determine how the United States approaches relevant issues, providing benchmarks and best-practice signals. This design is suited to interpreting doctrinal meaning, mapping gaps, and crafting context-appropriate recommendations for redefining “workplace” within South African labour law.

Chapter 2: Defining the Workplace

2.1 Introduction

This chapter provides legal and conceptual frameworks of re-defining the ‘workplace’ in the context of dispersed digitally mediated employment. Expanding on the Chapter 1 indication that hybrid and remote work have disrupted location-based assumptions, the debate explains how South African law grounds responsibilities and safeguards, where loopholes now exist, and what can be learned to inform renewal. It initially re-creates the traditional notion using the Constitution, the Labour Relations Act, OHSA and COIDA, followed by the development of the work patterns which disrupt those tools. The theoretical discussion takes a critical approach and compares the coherence of doctrines with socio-technical change and identifies conflict points in the areas of risk allocation, supervision and compensable harm at home and shared spaces. Thus, it previews an active idea of the workplace as aligned with modern organisational practice and the demands of justice in employment relations. The chapter offers an interface between theory and practice, suggestions.

2.2 Traditional Concept of the Workplace

This conventional legal conception of the workplace in South Africa cohered around a fixed, employer-controlled premises that served as the locus of productive activity, supervision and risk governance. The Constitution itself provides this by guaranteeing all people an environment that is not detrimental to their health or well-being, where the functions of the population and the actions of the private sector are obliged to create healthy conditions in the areas of work.[21] The labour Relations Act defines the workplace as the location where employees of an employer work and utilises that locus to apportion rights and

[21] Section 24 (a) *Constitution of the Republic of South Africa*, 1996

obligations in collective settlement, organisational rights and unfair labour practice adjudication.[22] Complementing this, OHSA[23] enforces a general obligation on employers with the duty to ensure, to the best of their means, a safe and healthy working environment and COIDA[24] compensates personal injury or disease caused by or during employment. These tools assume a clearly identifiable location, which can be inspected, its hazards evaluated, and enforceable conditions established by a manager.

Historically, this locale-based paradigm embodied industrial production and office bureaucracies where presence, time keeping and supervision played a key role in labour discipline and where unions and employers organised bargaining units around recognisable places. The descriptive or allocative legal shorthand of workplace meant not only that work was something in the spatial context, but that regulatory responsibilities, inspection powers and compensation initiators were directed through that context.[25] In Amcu v Chamber of mines SA, the court stated that a workplace is not a place where any single employee works-like that individual's workshop or assembly line or field or desk or office. It is where the employees of an employer collectively work.[26] Despite the spread of digital tools, the prevailing belief was that most of the work was performed on site through tools provided and managed by the employer, meaning risk could be spread based on physical location and employer-provided tools. In this frame, the laws might be implemented with relative ease: the risks might be examined on the spot; the ergonomics might be inspected; the incidents might be examined with references to access controls, supervisor records, and witnesses on the spot.

Policy direction became centred on the fixed site. Safe-work systems are related to inspection protocols, codes and insurers underwriting practices, and consideration given to dispersed or shared spaces.[27] The inspection and monitoring of the workplace through camera to guarantee the safety of an employee by an employer is a violation to the right to privacy.[28] A relevant legislative framework must be developed to

[22] Section 213 of the *Labour Relations Act* 66 of 1995.
[23] Section 8 of the *Occupational Health and Safety Act* 85 of 1993.
[24] Section 22 of the *Compensation for Occupational Injuries and Diseases Act* 130 of 1993.
[25] Item 18 in General Notice 1774 in GG 29445 of 1 December 2006.
[26] *Amcu v Chamber of Mines* SA 2017 3 CC
[27] Department of Employment and Labour *What Every Worker and Employer Should Know about Health and Safety in the Workplace* (Department of Employment and Labour (undated).
[28] Section 14 of the Constitution *of the Republic of South Africa*, 1996

balance the employer's right to monitor the workplace and the employees' right to privacy. The classic articulation thereby provided creates enforceability at the expense of malleability, which is gradually revealed by shifting work patterns.[29] These assumptions can justify the need to institute definitional reform to maintain enforceability while adapting to dispersion.

2.3 Evolution of Work Patterns

Remote and hybrid working emerged from the margins of managerially permissible flexibility into the mainstream because of the convergence of technological maturity, organisational learning and public-health shocks.[30] Distributed collaboration had been growing well before lockdowns through cloud platforms, mobile connectivity and task virtualisation, reducing transaction costs of working off employer premises and supporting asynchronous collaborations across time zones.[31] The pandemic gave a surge of adoption practices, both by turning optional practices into mandatory, and laying bare the unsuitability of the household for productive purposes - digital access, ergonomics, and the uneven household resources.[32] As restrictions eased, many employers continued to provide hybrid schedules to combine on-site collaboration with focused remote working, capitalizing on the benefits of flexibility without losing cohesion, learning, and innovation effects from occasional co-presence.[33] Hybrid design has thus far been mostly framed as a managerial issue, but in South Africa we also find that these trends intersect with historical inequalities in bandwidth, housing and care-work, which makes hybrid design also a distributional issue.[34]

Telework arrangements across the world vary from fully remote to tightly structured hybrid, with experimentation around team rather than individual flexibility and around anchor days for mentoring and socialisation.[35] Firms have re-structured performance systems, onboarding, surveillance and knowledge sharing systems to fit distributed settings while workers have restructured routines for

[29] Moglia, Hopkins and Bardoel, 2021*Sustainability* 4.
[30] Mustajab 2024 *Jurnal Manajemen Bisnis* 894.
[31] Shearmur 2021 *Urban Studies* 2190.
[32] Vyas L 2022 *Policy and Society* 155.
[33] Gratton L *Redesigning Work: How to Transform Your Organisation and Make Hybrid Work for Everyone* 17.
[34] Winkler-Titus, Gerber and Ngalo 2025 *SA Journal of Human resource and Management* 9.
[35] Shearmur 2021 *Urban Studies* 2190.

childcare, eldercare and commuter time savings.[36] Governments, on the other hand, provided fragmented guidance on ergonomics, data protection and working time but broader statutory redesign has generally followed practice, leaving uncertainty about spatial reach of employer obligations and about triggers for compensable incidents outside premises.[37] The COVID-19 pandemic and stay-home orders created an uncharted territory for remote work.[38] The result is a stratified rather than levelling evolution: remote and hybrid models expand the space of possibilities for the localisation of work but do so in structurally unequal infrastructural and social contexts that complicate a singular juridical transliteration. As practice has outpaced doctrine, a revised conception of the workplace needs to acknowledge variability while maintaining clarity for enforcement and compensation purposes. In the absence of recalibration, the responsibility for compliance burdens and protection gaps will be distributed by resources rather than by rational risk governance.[39]

2.4 Challenges to the Traditional Concept

The application of location-centred statutes to dispersed workforces creates complexities of visibility, practicability and equity. The general duty of OHSA[40] assumes an employer can recognise hazards, manage the environment and conduct audits; within homes and co-working spaces, however, there is less access for the employer, workers have privacy rights, and the infrastructure is not entirely under organisational control. This leads us to question what constitutes a reasonably practicable safe-work system where chairs, lighting, bandwidth and domestic risks differ by house, and what kind of guidance, equipment and stipends employers are required to provide to absolve responsibilities without encroaching on domestic autonomy.[41] Algorithms and productivity analytics also complicate fatigue control and psychosocial risk avoidance by making the boundary between work and breaks less clear, whereas the concerns of data-protection and dignity in relation to hybrids overlap with the need to avoid health and safety risks but cannot be reduced to them. Furthermore, in the absence of lunch and tea breaks which would

[36] Pagnozzi F, Irene P, Alfredo C and Gilda A "*Navigating Digital Transformation: organizational change, digital work and Individual behaviour"* 4
[37] Brodersen and Elizabeth 2022 *Journal of Business Leadership* 23.
[38] Shirmohammadi M and Beigi M *Human Resource Development International* 164.
[39] Vyas L 2022 *Policy and Society* 155.
[40] *Occupational Health and Safety Act 85* of 1993.
[41] Brodersen and Elizabeth 2022 *The Journal of Business Leadership* 18.

normally be with colleagues, employee's social interaction would be from other people living with them.[42]

The causation tests of COIDA also are challenged by dispersion. The criterion of emerging during and in employment necessitated the use of spatial indications and managerial supervision to relate an episode to employment; distant circumstances necessitate more careful examination of task-relatedness, temporal limits and third-party spaces. Imagine injuries on a video-conference call at home, a trip on a shared stairwell, or harms during commuting to a co-working location on an employer-designated anchor day: each begs a questionable task of the extent of employment and involvement of the employer in risk. Without more explicit regulations, the same incident can be compensated to an already well-resourced professional and not to a precarious worker deprived of ergonomics or secure connectivity, reinforcing disparities the law should prevent and not advance.

Enforcement and social insurance design make it even more complex. Technically, inspectors cannot practically visit thousands of homes, but pure self-certification is a recipe for box-ticking with barely any hazard reduction. Risk based auditing, digital self-enrolments, and ergonomic allowances combined with focused inspection is being experimented with overseas, but South African regulations provide only limited guidance for such approaches, resulting in ad hoc responses by employers and uncertain obligations for employees. In the absence of statutory standards for minimum safety requirements in remote work, cost-sharing and reportability, organisations are left with compliance uncertainty, and workers are left with uncertain remedies for injuries across locations and modalities. The upshot is that the traditional definition no longer provides a stable basis for distributing duties and benefits; doctrinal renovation is required to provide coherence while respecting autonomy and practical limits.[43] A re-anchored definition needs to be complemented by facilitating provisions for collective bargaining, sectoral codes and insurer guidance, which will allow partners to adapt safe-work systems to settings without compromising enforceability or voice.

2.5 Comparative Perspective with U.S

Comparative experience in the United States provides useful guideposts for reconciling doctrine to widespread practice without

[42] Banita L Yogesh D K and Markus H 2023 *Information Systems Frontiers* 1340
[43] Collier and Osiki *Remote and Hybrid work(ers): Considerations for regulating remote working arrangements and a code of good practice for remote work* 1.

pushing employer control too far into private homes. Risk-management policy: U.S. regulators and courts prioritize employers' obligations to adopt reasonable remote-work safety programs; provide guidance and equipment as needed; and document hazard communication; while inspections of private residences are infrequent and liability is based on control, foreseeability, and task-relatedness.[44] At-home injuries that occur out and in the course of employment have slowly been recognized in workers' compensation systems, although causation tests vary widely among states and disputes frequently hinge on evidence of whether the incident occurred while on the job or doing household activities. On the other hand, in South Africa, the Occupational Health and Safety Act provides that an employer must conduct regular internal control of the working environment in the process of which the employer plans, organizes and monitors the occupational health and safety situation.[45] The internal control as envisaged by the OHS Act means an employer should be able to access the employee's workplace even if the employee is working from home. Unlike in the U S, there is no policy to regulate the remote work safety in South Africa. Therefore, South African remote working legal framework need to include a strategy in which without infringing on the employees' right to privacy and dignity, the employer can set necessary safety standards within the employees' home.
The Ergonomic self-assessments have been promoted, equipment allowances and shared responsibility for safe set-ups between employer and employee have been allowed balancing prevention with setting privacy.

Three lessons for South Africa emerge. First, wherever possible, definitional reform should be side-by-side with clear remote-work minimums regarding the legal framework on how fair labour practice will be implemented regarding employees who work from home and those who are site based but working for the same employer. There must be clear legal pronouncement which dictates on how the employees will be treated equally without discrimination. Second, to increase predictability, compensation law should adopt a presumption of task-relatedness of injury sustained in the performance of assigned duties rebuttable by evidence of purely domestic origins. Third, regulators should ensure that the health and safety measures in a remote working

[44] Health and Safety Authority, Occupational Safety and Health Guidance on Remote Working (Version 1, HSA, undated) https://www.hsa.ie/eng/topics/remote_working/

[45] Section 13 of the *Occupational Health and Safety Act* 85 of 1993

environment, as provided in the OHS[46] are adhered to. The safety of an employee working from home should never be compromised, it should be relative to that of workers who are on the employer's site. These guidelines would align the US' focus on the practical and the written with local constraints and commitments to constitutionality and would make for a more coherent set of instructions while reducing overreach.

2.6 Conceptual Framework

A dynamic concept of the workplace as a functional nexus of task, control and risk and no longer an address is adopted in this study. The structure refers to the legally relevant space of workplace as wherever the tasks ordered by the employer are carried out and the work-related risks are foreseeable, subject to practicability and constitutional values.[47] It blends doctrinal anchors and hybrid realities with the possibility of duties and benefits following work across sites without collapsing into unlimited liability. Formal control is dependent on the principle of specification or codification which means that actions leading to successful cooperation and exploitation of value can be specified. Programmability of tasks and behaviours and measurability of outcomes are needed to specify expectations.[48] It is a lens that helps guide the comparative analysis and underpins the recommendations.

CHAPTER 3: CHALLENGES OF HYBRID AND REMOTE WORK

3.0 Introduction

Remote work and hybrid work has presented unexpected issues with workers, employers, and policymakers. Although these forms of arrangement promote flexibility and perpetual business operations, they also destabilise the old assumptions on which labour law and occupational health standards are based. The South African setting, its socio-economic issues, and regulatory uncertainty and unequal technological access tell a distinct story of challenges that need to be studied. According to scholars, hybrid work does not only transform the workplace culture, but it also poses challenges on the applicability of the current statutes especially on matters of health, safety, and injury on duty compensation.[49] An essential aspect of such transformation is the

[46] *Occupational Health and Safety Act* 85 of 1993
[47] Frakerma and Costa 2005 *International Sociology* 264
[48] Frankema and Costa 2005 *International Sociology* 264.
[49] Malila, Preeya and Geoff 2023 *"The future of work: A hybrid work model in a public sector organisation."* 3.

obscured lines of the workplace per se. As the home, shared spaces and even transport routes are becoming more acknowledged as labour spaces, traditional definitions of workplace are not sufficient to encompass modern reality. This discrepancy gives rise to the ambiguity of legal protection, employer-based responsibilities, and the rights of employees increasing the possibility of conflict in employment relations. It is against this context that this chapter looks at the multidimensional issues of hybrid and remote working in South Africa giving them a global context and contributing important lessons informed by the experiences of the United States.

3.1 Health and Safety Concerns in Hybrid and Remote Work

The shift to models of hybrid and remote work has destabilized the established structure of occupational health and safety (OHS) as the role in ensuring workplace safety is transferred no longer to the office under the control of employees but to their own households. The *Occupational Health and Safety Act* in South Africa requires employers to ensure that the workplace is safe but in a hybrid and remote environment the law is difficult to enforce since employers are not able to readily check or monitor the homes of employees.[50] According to some authors, such a transition leaves a regulatory blind spot where workers are exposed to ergonomic risk, spend more time on a screen and do not have stable working space setups they can be regularly monitored by employers.[51] By contrast, however, some observe that a number of organisations have started to embrace wellness models which incorporate OHS obligations into the home office but these are still uneven especially in less developed economies.[52]

In addition to ergonomics, mental health issues have also emerged as a major safety concern in hybrid arrangements.[53] The increased risks of stress and burnout are predetermined by isolation, the lack of the distinction between work and personal life, and the global digital connection.[54] Remote employees in South Africa tend to have lower wellbeing because there are no sufficient organisational support systems and employee assistance programmes.[55] The OHS Act prescribes that an employer must prevent risks, assess unavoidable

[50] Section 8 of the *Occupational Health and Safety Act* 85 of 1993.
[51] Bardoel and Hopkins 2024 *Sustainability* 13.
[52] Bentley, Onnis, Brunetto, Wharton, Cattani, Neto and Vassiley 2023 *Applied Ergonomics* 2.
[53] Sava 2025 *Uluslararasi Sosyal Bilimlerde Yeni Ufuklar Dergisi* 35.
[54] Van Heerden and Visvanathan 2025 *Eureka: Social and Humanities* 10.
[55] Winkler-Titus Charlene and Vera 2025 *SA Journal of Human Resource Management* 3.

risks in order to promote the physical, mental and social well-being of an employee. The requirement that an employer must mitigate all the risks associated with the workplace needs to be addressed legislatively to protect employees who work from home. On the other hand, remote working employee who works from home has the constitutional right to dignity and the right to privacy.[56] The conflict between the two provisions needs to be resolved legislatively. For an employer to be able to access the employee workplace, which is a home in this case, he would need consent from the employee.

There is also an ethical issue concerning the legal area of employer responsibility of the harm caused in non-traditional workplaces.[57] The employees who are hurt at work under the COIDA are entitled to compensation.[58] But, on a distant level, there is no way to determine whether an injury at home is a work-related issue. Some authors' emphasize the damage to employee protection that this legal uncertainty presents, and some indicate that the South African courts can use international precedents to help patterns of liability become clearer.[59] As an example, in the United States, some jurisdictions have given workers' compensation benefits in cases involving injuries in home offices in cases where more liberal legal interpretations can be made.[60] This is a compounding health and safety consideration that balances the relationship between the reality of hybrid work and available labour protection. The employees become more vulnerable without reform and employers might be left in doubt about their duties. These gaps cannot be bridged by just providing legislative transparency but by taking the initiative to create organisational measures that carry safety standards into various workplaces so that the constitutional right of employees in any environment that does not endanger their wellbeing is realised.

3.2 Legal Ambiguities in Defining the Workplace

The legal grey area on the definition of the workplace is one of the most urgent issues in hybrid and remote work setups. The workplace in South Africa is defined by the *Labour Relations Act (LRA* 66 of 1995), to mean the place where employees of an employer work which is traditionally meant as a centralised office setting.[61] This definition is problematic, as

[56] Section (10), (14) of the *Constitution of South Africa* 1996
[57] Sava 2025 *Uluslararasi Sosyal Bilimlerde Yeni Ufuklar Dergisi* 35.
[58] *Compensation of Injuries and Diseases Act* 130 of 1993.
[59] Sava 2025 *Uluslararasi Sosyal Bilimlerde Yeni Ufuklar Dergisi* 33.
[60] Speer 2025 *Akron Labour Review* 163.
[61] Section 213 of the *Labour Relations Act 66 of* 1995.

it does not sufficiently embrace the home, co-working, and other non-traditional places where one practises labour with the advent of remote and hybrid models. Such a strict legal structure is devastating to the rights of the workers especially in terms of occupational security, and some authors draw attention to the risks of unequal implementation where some employees can be provided with strong protection, and others are not.[62] This ambiguity goes so far as to mobility. During travelling, employees often undertake work-related tasks, be it commuting, participating in meetings or other mobile work practices. This begs questions whether injuries obtained along the way are compensated under the Compensation for Occupational Injuries and Diseases Act (COIDA). This is frequently associated with disagreements when employees seek compensation because of injuries at home or even on transit because employers are not sure whether these places can be called a workplace. In turn, this boundary is further complicated by the integration of technologies, including mobile devices that allow communicating at all times, because now work can take place anywhere.[63] Conventionally, Section 24 of the South African Constitution ensures that the right to an ecology that is non-hazardous to health and living is established.[64] Under a broad understanding, this may mean employer liabilities to home offices and other distant locations. Nevertheless, the existing jurisprudence is still incomplete, and there is no clear judicial precedent that would settle the boundaries of the definition of the word workplace in these new circumstances.

According to some scholars, one of the ways of filling these gaps is by embracing a functional definition instead of locational definition, where the emphasis is put on the nature of the activity rather than its physical location.[65] The view is consistent with the suggestion by Shearmur to theorize work as a space of probability, but not as a space in a geographic sense.[66] Finally, the confusion in the law as to what constitutes the workplace compromises uniformity and justice in the protection of the employees. It leaves employers stuck and employees making claims when they have a problem, confused. The legal framework needs to be made more flexible and adaptable, thus, ensuring that the statutory definitions reflect the realities of hybrid work and remote work.

[62] Van Heerden R and Visvanathan N 2025 *EUREKA: Social and Humanities* 6.
[63] Banita L Yogesh D and Markus H 2023 *Information Systems Frontiers* 1336.
[64] Section 24 of the *Constitution of the Republic of South Africa* 1996.
[65] Chigbu and Nekhwevha 2021 *Technology in Society* 1-9.
[66] Shearmur 2024 The *Encyclopedia of Human Geography* 2190.

3.3 Employment Relations and Organisational Culture

Hybrid and remote work designs have radically transformed the nature of employment relations by transforming the ways in which trust, control, and the workplace culture are created and preserved.[67] In the past, organisational culture was bonded by holding a physical sitting, physical presence, and experience in the office. As dispersed teams keep becoming more popular, managers are turning to digital tools to oversee and communicate with their staff, and this has provided both opportunities and challenges. According to some authors, remote monitoring technologies are an increasing trend to assess productivity using keystroke tracking and time-logging programs.[68] Although these tools increase the managerial control, they tend to reduce the autonomy of employees and destroy trust which prevents the establishment of healthy employment relationships. Conversely, others propose that effective cultures can be ensured in a distributed culture through the introduction of collaborative platforms and inclusive leadership practices which support organisational ethical digital transformation and would not undermine but reinforce culture.[69]

The other difficulty is the cohesion and equity between the on-site and remote employees.[70] Hybrid employees are often subjected to a so-called proximity bias, i.e., those who are physically present in the office have higher recognition, promotions, and opportunities than their remote colleagues.[71] This disequilibrium intensifies disparities and jeopardizes sustained participation and retention. On the other hand, some opine that hybridism can be more inclusive when organisations strategically set policies to make information, feedback, and career progressions equally available to everyone and this requires deliberate culture-building behaviours.[72]

In addition to this, isolation of employees has become a key organisational problem as some research discovered that employees working at a distance tend to complain of being disconnected with organisational identity and experience poor social bonds with their co-

[67] Pagnozzi et al *Springer Nature Switzerland* 181.
[68] Bodepudi and Manjunath 2021 *Journal of Artificial Intelligence and Machine Learning in Management* 28.
[69] Michaels and Jordan 2020 *American journal of public health* 633.
[70] Franken *et al.* "Design of learning and team-building processes in remote onboarding" 1-8.
[71] Winkler-Titus Charlene and Vera 2025 *SA Journal of Human Resource Management*.
[72] Shirmohammadi Chan and Mina 2022 *Human Resource Development International* 173.

workers.[73] This is not only a demotivator, but also a killer of innovation, as the sharing of knowledge through creativity becomes shattered. Conversely, autonomy in remote work can help to develop a sense of empowerment provided that the employer facilitates support systems (including virtual mentoring, social check-ins, and employee wellness programs).[74] The paradox of detachment risks and empowerment opportunities clearly show that the organisational culture in hybrid situations is very much dependent on the practice of leadership.

Combined, hybrid and remote models necessitate a re-reconceptualization of the employment relations and organisational culture. Instead of digitalising office-based norms, employers will need to adopt new frameworks that strike a balance between supervision and trust, reduce inequity between remote and on-site employees and purposefully build connection in decentralized environments. Unless this is adjusted, hybrid work will only enshrine divisions and weaken social fabric which supports organisational effectiveness.

3.4 Work-Life Balance and Psychological Wellbeing

The work-life balance has become one of the most debated areas with psychological wellbeing being one of the most challenged areas due to the transition to hybrid and remote work.[75] Although the idea of flexible arrangements is commonly advanced as creating more harmony between work and family life, studies show that in this case, the contrary may happen in situations where limits are not managed well. Some contend that remote work tends to cause the so-called boundary-less working environments in which employees feel that they should be continuously available, which leads to stress, burnout, and even fatigue.[76] Researchers were similarly able to find that South African workers noted reduced wellbeing because of the demands of digital presenteeism where the stress of being always present was overtaken by the need to take rest and have time off.[77] Even more, the psychological impact of hybrid work does not permeate all demographics equally. Women and caregivers are strained especially since home-based work often leads to a situation where they must

[73] Franken "Design of learning and team-building processes in remote onboarding" 3.
[74] Lal, Yogesh and Markus 2023 *Information Systems Frontiers* 1345.
[75] Shirmohammadi Chan and Mina 2022 *Human Resource Development International* 172.
[76] Shirmohammadi Chan and Mina 2022 *Human Resource Development International* 172.
[77] Winkler-Titus, Charlene and Vera 2025 *SA Journal of Human Resource Management* 2876.

combine both home and work commitments which create a double burden of unpaid labour and the need to do professional tasks. On the other hand, some observe that the wellbeing might be improved by hybrid setups, provided they are well-organized, which have the potential to decrease commute times and provide employees with more freedom in how to organize their working days.[78] Such inconsistent results indicate that hybrid working is not particularly positive or negative, but its effects are determined by how the policies have been implemented and how much the organisation supports it.

Another very important determinant of wellbeing is digital disconnection. Researchers underscore the importance of the fact that the lack of the face-to-face experience increases feelings of isolation and disconnection to the organisational identity, which may further contribute to anxiety and depression.[79] However, some authors refute these dangers arguing that such dangers can be minimised by organisations which implement deliberate efforts like scheduled virtual socialisation, employee wellness programme, and flexible workload distribution.[80] What stands out of these opposing viewpoints, however, is that psychological wellbeing in a hybrid work environment is very situational, contingent on the type of leadership, the culture of an institution, and the resources offered to employees. Overall, although hybrid and remote models provide a hypothetical opportunity of enhancing a work-life balance, they also present the risk of boundary issues and increased stress and imbalanced effects based on socio-economic factors. The Basic Conditions of Employment Act provides an employee with an entitlement to leave; lunch breaks and over-time pay.[81] These problems need to be tackled by legislative interventions to proactively protect the psychological wellbeing of employees and to put a strong line between work and social or family time for employees who work from home.

3.5 Inequality and Digital Divide Challenges

In South Africa, hybrid and remote work have intensified current socio-economic inequalities because of the widened digital divide.[82] Internet access, electricity, and digital infrastructure is geographically

[78] Banita Yogesh and Markus 2023 *Information Systems Frontiers* 1341.
[79] Franken et al "Design of learning and team-building processes in remote onboarding 3.
[80] Winkler, Gerber and Ngalo 2025 *SA Journal of Human Resource Management* 1686
[81] Section 21 of the *Basic Conditions of Employment Act*
[82] Van Rheede *A study of how digital inequality impacts remote work: Perception of Information Technology professionals in the Cape Town South African public sector* 43.

asymmetrical, especially between urban and rural populations.[83] Workplace transition to home-based for higher-income workers with consistent connectivity versus the disadvantaged results in an unbalanced impact on remote work. Working remotely and being physically present can only serve to deepen systemic inequality because people in less privileged regions have more obstacles to overcome to experience proper participation. These inequalities beckon the concerns of justice and inclusion in the labour market as the hybrid models will unintentionally favour a few workers and leave others out of the opportunities of growth and development.

The organisational level also shows the digital divide. South African businesses are quite diverse in their capability to facilitate hybrid arrangements. This disproportionate readiness does not only affect the productivity of employees, but also enhances the disparity between businesses, as resource-rich organisations gain competitive advantage. On the contrary, inequality can be neutralised through a well-designed hybrid system that allows employees that are spread geographically to be involved if organisations deal with disparities in infrastructures.

The other stratum of inequality is based on socio-demographic variations. Younger, urbanized and technologically literate employees are more adaptable to remote platforms, whereas older employees have difficulties with adopting digital platforms Stereotypes of older adults portray them as less interested in digital platforms which is ten used as a justification to deprioritize them in product design decisions.[84] Such an unequal distribution of skills and resources strengthens the division of the labour market and exposes vulnerable groups to the disadvantages of hybrid work. However, such disparities can be minimized by means of the digital training programmes and government-sponsored connectivity programmes to prove that inequality is affected by policy measures.

The digital divide is one of the greatest issues to equitable hybrid and remote working in South Africa. These inequalities will go on entrenching disparities in employment unless they are dealt with and the constitutional ideals of equality and fairness in the workplace are compromised.

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[83] Van Rheede *A study of how digital inequality impacts remote work: Perception of Information Technology professionals in the Cape Town South African public sector* 39.

[84] Manor and Herscovici 2021 *Wiley Online Library* 1086.

3.6 Comparative Insights from the United States

The case of the United States can offer important insights into the ways the challenge of hybrid and remote work has been approached in a well-established legal and regulatory framework. In contrast to South Africa where the statutory definitions of the workplace are still tightly attached to physical locations, there have been more liberal interpretations of the workplace especially in occupational health and safety in the United States. The Occupational Safety and Health Administration has made it clear that although employers do not have to inspect the homes of the employees, they still have a duty of assuring that home-based work does not present any unreasonable risk.[85] Based on the view that all employees are entitled to autonomy and, at the same time that reasonable safety standards are the responsibility of employers, researchers conclude that such a balanced solution acknowledges the agency of each employee but puts employers responsible in terms of reasonable safety standards depending on the specific law of the country in which the remote worker is based.[86] Conversely, the regulatory environment in South Africa has not clearly expressed these responsibilities, with no clear understanding of the extent of the employer responsibilities in the hybrid setting.

Work-related injuries also differ in compensation. Some states in the United States have also introduced workers compensation to cover injuries in the home offices provided a clear association to the job roles is demonstrated. An example of an adaptive interpretation of the law was presented when the courts ruled in favour of employees who were injured when operating employer provided equipment at home.[87] On the other hand, South African workers have to overcome considerable obstacles in the Compensation for Occupational Injuries and Diseases Act (COIDA), which does not explicitly address the effects resulting from home-based accidents.[88] The comparative gap reveals the ways U.S practices can be applied in South Africa to achieve fair protection of remote workers.

Employee monitoring and employee privacy have also been an issue in the U.S.[89] As digital surveillance technologies grow; employers are

[85] Michaels D and Jordan B 2020 *American Journal of Public Health* 635.
[86] Brodersen and Elizabeth 2022 *The Journal of Business Leadership* 20.
[87] Goldman T and David W 2021 *Berkeley Journal of Employment and Labor Law 47*.
[88] James J *Remote working and labour legislation in South Africa* 74.
[89] Bodepudi A and Manjunath R 2021 *Journal of Artificial Intelligence and Machine Learning in Management* 44.

tracking productivity more using software which can lead to encroaching upon personal lives of employees. Although these kinds of actions may improve efficiency, they may compromise trust and destroy organisational culture unless these activities are offset by transparent ethical standards.[90] The U.S. courts and policymakers have been looking into privacy implication under federal and state laws, but South Africa is just starting to incorporate the same under the Protection of Personal Information Act (POPIA).[91] Comparative analysis has indicated that South Africa should actively set boundaries to the use of remote surveillance to avoid infringement of rights in the hybrid environments.[92]

The appreciation of equity and digital inclusion as a fundamental part of hybrid work policies is also another positive lesson of the U.S.[93] American employers and policymakers have been making substantial investments in digital skills training and expansion of the broadband which have helped to close the digital divide. However, in South Africa, infrastructural inequalities are not resolved which contributes to the socio-economic inequalities in access to remote opportunities.[94] A crucial area of focus should be lessons to be applied from U.S. to inform policy, notably, partnerships between the government and business to expand connectivity and train. The digital inequalities as shown would lead to discrimination in terms of affordability. Those who afford to be connected digitally and those who can't afford may be treated differently. Differentiation in treatment may lead to violation of constitutional equality provision.[95]

In general, the experience in the U.S. demonstrates that the hybrid and remote working issues are not solitary but must be addressed through the conscious legal and policy changes. South Africa can reduce the risks associated with hybrid work, safeguard constitutional rights and facilitate inclusive labour practices by implementing flexible frameworks that resolve the conflict between monitoring and privacy.

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[90] Bodepudi and Manjunath 2021 Journal of Artificial Intelligence and Machine Learning in Management 44.

[91] Sibanyoni *Remote Work and Employee Privacy in South African Law* 24.

[92] Sibanyoni *Remote Work and Employee Privacy in South African Law* 25.

[93] Rachfal C 2021 *The digital divide: What is it, Where it is and the Federal Assistance Programme* 11.

[94] Van Rheede "*A study of how digital inequality impacts remote work: Perception of Information Technology professionals in the Cape Town, South African public sector"* 8.

[95] Section 9 of the *Constitution of South Africa* 1996

3.7 Synthesis of Challenges

The discussion of hybrid and remote work shows that there is an intersection between legal, organisational, and social issues that redefine the employment landscape. The health and safety issues illustrate how ineffective the traditional structures are because employers find it harder to provide the safeguards to residences as employees encounter increased ergonomic and psychological hazards. Simultaneously, the vagueness of the definition of the workplace according to the South African labour law raises uncertainties in the application of the statutes of the labour relations like the *Labour Relations Act* which ignores the protection and accountability in remote work.[96] Such loopholes underscore the dire need of implementing dynamic legal structures that may respond to a changing work environment. The lack of legal rules dealing with remote work is validated in Lewis v CCMA [97] case where an employee working remotely resigned and claimed constructive dismissal after her employer withdrew remote work privileges and denied her medical certified sick leave. This case highlights the need for regulation of remote and hybrid working. It shows the lack of a legal framework regulating termination or recall of an employee from working from home. Organisationally, hybrid models break traditional workplace culture exacerbating the problem of trust and equity between the remote and on-site workforce. There is evidence indicating that unless there is deliberate leadership, remote workers experience the threat of marginalisation and lack of organisational identification.[98] Meanwhile, social-economic inequalities and the digital divide expose structural inequalities where hybrid work favours access to uninterrupted connectivity and digital literacy, excluding vulnerable population groups.[99] These inequalities highlight the overlap between labour law and more general socio-economic policy.

3.8 Conclusion

The United States experience can offer valuable points of comparison, especially in terms of lax interpretations of employer responsibility, digital inclusion efforts, and the regulation of surveillance activity. In the case of South Africa, such measures provide a way of examining the emerging realities in the workplace and align them to what the constitution stipulates about fairness, equality, and safe working

[96] Section 213 of the *Labour Relations Act* 66 of 1995.
[97] *Lewis v CCMA and Others* 2025 (LCCT)
[98] Bardoel A and Hopkins J *Sustainability* 7.
[99] Cetrulo, Dario and Maria 2022 *Economia Politica* 347.

conditions. All these issues, in turn, precede Chapter 4 that looks at a more in-depth comparative analysis to derive practical lessons for reform.

CHAPTER 4: COMPARATIVE LEGAL ANALYSIS

4.0 Introduction

Comparative legal analysis offers a crucial method of assessing how the South African labour law regime can be changed to address the realities of hybrid and remote work. This study has the advantage of not only identifying best practices by analysing experiences in other jurisdictions but also illustrating the dangers of inaction in a fast-changing global workplace. The United States is used as a comparator due to its more developed regulatory mechanism at both federal and state levels where the initial steps to meet the challenge posed by non-traditional workplaces have already been taken. The U.S. is especially a good example since it has a history of being legally responsive to technological change and allows a liberal interpretation of occupational health and safety.[100]

A comparative study highlights that the issues in South Africa concerning health and safety compliance, compensation of employment-related injuries, and regulation of digital surveillance are at stake and are not exclusive but need intentional changes in policies.[101] The United States shows how frameworks of adaptation can balance the employer duties and the rights of employees in hybrid contexts and explain that models should be transferred only sensitively to local socio-economic circumstances.[102] This chapter critically analyses how the U.S. has negotiated the evolution of workplace definitions, occupational safeguards and equality issues, and then reflects on what the South African labour law would learn in redefining its own labour law

4.1 Evolution of the Workplace Concept in the United States

The United States traditionally has understood the workplace in practical terms, and the legislation and case law has adapted to changes in industrial relations and technological progress. Originally the notion of a place of work was associated with the factory floor, office block and other distinctly recognizable workplace locations.[103]

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[100] Michael and Jordan 2020 *American Journal of Public Health* 631.
[101] James *Remote Working and Labour Legislation in South Africa* 48.
[102] Brodersen and Elizabeth 2022 *The Journal of Business Leadership* 16.
[103] Barrero, Nicholas and Steven 2023 *Journal of Economic Perspectives* 47.

Nevertheless, with the rise of telecommuting and online work especially following the COVID-19 pandemic, the focus of legal regimes started to expand. The flexibility exhibited by the U.S. labour regulators is that it recognises that productive activity is no longer localised inside physical offices but possibly at homes, co-working spaces, and mobile settings.[104] This method is the opposite of the more rigid statutory model in South Africa, which still grounds the definition of the workplace in a physical location. This evolution was boosted by the pandemic. In U S, the OSH Act generated a new and controversial federal government power; the right of government inspectors to enter private sector workplaces and require that hazards be controlled.[105] These adaptations recognized that it is still the role of employers despite their worker privacy constraints, to maintain safe conditions. Such directions reflect a functional definition of the workplace where the definition is concerned with the fulfilment of work obligations, but not with the territorial limits. This functional view is gradually finding reflection in U.S. workspaces in which work is thought of as an activity that can take place anywhere, anytime and made possible by digital technologies.

Further, decentralisation of work has resulted in the emergence of hybrid jobs where workers split time between the workplace and home. Another point that by researchers is that most employers of the U.S. officially incorporate the concept of hybrid structures in their workplace policy-making, which supports the idea that several places can be at the same time considered workplaces.[106] This developing perception has impacted the court decisions especially in the cases related to workers compensation and the liability of an employer on distant injuries. Although the results vary in each state, the general trend shows that there is a desire to accept the legitimacy of remote workplaces within the wider labour system.[107]

In the case of South Africa, the U.S. experience shows the necessity to follow a flexible and activity-based definition of workplace. An adaptive framework should not just limit protections to centralised spaces but instead consider the multiplicity of environments within which labour is practised. It is a necessary change to protect the rights of employees in the digital era and make sure that laws are updated to the realities of the contemporary labour practices.

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[104] Barrero, Nicholas and Steven 2023 *Journal of Economic Perspectives* 47.
[105] Michaels and Jordan 2020 *American Journal of Public Health* 631.
[106] Michaels and Jordan 2020 *American Journal of Public Health* 635.
[107] Taylor *et al*. 2020 *Journal of Occupational and Environmental Medicine* e760.

4.2 Occupational Health and Safety Regulations in the U.S.

The United States has come up with a subtle solution to occupational health and safety (OHS) for hybrid and remote work to balance employee safety and the realities of employer control through Occupational safety and health administration. OSHA has made it clear that the employers need to inspect the homes of the employees, are also obligated to make sure that the work the employee does, does not subject them to unreasonable dangers.[108] Such an interpretation represents a practical compromise where it is an acceptance of privacy of the home and an extrapolation of OHS principles to faraway settings. This solution will give workers privacy without making the employers bear the reluctant responsibility of monitoring them. In the South African context the OSHA would not be easily applicable, it would be against the constitutional right to privacy[109] which employees have in their private homes. A documented authoritative legal directive is required to address this conflict in remote working.

The important aspect of the U.S. system is that it places a significant amount of emphasis on employer-based resources and guidance.[110] As researchers point out, several organisations have reacted to this by providing ergonomic training, equipment allowances, and mental health assistance to reduce risks in the home offices.[111] These programs are an extension of traditional OHS principles well past physical offices in a way that demonstrates an activity based and not a location based understanding of workplace safety. In comparison, researchers observe that employee protection and wellbeing gaps are common in South Africa because employers do not often offer such structured support.[112]

One more sphere of OHS concern in the U.S is psychosocial risk.[113] Remote work may pose the risk of isolation, stress, and burnout over an extended period, which is becoming more and more commonly accepted as an occupational health concern.[114] Employers in the United States have countered this by adopting policies that focus on employee welfare including flexible working and online wellness

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[108] Michaels and Jordan 2020 *American Journal of Public Health* 633.
[109] Section 14 of the *Constitution of South Africa* 1996
[110] Michaels and Jordan 2020 *American Journal of Public Health* 633.
[111] Collier and Abigail *Remote and hybrid work(ers): Considerations for regulating remote working arrangements and a code of good practice for remote work* 12.
[112] James J *Remote working and labour legislation in South Africa* 12.
[113] Shirmohammadi Chan and Mina 2022 *Human Resource Development International* 170.
[114] Shirmohammadi Chan and Mina 2022 *Human Resource Development International* 170.

programs.[115] In certain jurisdictions the measures are backed by state-level laws, which demonstrates the increased awareness that health and safety go beyond the physical hazards to include mental and emotional health.[116] In South Africa, psychosocial risks are not properly controlled, although stress and poor wellbeing increase in remote workers.[117] The Occupational Health And Safety Act obliges an employer to design and furnish its workplace in such a way that it is possible to avoid occupational accidents and damage to health, and to maintain an employee's work ability and well-being[118]
The enforcement of the OHS by labour inspectors in respect to work from home employees can promote the safety of remote working employees in their workplace.
OSHA offers guidelines and best-practice procedures but puts a lot of charge to the employers to make them effective. Such a decentralised model promotes innovation in risk management within the organisation and at the same time adherence to federal standards. This type of flexibility enables adjustment in a wide range of industries and workplace designs that South Africa might use considering its own diverse labour force. How ever, the federal nature of the U S makes it difficult for South Africa which is a unitary state to adopt the fragmented regulatory laws. South Africa labour law BCEA provides for the conditions of employment which includes hours of work, overtime, average working hours, meal intervals, daily and weekly rest periods and leave. Enforcement of the above will suffice to protect remote employees from mental and social well-being and avoidance of burn-out.

In the whole, U.S. OHS rules indicate that hybrid and remote working can be successfully regulated with the help of statutory supervision, the responsibility of the employer, and the active support system. The South African experience teaches that a transition to an activity-based conceptualization of OHS and an increased consideration of psychosocial hazards is necessary to make sure that constitutional or statutory provisions on safe and dignified work are met in hybrid environments. The provision of the Occupational Health and Safety Act in section 4(2) sufficiently addresses the issue of the responsibility of the employer to create a health and safe working environment. However, the remaining problem is enforceability in terms compliance

[115] Taylor et al. 2020 *Journal of Occupational and Environmental Medicine* e760.
[116] Michaels and Jordan 2020 *American Journal of Public Health* 631.
[117] Collier and Abigail *Remote and hybrid work(ers): Considerations for regulating remote working arrangements and a code of good practice for remote work* 18.
[118] Section 4(2) of the *Occupational Health and Safety Act* 85 of 1993

by labour inspectors. The Basic Conditions of Employment Act provides that to monitor and enforce compliance with an employment law; a labour inspector may, without warrant or notice, at any reasonable time enter any workplace or any other place where an employer carries on business or keeps employment records, that is not a home.[119] The provision of the BCEA in section 65(1) makes it very difficult for the labour inspectors to monitor health and safety compliance in a situation where an employee is working from home. Section 65(1) gives labour inspector's powers of entry to a workplace excluding a home. In comparison to U S, South Africa need a regulatory law which will cover the gap in terms of entry to a workplace which is a home by labour inspectors.

4.3 Compensation and Liability for Work-Related Injuries

One of the most complicated legal challenges of hybrid and remote working has become compensation of work-related injuries.[120] In the US, workers compensation is a decentralised system, with states governing their own regulations, resulting in widespread differences in interpreting whether home based injuries count as occupational or not.[121] However, there has been tendency to acknowledge that injuries that are caused during the execution of job responsibilities at home can be covered by workers compensation.[122] Courts in other states like Oregon and California have decided in favour of employees who sustained injuries in the process of undertaking work-related duties in their homes so long as a direct cause-effect relationship could be identified.[123] This is an extension of the concept of the workplace to suit non-traditional environments.

The question of control has also been put to the test on employer liability in such instances. U.S. courts tend to review whether an employer took control over the conditions causing the injury, like the provision of equipment or establishment of certain work requirements.[124] Liability is easy to prove in scenarios where the furniture or tools given out by the employer lead to injury. On the other hand, when the injury is attributed to purely personal situations, claims are usually rejected. The standard of evidence is a practical to provide the protection of employees and prove the liability of employers.

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[119] Section 65(1) of the *Basic Conditions of Employment Act* 75 of 1997
[120] Speer 2024 *Akron Law Review* 157.
[121] Taylor et al 2020 *Journal of Occupational and Environmental Medicine* e761.
[122] Taylor et al 2020 *Journal of Occupational and Environmental Medicine* e761.
[123] Speer 2024 *Akron Law Review* 165.
[124] Torrey and Lawrence 2015 *Tort Trial & Insurance practice Law Journal* 723.

Contrastingly, the Compensations of Occupational injuries and Diseases Act (COIDA) of South Africa makes no explicit reference to home-based work, thus creating a lot of ambiguity.[125] South African workers have a difficult time establishing that home-based injuries are work-related, especially due to the strict statutory definition of where the workplace exists.[126] This legal loophole exposes most of the remote workers to vulnerability since the employers can claim that the home is not a recognised place of work. Protections would be clearer through the adoption of US style functional definitions that focus on the type of activity being done, rather than on the location.

The evidence of comparisons has shown that the U.S. practices can be useful lessons to the South African nation. Expanding the workers compensation systems to include household-based injuries with moderately acceptable evidentiary protection would serve to bring South African labour law closer to protecting hybrid work. In the absence of these reforms, employees may be left unprotected in a situation where the Constitution should provide them with safe working conditions and with equitable labour practices. OHS Act regulates safety in the workplace

4.4 Employment Relations and Surveillance in Remote Work

The growth of remote and hybrid work in the United States has created a new focus on the regulation of digital surveillance and its effects on employment relations. Monitoring applications are becoming more popular among employers to keep track of keystroke, screen time and internet activity casting doubt on the privacy and autonomy of employees.[127] Although such tools may be explained as needed when it comes to productivity management, they also threaten to damage the trust between employers and employees and lead to an environment of distrust. Such dynamics transform the conventional employment relationship to a more technologically controlled relationship instead of the previously existing relationship of mutual accountability.

These concerns have already started getting legal responses in the U.S. Some states such as in the U.S have proposed bills that employers must inform employees about monitoring practices.[128] The existence of transparency requirements is supposed to prevent the privacy intrusion

[125] James *Remote working and labour legislation in South Africa* 15.
[126] Collier and Osiki *Remote and hybrid work(ers): Considerations for regulating remote working arrangements and a code of good practice for remote work* 15.
[127] Aloisi and Valerio 2022 *International Labour Review* 310.
[128] Brodersen 2024 *The Journal of Business* 96.

to a certain extent, but it does not completely address the power imbalance that lies at the basis of surveillance technologies. Surveillance may increase stress and undermine organisational culture especially when the process is seen negatively as punishment instead of support.[129] These concerns reveal the conflict between efficiency and dignity of an employee[130], a conflict that has not fully been addressed in South African labour law. The monitoring of the home as a workplace by an employer in South Africa needs to be addressed through a regulatory law which outlines how and when it should occur.

In South Africa, the protection of personal information act (POPIA) is the main source of regulation for surveillance in the workplace and it can be considered that it protects the general privacy rights of individuals but has not been yet tested in the hybrid work cases.[131] Although the POPIA offers a possible legal defence against intrusive monitoring, the effectiveness of this tool lies in its interpretation and enforcement by the court which is limited. In remote settings, South Africa trails the U.S. in formulating clear rules to balance the needs of organisations and the rights of their employees since state-level laws are already informing employer practices in the U.S.

The comparative evidence indicates that South Africa might gain by implementing the notification and transparency requirement on the same lines as in the U.S. to safeguard the constitutional rights on dignity and privacy. In the absence of such protections, digital surveillance poses a threat by worsening inequities and sabotaging the trust required to sustain employment relations at hybrid workplaces. The right to privacy is also affected by remote work, particularly in the context of monitoring and surveillance systems implemented to measure employees' work performance. An implied term in the employment contract is that an employee will perform his or her duties with due skill and care, and that the failure to meet an employer's attainable and reasonable performance standard may justify dismissal in terms of section 188(1)(a) of the LRA.[132] However, this dismissal must be substantively and procedurally fair. Digital surveillance infringes also on the constitutional right to privacy as enshrined in the constitution of South Africa. The employer on the other hand has a right to monitor his employee's work. Regulatory law must be developed to draw a clear line

[129] Bodepudi and Manjunath 2021 *Journal of Artificial Intelligence and Machine Learning in Management* 29.
[130] Section 10 of the *Constitution of South Africa* 1996
[131] Sibanyoni Remote *Work and Employee Privacy in South African Law* 15.
[132] Collier, Debbie 2024 *Nedlac Labour Law Series* 11

so that the surveillance must not be an infringement on the constitutional right of an employee.

4.5 Equality, Inclusion, and Digital Access

The United States has particularly come far in fighting digital disparities and enhancing inclusion in hybrid workplaces, which can serve as beneficial examples to South Africa. There have been substantial federal and state investments in broadband expansion and technology subsidies especially in underserved communities.[133] The Emergency Broadband Benefit of the Federal Communications Commission helped to make internet access more affordable to low-income households during the pandemic and thus facilitated fair access to remote employment.[134] In comparison, the digital divide is supported by the fact that a significant number of workers in rural and peri-urban regions of South Africa do not have access to stable internet and electricity due to the constant lack of infrastructure.[135] This imbalance compromises the constitutional promise of equality at the workplace, because not all of the workforce has access to hybrid opportunities.

Diversity of employee needs is also included in hybrid workplaces.[136] The *Americans with Disabilities Act* (*ADA)* (1990) states that U.S. employers must provide reasonable accommodations for disabled people and make provision for accessible digital platforms to remote disabled workers.[137] These provisions do not only make the organisation more compliant but also more inclusive. The EEA in South African legislation ensures there is non-discrimination, yet its applicability to the digital accessibility is not well developed and thus, vulnerable populations are likely to be left behind in terms of access to the hybrid work.[138]

The law should also pay attention to the socio-demographic aspects of inequality. Researchers discovered that organisations in the US are testing an inclusive approach to hybrid work where gender inequalities are considered, including flexible working hours to support caregivers,

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[133] Rachfal "The Digital Divide: What Is It, Where Is It, and Federal Assistance Programs" 2021 *Congressional research Service* 9
[134] Rachfal "The Digital Divide: What Is It, Where Is It, and Federal Assistance Programs" 2021 *Congressional research Service* 9.
[135] Van Rheede "*A study of how digital inequality impacts remote work: Perception of Information Technology professionals in the Cape Town, South African public sector"* 11.
[136] Dowling Drew and Michael *2022 The Mckinsey Quarterly* 5.
[137] Section 12182 of *Americans with Disabilities Act* of 1990.
[138] *Employment Equity Act* 55 of 1998.

and parental support programs.[139] Comparatively, South African employees (mostly women) tend to encounter the problem of both unpaid care work and professional obligations, and the lack of institutional support.[140] The comparison brings out the importance of maintaining inequities by designing policies inclusively.

In summary, the U.S. shows that equality and access to the digital world not only demand infrastructural investments but specific workplace policies as well. In the case of South Africa, these strategies could only be replicated with the multi-stakeholder partnership between the government, employers, and civil society so that hybrid work is not the cause of worsening current socio-economic disparities but rather furthering the cause of inclusive employment practice.

4.6 Lessons and Best Practices for South Africa

The comparative analysis of the United States offers some essential lessons to the South African labour law system in making changes to accommodate hybrid and remote work. At the heart of these lessons is the understanding that the definition of workplace must change to more of a functional definition rather than a purely physical one, which includes any place that employees carry out their tasks. Such a redefinition is crucial to the provision of employees' access to protections, irrespective of working environment. The change to activity-based definitions of workplace is one that makes employer responsibilities more in line with the realities of digital work, with consequent ambiguity in both liability and compliance reduced. In the case of South Africa, the solution would fill gaps in the current legislation like the COIDA and OHSA that, as they are, offer insufficient guidance to the home-based and hybrid arrangements.

Another good practice is the expansion of occupational health and safety provisions to the psychosocial wellbeing. The example of the US demonstrates that regulatory authorities and employers are becoming aware of the idea that stress and isolation, burnout can be discussed as the real occupational health issues. Studies stress the importance of viewing hybrid work as needing a holistic system of OHS that considers not only physical but also psychological risks.[141] Section 24 of the Constitution of South Africa supports such an expansion, which provides

[139] Dowling Drew and Michael 2022 *The Mckinsey Quarterly* 6.
[140] Collier and Abigail *Remote and hybrid work (ers) Considerations for regulating remote working arrangements and a code of good practice for remote work* 10.
[141] Hamour, Areeg and Muhammad "*Remote Working in the COVID-19 Era"* 460.

the right to a healthy, wellbeing non-harmful environment.[142] However, the resource limitations in South Africa might impede implementation, unless employer investment in wellness programmes, ergonomic tools and mental health services support reforms. Such reforms must be codified in a regulating legal framework which includes enforcement strategies.

Another important lesson that can be taught by the U.S is that productivity monitoring should be balanced with employee privacy. In several states, there are notification laws that employers must inform the workers of surveillance practices.[143] The transparency will improve trust and reduce the adverse cultural effect of monitoring. In the case of South Africa, the introduction of such notification provisions in *POPIA* compliance systems would go a long way in deterring misuse of surveillance technology and protect the dignity of employees. In this way, employers will be able to respect constitutional rights to privacy and yet be accountable in a hybrid environment.

Another important lesson is dealing with inequality. The U.S has shown that the inclusion of digital needs in the country is a concerted effort of both the government and business and civil society. The example of federal subsidies to broadband and specific programmes to disadvantaged populations demonstrates how barriers in the infrastructure and social context can be minimised. In South Africa, where digital exclusion is particularly strong in rural communities, the replication of such multi-stakeholder approaches would be necessary to equitable access to hybrid work. Some argue that hybrid models will reinstate and not alleviate structural inequalities without such measures.[144]

Moreover, legal flexibility is emphasized by U.S. practice. The differences between workers compensation rulings at the state level can expose the advantages of situational decision-making where the ruling is based on principles and not on strict definitions.[145] Similar judicial flexibility could be followed in South Africa by persuading courts to read workplace as broadly construed on the basis of constitutional values, as parliament engages in the process of legislative reforming. Such a twofold solution of legal adaptation and judicial interpretation would

[142] Section 24 of the *Constitution of the Republic of South Africa*, 1996.
[143] Taylor *et al.* 2020 *Journal of Occupational and Environmental Medicine* e767.
[144] James Remote *working and labour legislation in South Africa* 20.
[145] Taylor *et al.* 2020 *Journal of Occupational and Environmental Medicine* e766.

mean that the hybrid and remote workers are not remaining in a regulatory vacuum.

Overall, the U.S. shows that active policy changes in legislation, and cooperation of multiple stakeholders can make hybrid work an opportunity to provide inclusive development instead of it being a hindrance. In the case of South Africa, adapting these lessons would not only help to modernise labour law, but also protect fairness, equality and wellbeing in the changing world of work.

4.7 Conclusion

The comparative study with the United States shows that hybrid and remote employment require a reconsideration of the traditional concepts of labour law, especially the definition of workplace, occupational health and safety, compensation, and digital rights. According to the U.S, flexible and activity-based definitions of what constitutes the workplace offer clarity, and employee protectors can be proactive in identifying psychosocial health and privacy issues to ensure that workplace protections are upheld in changing situations. Notably, the U.S. example shows that the gap can be reduced through investing in digital inclusion and enforcing clear monitoring activities to strengthen the organisational culture. The implications that these insights have on the case of South Africa are that adaptive reforms are desperately needed to match the constitutional rights [146]and the realities of hybrid work. Except when intentionally designed, hybrid arrangements are likely to worsen inequities, undermine trust, and expose the workers to health and safety hazards. The U.S. provides a lesson on how to update the labour system by making it modern, predictable and fair in terms of payment, liability and access to digital devices. Finally, the U.S. experience shows that hybrid and remote work are not just operational changes but radical changes that need strong and future-focused regulation.

CHAPTER 5: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The chapter outlines an overview of the study results, conclusions, and suggestions after the analysis of the redefinition of the workplace in the framework for the hybrid and remote workplace in South Africa. The discussion incorporates information of the previous chapters to discuss the objectives in Chapter 1 and investigate them by use of the comparative lessons developed by the United States. The analysis

[146] Chapter 2 of the *Constitution of South Africa* 1996

highlights how the digitalisation and the Fourth Industrial Revolution (4IR) transformation in work patterns threaten the aspect of traditional legal constructs of the workplace. The chapter thus incorporates theoretical considerations, law, and practical suggestions to inform the development of the South African labour law to uphold the rights of the employees[147] amid a more dynamic work-related environment. A direct legislative framework needs to be developed to address health and safety concerns for employees who work from home.

5.2 Summary of Key Findings

5.2.1 Evolution of the Workplace Concept

The first objective analysed the classic vision of the workplace and the way it changed under the influence of the altered working patterns. The historical perception of the term South African workplace was one that was anchored to a fixed and employer-controlled place with the foundation based on the legislations of the Labour Relations Act (LRA) and the Occupational Health and Safety Act (OHSA). These laws presupposed that the supervision, control, and risk management took place in a spatially specific context. Nevertheless, the advent of remote work and hybrid work models upset these assumptions. It emerged that work conducted through technology has made workplaces to be dynamic and fluid subjects as opposed to fixed locations of work. According to Shearmur, work must be conceptualised as a place of probability, that is, expressive of mobility, digital mediation, and multi-loci of productiveness and not geographically only.[148]

The changes were accelerated by the pandemic that pushed organisations to embrace remote work in large numbers revealing the flexibility and restrictions of the established legal frameworks. As researchers note, the emergence of the hybrid workplace has led to the blurring of the organisational control line and the concept of supervision and distribution of risk in the contemporary workplace extends to homes, shared areas and digital environments.[149]

5.2.2 Challenges of Hybrid and Remote Work

The second objective was to investigate the issues that employees face regarding working in hybrid environments and remotely. Results of Chapter 3 indicate that such challenges are not limited to the logistics but include health and safety issues, law uncertainty, labour relations,

[147] *Constitution of South Africa* 1996
[148] Shearmur 2024 The *Encyclopedia of Human Geography* 2190.
[149] Chigbu and Nekhwevha 2021 *Technology in Society* 129.

and socio-economic disparities.[150] The implementation of the *OHS* Act still is an issue in non-traditional workplaces because employers have difficulties in inspecting the home and face violation of privacy rights.[151]

This regulatory loophole makes employees vulnerable to ergonomic hazards, psychosocial stress, and digital fatigue. Besides, the Compensation for Occupational Injuries and Diseases Act (COIDA) has failed to evolve to reflect injuries at home, offices or in the context of mobility during work.[152] The ambiguity of the causation, control, and the location of injury compromises the constitutional right of workers to work in an environment that is not harmful to their well-being.

The study has also found that the hybrid and remote models have an impact on the organisational culture and cohesion.[153] Digital surveillance technologies while effective in productivity management tend to undermine trust and autonomy and pose ethical challenges to employee privacy while violating constitutional right to privacy.

Another lesson has to do with inequality. Remote work has increased socio-economic inequality, particularly between rural and under-equipped employees, as Cetrulo et al. state, and therefore, without a change in the legal and infrastructural conditions, remote work can escalate inequality instead of alleviating it.[154]

5.2.3 Legal and Regulatory Implications

The third objective discussed the impact of inclusion of hybrid and remote models on occupational health, safety and injury benefits in the South African labour law. The research discovered that the statutory systems are still attached to place-based presumptions thus creating inconsistency in the enforcement of employer duties and employee rights.[155] The OHSA and COIDA assume a physically accessible workplace that is open to inspection and management which makes them unfit to the realities of teleworking.[156] Conventionally, with regards to the Constitution, the right to a safe working environment is assured in Section 24 of the Constitution. When this is understood in a purposive sense, this cannot be limited to the factories but also to the homes and communal places where one is busy producing something. Nevertheless, the enforcement is weak because there is no secondary

[150] Speer 2024 *Akron Law Review* 161.
[151] *Occupational Health and Safety Act* 85 of 1993.
[152] Compensation for Occupational Injuries and Diseases Act 130 of 1993.
[153] Pagnozzi *et al.* 2024 *Springer Nature* 181.
[154] Cetrulo, Dario and Maria 2022 *Economia Politica* 347.
[155] James *Remote working and labour legislation in South Africa* 23.
[156] Sibanyoni Remote Work and Employee Privacy in South African Law 24.

legislation that explains the duty of the employer in the dispersed environment. James argues that South Africa has no consistent policy connecting hybrid work and occupational health and safety regulation, which leads to fragmented compliance.[157]

The study also determined that psychological comfort and psychological well-being ought to be included in the occupational health criteria. This would be in line with the global trend, as stress, burnout and isolation are coming to be recognised as workplace risks in the statutes.[158] In South Africa, such psychological well-being, employee isolation and burn-out can be efficiently addressed by enforcing the provisions of the BCEA which include leave, hours of work, overtime, average working hours, meal intervals, daily and weekly rest periods. The employee must be monitored to avoid over working himself which may lead to burnout. A mechanism through which remote employees are monitored for adherence to lunch break, working time, resting time and overall hours of work. The BCEA can sufficiently address the issue of burn out, mental and psychological well-being if it is implemented and enforced in remote working employees.

5.2.4 Comparative Lessons from the United States

The fourth objective presented some comparative lessons based on the United States where functional methods have been embraced by the courts and regulators in managing the workplace. The OSH Act of United States acknowledges that where the home-based working applies, the employers still have the duty of care as far as it is reasonable and practicable. This strategy provides a solution and clarity for the privacy of employees and the responsibility of employers. The jurisprudence of the U.S has also advanced to provide workers with compensation when they are injured at home-office, if this happened during employment.[159] The research discovered that the American model stresses on practicality and shared responsibility which can bring important lessons to South Africa. Moreover, the American policies that cover digital inclusion policies like subsidies towards broadband and which provide ergonomic aids, show that the partnership between the government and the private sector can alleviate inequality.[160] South Africa can use the same multi-stakeholder model to guarantee that the hybrid opportunities are not unevenly distributed. Moreover, digital

[157] James *Remote working and labour legislation in South Africa* 17.
[158] Collier and Abigail *Remote and hybrid work(ers) Considerations for regulating remote working arrangements and a code of good practice for remote work* 18.
[159] Speer 2024 Akron Labour Review 153.
[160] Rachfal "The Digital Divide: What Is It, Where Is It, and Federal Assistance Programs." 2021 *Congressional Research Service* 12.

surveillance transparency legislation in a few states of the United States can offer helpful precedents to the POPIA[161] and the current surveillance technologies.

This research points at the conclusion that the current legal framework in South Africa fails to address the realities of hybrid and remote work. The *Labour Relations Act* and other statutes imply that the definition of workplace is fixed in location which currently does not fit the digitalised production modes.[162] The redefinition of the workplace as a functional and activity-based concept would reflect the current circumstances in a better way and meet the constitutional obligations of safety, dignity, and equality. Secondly, the continuity of regulatory areas ignorant to occupational health and compensation, weakens the safety of employees. Having no statutory reform, the employees who suffer injuries during working at home or in the common place are still at a risk of being left out of the compensation benefits. The principle of foreseeability that forms the core of the occupational liability ought to be construed to incorporate foreseeable risks that may be caused by authorised hybrid work activities.

Thirdly, employment relations require change which reconsiders the compromise between trust and control. Moral and independent thinking may be undermined because of excessive dependence on digital surveillance which is against the constitutional principle of dignity. Urgent measures to incorporate transparency on monitoring policies and employee participation mechanisms should therefore be considered in the hybrid governance structures.

The research also finds that hybrid and remote work exacerbate socio-economic and gender inequality unless the policies are taken to overcome the digital gaps.[163] Equality as Section 9 of the Constitution [164]envisions, needs active intervention of the state to make sure that the disproportions in infrastructure are not converted into exclusion in the labour market. Lastly, comparative analysis proves that reform is plausible and essential, and the U.S. model shows how multi-level

[161] Protection of Personal Information Act 4 of 2013
[162] Section 213 of the *Labour Relations Act* 66 of 1995.
[163] Van Rheede “A study of how digital inequality impacts remote work: Perception of Information Technology professionals in the Cape Town South African public sector" 46.
[164] Section 9 *of the Constitution of the Republic of South Africa,* 1996.

governance can be adapted to modernise labour protection without choking flexibility.

5.3 Recommendations

5.3.1 Legislative Reform

i. Amendment of Definitions:

Labour Relations Act, OHSA and COIDA ought to be revised to incorporate the meaning of a workplace as any place -physical or virtual- which an employee undertakes and carries out work under the direction or advantage of an employer. This functional definition would be inclusive of home offices, co-working environments and mobile environments without impairing enforceability.

ii. Extension of Occupational Health Standards:

Psychosocial and ergonomic risks should be explicitly included in the employer responsibilities in the OHSA. A code of practice regarding the arrangements of contracts including the period in which an employee will be on remote working, location and access to the premises as well as how remote working will be terminated.

iii. Compensation and Liability Clarification:

COIDA must also provide presumptive coverage of remote-work injuries incurred during the performance of authorised work, subject to rebuttal by evidence that the injury arose from purely domestic or personal causes.

iv. Privacy and Surveillance Regulation:
The addition or amendments to existing law so that a remote workspace is accessible for inspections. Such law can include procedures for virtual inspections by labour inspectors.

5.3.2 Institutional and Organisational Measures

i. Risk Assessment and Support:
The employers are supposed to perform digital risk assessment, offer ergonomic equipment allowance and mental health support services to the remote workers. These efforts meet the constitutional duty of providing protective, well-being environments as provided for in Section 24 of the Constitution.

ii. Joint Responsibility Frameworks

Home-based safety compliance should include cost-sharing and reporting requirements that should be internalized in industry-wide collective agreements, which reflects a cooperative system of governance between the employer and employees.

iii. Leadership and Culture Building

Managers should be able to develop trust-based cultures by providing inclusive communication platforms and balanced performance assessment systems. Hybrid work causes psychosocial strain which can be decreased by training leaders in digital ethics and emotional intelligence.[165]

iv. Equality and Digital Access

With the help of the government and non-governmental organisations, broadband should be increased where digital tools are subsidised, and training programs provided with the focus on rural citizens and disadvantaged groups. It is a common practice in the inclusive digital labour policy of the modern world.

5.3.3 Judicial and Policy Guidance

i. Functional Judicial Interpretation

The interpretation of workplace by the courts should be dynamic based on the constitutional principles and on the intent purpose of the labour laws. This interpretive elasticity means that the case law is updated simultaneously as technological and social change.

ii. Development of Sectoral Codes

The Department of Employment and Labour must promote the framework of sector(s)-specific recommendations, including education, finance, and ICT, considering the variety of hybrid work in different spheres.

iii. Public Awareness Campaigns

Both employers and employees should be made aware of rights and obligations in remote work situations through awareness programmes which will also help reduce litigation and increase compliance.

5.4 Implications for Future Research

The future research needs to examine the empirical outcomes of hybrid work on safety of the employees, compensation claims and productivity within the public and private sector. A longitudinal study can help determine the impact of redefined legal parameters basing on the rates

[165] Sibanyoni *Remote Work and Employee Privacy in South African Law* 15.

of dispute resolution and compliance. Also, the socio-legal research area must examine the connection between gender, digital inequality, and hybrid work to support the design of policies in a more equitable way. A cross-regional comparison with other jurisdictions (European Union or Australia, etc.) would further put into perspective the development of law in South Africa in the context of global labour reforms.

5.5 Conclusion

One of the biggest changes in the South African labour history is the transformation of the workplace. The researcher has demonstrated that the notion of the workplace cannot be limited to geographical locations anymore but must be interpreted as a functional area that is determined by the execution of labour as opposed to the place. Restructuring the workplace is thus a social-economic and constitutional requirement and not a theoretical practice. This goes in line with the rights to dignity, equality and safe working environment that are stipulated in the Constitution[166] that guarantees protection to all employees irrespective of their places of work.

The present study confirms that legislative and policy development should also be in line with the reality of hybrid and remote work. Devoid of such adaption, the potential of fair and human employment terms stands the threat of being lost in the digital age. The case study in comparison with the United States shows that a system of principle-based regulation that is flexible, can be fair and still respect privacy and autonomy. South Africa therefore has a roadmap to follow where it can either choose to liberalise its labour structure and allow inclusivity or continue following the outdated definitions that do not work for the future generation. Finally, redefining the workplace is a social justice measure, making the law to be based on the reality of the twenty-first century work environment.

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