



Global labor and employment law strategic topics

Reimagining work globally: key
working considerations, including
confidentiality and privacy

December 2020 Edition



Building a better
working world



In this issue, we focus on:

Reimagining work globally: key working considerations, including confidentiality and privacy
(The content is based on information collected as of December 2020)

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In early 2020, very few people would have or could have imagined the new lifestyles brought about by the COVID-19 pandemic. Governments, organizations, families, friends, and communities around the world have a new paradigm when it comes to public health, workplace safety and personal interaction.

One such area is the focus on **remote working**. With so many employees around the world utilizing remote working, either voluntarily or due to public health measures, employers now have more options when it comes to workforce planning. The challenge for HR teams is to provide the right information, particularly for global organizations, about the risks and benefits of enabling remote working as we move through to the “Beyond” phase of the COVID-19 pandemic in 2021.

Indeed, COVID-19 has become a formidable transformation accelerator. For some organizations, remote work is being viewed as a temporary accommodation to help us “live with the virus”. The expectation for these organizations is that one day we will go back to the way we were. For other organizations, they are not “going back”! Deep transformations are underway to reimagine work and change the future of the way we work.

The design of an effective remote work program requires a balance of different considerations, including health and safety, tax, labor and employment law, privacy and confidentiality considerations, as well as cost.

In the context of advising and assisting our clients regarding remote working, our Global Labor and Employment Law teams around the world have found a number of wider issues which affect how employers manage their workforce. Firstly, there is the cost of equipping previously office-based

Editors' letter



teams with the technology to work remotely, yet the cost saving of potentially reducing the real estate footprint. Second, the importance of maintaining the organization's culture, despite physical distance, has been the source of much thinking, such as this article from EY's People Advisory Services colleagues. Thirdly, there is a disparate impact of remote working depending on the sector in which the organization operates. Sometimes remote working cannot be contemplated due to the nature of the work, and the employer must focus on creating a safe workplace, factory or office. And finally, the competitive global market for talent has become an even steeper as the importance of a person's physical location becomes less significant.

Despite the prevalence of remote working, there are a number of reasons why employers are planning for a physical return to the workplace. Some of the reasons why organizations are eager to go back to the office include increasing employee contact with management, need to strategically plan and regularly conduct performance reviews, for which employers may prefer to have their employees in the office, factory or site.

Of course, corporate culture plays a key role in these decisions, as well. Some organizations are willing to make drastic changes, while others are not. Regardless of the mindset or culture of an organization, what is clear is that after nine months of our immediate pivot to remote working, organizations are moving to develop robust policies for continued remote work globally or return to office programs.

In this edition of the EY Labor and Employment Law (LEL) strategic topics newsletter, we canvass the key considerations for reimagining work across 42 jurisdictions around the world.



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Albania



Soena Foto

Reimagining work: key remote working considerations, including confidentiality and privacy

Developing a remote-work program
While the office has been considered as the sole workspace for many companies and employees, today's reality has obliged many of them to reframe this traditional belief.

The benefits of an office environment that has easy, day-to-day access to people, collaboration, training and mentorship are being reconsidered to accommodate health and safety issues, flexibility and remote working.

Some employers in Albania, especially big international companies, are implementing remote working by offering employees the option to work from home as part of a flexible working policy, and are even considering whether large-scale remote working is feasible on a permanent basis.

Developing a remote-work program requires analysis of a variety of employment law, practical and technical issues for employers to consider.

Remote-work consideration

Communication and trust are among the most important things to empower the new working relationship. With the rapid shift to remote working, some employers have considered monitoring their employees' activity and productivity. In this respect, any legal, ethical, practical or technical issues arising from the use of these tools should be considered to ensure that use of such software is permitted under the relevant employment agreements and policies.

Additionally, businesses should support employees' compliance with the requirements of internal security and confidentiality policies, for example, by issuing work laptops as opposed to employees having to use personal computers to log into work systems, and reimbursing any related expenses to employees since it is the employer's obligation to provide working tools.

Another issue to be taken into consideration while deciding to apply remote work is the confidentiality of work-related data. Businesses should ensure they have robust policies governing confidentiality when working from home, addressing, among other issues:

- ▶ Using only secure work platforms to discuss or share information. This is especially important as home networks are traditionally less secure than business networks, which are likely to have such protections built in.
- ▶ Not discussing confidential matters with others in the household
- ▶ Using strong passwords that are changed frequently
- ▶ Prohibiting the use of public Wi-Fi networks while working
- ▶ Putting away confidential documents and locking computers when unattended

Under such new reality and work conditions, current employment contracts may therefore need to be revised to reflect the new working arrangement for each employee.

Employment agreements should specify the hours of working if different from the office hours, the location of the employees' primary place of work and any new confidentiality and privacy settings agreed on between the employer and employees for conducting work remotely.

What is most important for both employers and employees is setting clear guidance and protocols, and communicating expectations and decisions in a timely manner to allow the other party to take the needed time to adapt accordingly. Organizing regular virtual trainings and meetings to discuss and follow up on any issue related to the new working style can also be of added value to the new reality.

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Argentina



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Implementation of telework in Argentina

In light of the quick spread of COVID-19 globally, many countries decided to establish lockdowns, obliging people to stay in their homes and to refrain from attending their workplaces for as long as possible as the primary health measure against the disease. Argentina was no exception, and from the beginning of the pandemic, leaders imposed a “social, preventive and mandatory lockdown,” including the suspension of school classes, intercity transport, tourism and nonessential activities, among other measures. From the beginning of the lockdown, the business sector had the fastest response, with policies reinventing work through the home-office modality to face this unprecedented context. In many companies, COVID-19 caused telework to be the only alternative to protect employees’ health and to guarantee business productivity, thus becoming a need instead of an option.

In Argentina, remote-work continues to be favorable; experience showed that companies were able to implement this type of method successfully.

They also received significant benefits as a result of the telework extension, such as rent savings, fixed cost reduction (cleaning, security and utilities), productivity increase, flexibility increase and reduced absenteeism.

The legislative environment of remote work in Argentina

In relation to the regulatory framework, Argentina has a series of laws governing the

activity, such as Employment Contract Law No. 20,744 and Law No. 25,800, which ratifies ILO Convention 177.

Apart from that, many important companies had already implemented this work methodology prior to the pandemic under standards in their internal policies, which are a source of law, according to our labor regulations.

More recently, on 14 August, Law No. 27,555 was published in the Official Bulletin, setting forth the minimum telework requirements. Employers need to know that the matters contained in the law must be defined through the collective bargaining agreements (CBAs) of each activity and that the final legislation will be enacted in due time. Such regulation does not apply to the home-office methodology implemented as an exception due to the pandemic, but it will become effective after 90 days from the end of the lockdown (even though such date has not been specified yet).

Within this social and regulatory context and considering that telework is a potential continuity scenario, the following matters should be considered for implementation in Argentina:

Process for remote work implementation

- ▶ Mandatory remote-work provisions: the rule is that the employee hired under a remote-work contract will be entitled to the same rights and obligations as in-company employees, and their compensation must not be lower than the amount that they earned or would earn as in-company employees.
- ▶ The implementation of remote work requires employee consent: the working days should be previously agreed upon in writing in an employment contract, according to the limits in hours and goals established by law and the CBA. Any change from the in-company arrangement to telework, except for duly evidenced events of force majeure, should be voluntary and implemented in writing.

Managing remote work

Currently, many companies may have only part or all of their employee population working remotely. There are no rules governing the selection of employees who work remotely.

However, keep in mind that the law sets limits to the monitoring of remote work: the platforms used for teleworking should

be developed according to the agreed-upon working day. The employee also has a right to time to disconnect from digital devices outside working hours and during leave terms.

Privacy and confidentiality control system

Regarding the protection of work, the law establishes that the employer must adopt the necessary measures, especially with regard to software, to ensure the protection of data used and processed by the teleworker for professional purposes, and employers may not use surveillance software, which violates the right to privacy.

Risks of remote work

The law establishes the obligation for employers to report workers affected by teleworking to the workers’ compensation insurance company for purposes related to occupational risk laws.

In a pandemic, the COVID-19 disease would presumably be considered an occupational disease.

Costs of remote work

- ▶ Facilities and equipment: the ordinary labor regulations establish that it is the employer who must provide the work items to employees.
- ▶ Expense compensation: the teleworker will be entitled to compensation for higher connectivity and/or utility expenses. Such compensation will be governed by the CBA and will be exempted from income tax.

Conclusion

This new exceptional social scenario implies new challenges for employers in Argentina, but the fundamental basis to be able to implement telework under more specific circumstances will depend on the impact of the new telework law administrative order.

However, the experience of the pandemic proved that it is possible to turn work into a remote scenario, which has allowed the continuity of business activities. At the moment there is no information on any litigation in this regard.

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Reimagining work: key remote working considerations, including confidentiality and privacy

Developing a remote-work program

The COVID-19 pandemic has forced both employers and employees to reimagine new ways of working. The pandemic has forced many employers in Australia to “practice” remote work before committing to implementing a reshaped and rebuilt structure of working.

Remote work rules – implementation and monitoring

Australia recognizes the notion of remote work. Indeed, governments have issued public health orders requiring remote work in certain circumstances during the pandemic. However, there is no specific legislative framework for remote work, and it not mandatory for employers to have a formal remote-work policy.

The role of unions and employees

The move to remote working does not generally require consultation with unions or employees. That said, the employer should check for any notification or consultation requirements under collective bargaining agreements, employment contracts and policies when implementing remote work.

Required employment documentation

During COVID-19, employee consent to remote work should not be required. However, there is a risk that an employee could treat a requirement to work remotely as a repudiation of the employee's contract of employment. Therefore, employee consent to remote work should be obtained where practicable, and contracts of employment for new employees should expressly address the issue.

Key issues, such as privacy, confidentiality, monitoring work time and expense reimbursement for employees

The new “normal” will almost certainly have implications for employer policies around privacy, confidentiality, working time and expenses.

The Privacy Act 1988 does not apply to acts or practices that are directly related to a current employment relationship between the employer and the employee. However, it does apply to nonexempt employee records, such as private emails.

Workplace surveillance laws apply when an employee is “at work” even when performing work outside the employer's workplace. Where these laws apply, workplace surveillance (including computer, camera and tracking surveillance) must not commence without appropriate notice and policies.

Confidentiality policies should also be reviewed to ensure that the employer's confidential information is being appropriately protected in a home environment. Employees must comply with any reasonable direction from the employer around protecting confidential information.

Reimbursement of expenses is likely to be a key battleground for unions and employers. If an employee has been directed to work from home, the employer should pay for any equipment that is reasonably required by the employee to do so.

Other key issues

Workers' compensation claims can be made by employees irrespective of whether they are working at the office or at home.

Post-COVID-19, employers should consider that unions will look to address remote working in applications to various awards and enterprise agreement negotiations to ensure workers are afforded the same protections at home and at the office.

Conclusion

Best practices for employers who are moving or adapting to remote work is to consult with workers about their attitude to remote working and carefully consider defining work expectations and access to technology. Employers should be conscious of their obligations under anti-discrimination and general protections laws, and understand that remote working is not a one-size-fits-all approach.

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Belgium



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Remote working

To implement the European Framework Agreement on telework of 16 July 2002, the National Labour Council adopted CBA No. 85 on 9 November 2005 and provided a legal basis for structural telework for employees working a minimum of eight hours per week away from the office.

Structural remote working requires a voluntary written agreement entered into between the employer and the employee in an addendum to the employment contract to determine the frequency of remote working, the extent of technical support, the reimbursement of costs and other related issues.

Occasional telework at the request of the employee in the event of force majeure (such as in the case of an unexpected train strike) or for personal reasons was only introduced by the Law of 5 March 2017 on Workable and Manageable Work. Occasional telework remains subject to approval by the employer but allows

for a more flexible approach. Although, strictly speaking, no written contract is required, we recommend to lay down – via a collective labor agreement, the work regulations or an annex to the employment contract – a framework within which the occasional telework can be elaborated.

In the context of the COVID-19 crisis, telework has been imposed as part of the Belgian Government's lockdown measures of 23 March 2020. Rather more incidental than structural, this imposed telework is implicitly and loosely based on the rules regarding occasional telework, which allows for a more flexible implementation.

The role of unions, works council and employees

Before introducing structural telework, the workers' representatives in the works council or, in the absence thereof, the trade union delegates must be informed and consulted.

This is not required for occasional telework, and it also is not required for the telework mandated by the Belgian Government amid the COVID-19 crisis.

Success factor

According to a study coauthored by the KU Leuven, published on 12 October 2020, the popularity of telework increased more than 50% in comparison to the pre-COVID-19 period. But while the study reveals a change in employers' perceptions in favor of telework, it also reveals the pitfalls of it: its negative impact on teamwork and social cohesion clearly. It also demonstrates the importance of clear and specific agreements between employers and employees and the importance of a policy on telework to preserve the balance between professional and private life.

A clear and precise policy mentioning the place telework is performed and the periods of the day during which telework must be performed is recommended. The study also underscores that telework is more optimal when the employer applies a control on the output rather than merely on the work schedule.

Conclusion

Employers have been forced to (re) discover telework during the COVID-19 pandemic. Most likely, telework is here to stay as part of a new hybrid model of work performance, combining remote work and working at the office. This in turn will require new policies, carefully worded to consider work time and the objective, with reliable and accessible time-registration systems recently required by the European Court of Justice. Employers will also need to consider compliance with the General Data Protection Regulation as well as the needs and wishes of the business and its customers.

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Remote work

Currently, employers are in the process of returning to their offices, and others are looking for the best plan to structure the new way of working, considering all the learning that resulted from the past months and the need to adapt to a new scenario that is still not completely certain.

Developing a remote program

The remote-work regime is an option for companies in Brazil and may result in positive benefits, both for the company and for the employees. However, it is important to make a deep evaluation of all aspects and possible impacts before implementing a remote-work program.

Remote work rules

According to the Labor Law Reform from November 2017, there are specific rules relating to remote work. The change to telework needs to be formalized through a work contract amendment and agreed upon by employer and employee.

Additionally, the employer must provide detailed instruction to employees relating to the prevention of work accidents and illness. Finally, the responsibility to provide support, with infrastructure and technology equipment for employees, should be formalized.

In addition, there is a technical note from the Ministry of Economy, from 10 September 2020, reinforcing the attention that companies should pay when establishing remote work-policies, mentioning aspects related to well-being, ergonomics, work time, etc. Such rules may guide the authorities when evaluating whether employers are observing the relevant aspects that benefit employees, aiming to avoid risks resulting from the remote-work regime.

Labor union roles

Brazilian legislation does not require the labor union's consent prior to the implementation of remote-work. However, it is important to bear in mind that unions may want to supervise the conditions adopted and evaluate if there is any type of damage to the employment relationship. Therefore, the more the company acts with transparency to all stakeholders, including unions, fewer questions will be raised.

Remote-work monitoring

Employees in remote-work setups are not subject to working-hour rules established by the Brazilian Labor Code. Additionally, it is important to make sure employees are not subject to long work periods and that they are provided support for their well-being. Some companies have performed surveys to understand how employees doing remote work are feeling and, with this information, will implement necessary improvements.

Considering this scenario, it may be a challenge to establish effective productivity metrics and to apply an effective performance evaluation methodology.

Data privacy

In Brazil, a detailed general data protection law was enacted in September 2020, whose rules will be effective as of January 2021.

In considering remote work, it is very important to be aware of potential risks and to take actions to mitigate them. Employers need to provide appropriate guidance to employees regarding access to confidential information, and they should establish safe access to the company's systems and tools.

Conclusion

The adoption of remote work may result in benefits, both to the company and the employee. But it is important to absorb lessons learned during the COVID-19 pandemic and elaborate a structured remote-work policy based on the company's strategy for the "new normal" period. To achieve the best results, several aspects need to be considered in the elaboration of the remote-work policy, including criteria for eligibility, law compliance, evaluation of compensation and benefits, data protection and technology, performance evaluation methodology, communication strategy and employees' well-being, health and safety. The study and evaluation of each detail will allow a company to implement a successful, sustainable and efficient remote-work policy.

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Work from home and work from anywhere

Is remote work the new standard? If so, how should organizations approach it?

COVID-19 is constantly and rapidly increasing the number of infected people in Bulgaria. The Government reintroduced some of the strictest measures for Bulgarian citizens and local employers. Such measures include a strong recommendation to stick to remote-work arrangements whenever possible. However, even in the case where remote work is possible, employers keep facing challenges particularly related to the training and preparation of new hires. A number of employers have issued orders stating that new employees are expected to work permanently from the office, while long-term employees are allowed to schedule their office and home hours more freely. Some of the largest employers introduced a permanent rule that employees be split into at least two groups, including employees with identical functions so that such groups never meet in the office (i.e., each group works every second week from the office). This aims to make sure that if one member of a team

gets infected and is eventually unable to work, the remaining part of the team will be able to cover all assignments and stay safe from the infection.

Remote work is still not regulated in detail in Bulgaria. Therefore, it is recommendable that employers introduce more detailed information in their internal rules and orders.

In respect to health and safety, the employer still remains fully liable even when employees opt to work from home. Employers are entitled to inspect their employees' homes to ensure that all health and safety requirements are complied with and to issue some additional instructions if necessary. Some of the largest employers have diligently complied with this obligation and conducted thorough inspections of employees' homes. The employer must be aware of the exact place of work for their employees in the case of remote work.

The current legal provisions are not very flexible, and it seems that employees are not allowed to switch their working places on a daily basis. Some employers have tried to rule that employees can only work in the city where the employer's office is located, which prevents employees from working from other cities for (in some cases) no obvious reason. However, while the employer reserves the right to call employees back to the office on short notice, it seems reasonable to acknowledge that employees must not be allowed to work in a place that prevents them from performing their work obligations. In some other cases employers ruled that employees can only work at their address as per their ID cards. In our opinion, this solution is not practical, as a large number of people do not have up-to-date information on their ID cards. Such requests that seem unreasonable to employees may cause unnecessary frustration.

Another challenge in respect to working from home is the distribution of increased costs for heating, electricity, internet and the like between the employer and the employee. Under the law, the employer has to bear all such costs and provide the necessary equipment. However, in some cases it is possible that parties agree that employees will use their private equipment (such as an internet router or printer).

Confidentiality is another important issue. Remote work poses additional challenges to the employer concerning the safekeeping of the employer's and its clients' confidential information. To mitigate such risks, employers should introduce additional requirements concerning information and equipment safety to prevent information leakages. As a final point, to the extent that remote work involves the movement of equipment that would otherwise remain in the office, it is also worth introducing equipment-handling manuals to prevent incidents.

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Reimagining work: the remote workplace

In the context of the COVID-19 global pandemic, many employers have begun asking their employees to work remotely. While some employers may have been well-equipped to implement this pre-COVID, this may be a novel concept for others. In both cases, employers should be aware of the various nuances of a remote workforce with a view to managing risk.

Developing a remote-work program

When developing remote-work programs, employers should be cognizant of the operational implications and underlying methodology when choosing which employees may work remotely. While certain jobs are more suited to working remotely, others must be done on-site. In addition, employers must be sure not to discriminate regarding which employees may work remotely on the basis of prohibited grounds (e.g., age, sex, family status), as set out under the applicable human rights codes.

Employers should consider implementing strategies to ensure that productivity and accountability are maintained with remote workers. For example, employers may implement instant messaging software, check in more regularly with subordinates, require employees to document tasks performed and provide work-from-home tools.

Remote-work rules

Employment standards are governed individually by each of Canada's 14 jurisdictions (10 provinces, 3 territories and federally in the case of federally regulated employers). In general, such employment standards continue to apply to employees regardless of whether they work on-site or remotely. That said, it may be more difficult for employers to monitor remote employees to ensure compliance with such standards. As a result, it is generally recommended to implement remote-work policies to help employers establish clear expectations with respect to things such as hours of work, breaks, vacation time, authorization for overtime and reporting work completed during overtime.

Required documentation

Employers may not make material unilateral changes to employees' employment agreements. If they do, an employee may resign and claim constructive dismissal. If a constructive dismissal claim is successful, the employee will be deemed to have been dismissed by the employer without cause, entitling them to a termination notice and severance. In some circumstances, an employer's requirement to have an employee work remotely when they were previously required to work from the employer's office may be interpreted as a material change. Therefore, employers should obtain employee consent, where possible, when requiring them to work remotely.

Security and confidentiality

With work now being done outside the office in many locations over many different internet networks, cybersecurity and general confidentiality should be top of mind. It is more likely that conference calls may be hacked, internet networks may be compromised, emails may be intercepted, etc. To mitigate some of these risks, employers could, among other actions, provide employee training sessions, implement network VPNs, restrict the use of unsecure networks and reassert the importance of confidentiality to remote workers.

Conclusion

While there are benefits to implementing a remote workforce for certain roles (particularly during this COVID era), care should be taken to ensure that operational inefficiencies, negative work-culture impacts and compliance risks are minimized.

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China Mainland



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Reimagining work: key remote working considerations, including confidentiality and privacy

Developing a remote-work program

There are no specific legal requirements about remote work under China laws for now. During the National People's Congress (NPC) and the Chinese People's Political Consultative Conference in May 2020, a member of the NPC suggested that a remote-work law should be drafted as soon as possible by drawing on the experience of telecommuting regulations formulated by most countries under the Organisation for Economic Co-operation and Development.

Remote-work rules – both implementation and monitoring

Since the outbreak of COVID-19, the Ministry of Human Resources and Social Security departments of China and local governments have issued certain general guidance on remote

work and flexible employment during the epidemic, without specific rules. Thus, the implementation will require either the democratic consultation procedures as below or individual agreements with each employee.

The role of unions, works council and employees For the formulation of the remote-work policy, according to China employment contract law, when enacting, revising or deciding upon policies and procedures for major issues that directly involve the vital interests of employees, such matters or policies must be presented for consultation to an assembly of employee representatives or all the employees by setting forth a proposal and opinion. Then, it is determined through mutual and equitable consultations with the trade union or employees' representatives.

If a trade union or employees find decisions on important matters or the implementation of policies and rules to be inappropriate, they are entitled to raise such concerns with the employer, and such policies must be revised by means of mutual consultation and agreement.

Moreover, employers must publicly display or advise those employees of their policies, rules and important decisions that directly involve employees' vital interests. The remote-work policy will, in general, involve the employees' working hours, working location and remuneration (if applicable), therefore the remote-work policy must also undergo the democratic procedures mentioned as above before it can become effective.

Required employment documentation

For amendments to the employee's working model, the employer and the employee must sign the amendment or supplementary agreement about the specific terms of remote work.

Key issues, such as privacy and confidentiality, monitoring working time, expense reimbursement to employees

The protection of privacy and confidentiality is a great challenge under the remote-working process to both the employer and the employee. Such matters and overall monitoring will be mainly subject to the remote-work policies or the agreements with the employee individually in the absence of the applicable laws.

Other key issues in China

China labor laws set out equal pay for equal work as a basic principle in labor remuneration within the same employer, thus an equal-treatment obligation and the same benefits for both remote workers and on-site workers are required.

No matter what type of working arrangement, it is the employer's legal obligation to provide labor protection, good working conditions and protections against occupational hazards for employees, which could be arranged via the policy or agreements with the employees.

Conclusion

Currently, there are no specific laws and regulations about remote working. In such circumstances, the onus of developing remote working will be on employers, who will need to communicate matters with employees and formulate remote-work policies.

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Reimagining work: key remote working considerations

Developing a remote-work program

When developing a remote-work program, it is important to define the following aspects:

1. Employees who can work remotely, considering their position and functions
2. Legal obligations and rights concerning remote work when developing the program (internal and external)
3. Costs and necessary tools for the implementation.

Remote-work rules

In Colombia, according to Law 1221 of 2008 and Decree 884 of 2012 (Telework Rules), there are three forms of telework:

Supplementary: employees alternate their tasks on different days of the week between the office and another fixed place, using technology. It is understood that they telework at least two days a week.

This form of telework is the only one that is currently regulated.

Autonomous: independent workers or employees use technology to carry out their tasks, executing them from anywhere.

Mobile: workers use mobile devices to carry out their activities without a specific place to perform them.

In the only regulated form of teleworking (Supplementary Telework), the employer

must inform the Labor Risks Administrator (ARL) about its implementation, and the ARL representative must work hand in hand with the team responsible for the Employer's Health and Safety Management System (SG-SST) so that all occupational health and safety measures are complied with.

Likewise, the employer must provide and guarantee all the working tools, including connectivity, software and power. Bear in mind that telework does not affect the employees' labor, social security and union rights.

Due to COVID-19, the Government is letting companies allow their employees to work from home without following the parameters established by the existing Telework Rules. However, this is a temporary measure.

There is a bill in Congress that aims to regulate the modalities of telework and home offices in a more complete and precise way.

Required employment documentation

According to the Telework Rules, the telework contract must comply with the same requirements of any written employment contract, and specifically it must indicate:

1. Service conditions, including time and location (if possible) and the required technological and environmental means to execute it
2. Days and hours in which the teleworker will carry out his activities
3. Obligations regarding the custody and return of working tools
4. Cybersecurity measures that the teleworker must know and comply with

If there is an existing employment relationship and the parties, by mutual consent, opt for teleworking, the written agreement must contain at least the aforementioned elements.

In addition to the telework contract or written agreement, the employer must align its internal working rules, policies and the SG-SST accordingly.

Key issues

The Ministry of Information, Technologies and Communications and the Ministry of Labor, in alliance with the Corporation Colombia Digital, published *the White Book: the ABC of Teleworking in Colombia*. This book highlights telework key issues and suggests that contracts and internal working rules should regulate or define the parties' general rights and obligations, the coordination and

evaluation body of the telework program, the way and criteria for measuring work and results, the communication channels, the technological platforms and support, privacy and confidentiality rights and obligations, training programs, the coverage of expenses by the employer, occupational health and safety matters, claims, procedures and the individuals to whom they must be presented, among other aspects.

Specific roles

Once the management has decided to implement the teleworking model, the White Book recommends the creation of a team that leads and coordinates the process, which should include representatives from the areas of human resources, finance, technology and cybersecurity, legal, SG-SST and the union (if applicable).

The employer must ensure the compliance of telework, Social Security and labor regulations and must provide all the teleworking tools for employees to carry out their defined activities. The employee must be clear about his rights and obligations and comply with them.

Among the different issues that are negotiated in the framework of a union in which there are teleworkers, it is common to see those related to wages, working hours, vacations, training and extralegal benefits.

It is advisable to ensure that employees and unions are informed about the status of the telework implementation, its advantages and the employer's actions to improve the model. Opening communication channels to share experiences and ideas is also a suggested practice.

Conclusion

Despite the difficulties that implementing a remote-work program may represent, there are many advantages in terms of costs, people and quality of life. In Colombia, the existing rules on remote work are not very specialized or adapted to the new reality of labor relations. It is essential that employers who are willing to implement a remote-work program create their own mechanisms of development, implementation and control of this new form of work, following the guidelines of current regulations but not be limited to them.

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Costa Rica



Laura Navarrete Hernández

Key remote work considerations

Since 30 September 2019, the law that regulates remote work, Law No. 9738, came into force in Costa Rica, and it is applicable to both the private and public sector.

However, one of the changes that the current pandemic has brought on is the applicability of remote work on a more general and permanent basis.

On one hand, the employers that already implemented it increased their number of remote-work days or the list of positions that may access such modality of work. On the other hand, the ones that did not have policies in place and did not apply it before the pandemic have been forced to adapt more rapidly and implement at least the possibility of working remotely for certain key positions.

Remote work helps to guarantee the continuity of an employer's business and to safeguard the employees' health in the context of a pandemic. It may reduce operative costs and assist in control of the pandemic, as it reduces the need to use transportation and use paper. Therefore, it is also environmentally friendly, which is especially key to build a more sustainable future.

Regulation of remote work in Costa Rica

Currently in Costa Rica and during the national emergency due to COVID-19, working remotely has flourished in the private sector, even though it is not mandatory.

The law that regulates remote work in Costa Rica establishes the main requirements for this modality of work to be applied. Please find below the most important aspects to consider for remote work: it is voluntary for the employer and the employee, so if the relationship is already in place, remote work has to be agreed upon by both parties. Based on the above, an agreement or just an addendum that documents how the modality will be implemented it is key, particularly because, in Costa Rica, the employer has the burden of the proof if an employee files a claim.

Considering these legal provisions, it is recommended that this agreement between parties to work remotely should be governed by a framework regulation, created internally, to regulate certain conditions. One of the main issues to be regulated is the provision of work tools and who will provide them. If it is not agreed upon by the parties, the employer will have the obligation. However, parties may distribute this obligation as they please.

Also, it is key that the organization continues to monitor employees in a way that does not breach their privacy. The verification that employees are compliant with internal regulations and that they continue to work their full shift is essential to ensure the company's operation continuity. Additionally, having clear rules will lower overtime claims.

Likewise, this last aspect is very important in order to avoid the "burnout" syndrome, which consists of chronic fatigue generated by work stress.

The above-mentioned law does not regulate the right to disconnect, which is currently under discussion by bill No. 22,230.

Data protection and confidentiality

According to the "Law of protection of the person against the treatment of his personal data," Law No. 8968, when dealing with personal data, no database should be generated and if so, it should be anonymized. The purpose of this is to make sure, in cases where information is leaked, it does not harm the dignity of workers and expose their addresses, ages and other personal data. As an organization, it takes a significant amount of responsibility for storing that type of information.

In conclusion, remote work is here to stay. It will be part of the new reality. To maintain it as a permanent practice over time, it is key to digitize processes, define new benefits and tools that help increase staff productivity, define adequate forms of monitoring and controlling work performance remotely, safeguard confidentiality, ensure that the connection between team members is maintained, avoid hazards when working from home, and protect employees' fundamental rights (data privacy, among others).

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Cyprus



Charalambos Prountzos

Reimagining work: key remote working considerations, including confidentiality and privacy

The recent spike of coronavirus cases has justifiably led to discussion of a second wave outbreak. Have employers prepared for such an event? Are employers ready to take on the effects of a second wave and adequately manage their businesses?

Developing a remote-work program

Depending on the nature of work, there were cases where remote working during the first wave of coronavirus was more efficient than expected, but also there were cases where remote working was not applicable or inefficient. In any case, businesses had to be proactive and take measures to implement a “remote work program” in the event that this was deemed necessary, and which indeed it has.

Although there is no legal requirement, the processes of developing a remote work program should involve all interested parties, i.e., the employer, employee and the trade unions or work councils (if applicable) in order to adopt a coherent and successful remote-work model.

Remote-work rules – both implementation and monitoring

Assisting employees in enhancing the remote-work environment is key to having a successful remote work program. Therefore, remote-working rules should be clearly explained to employees by adopting a remote-work handbook and, where feasible, providing adequate training, both to standard employees and managers.

From an employer perspective, managers face a new challenge relating to the monitoring of their team. Examples of monitoring employees include, but are not limited to, setting a daily call with employees, either with the team or in one-on-one calls, depending on the nature of work. Employers should also consider providing “richer” technology, such as video conferencing.

The role of unions, works council and employees

The unions or work councils are the voice of employees and thus have a significant position in the remote-work program.

However, in smaller businesses or where there are no unions or work councils in place, employees, if necessary, should contact the HR department.

Key issues

Remote work programs should also be examined under the umbrella of GDPR legislation.

Conclusion

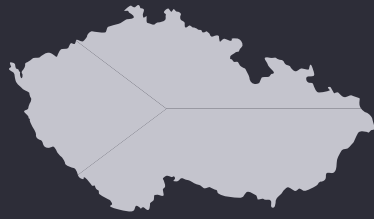
Adjusting to the needs of the current era and particularly to measures to help avoid the spread of coronavirus is imperative for the survival of businesses.

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Czech Rep



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Reimagining work: key remote working considerations

Czech law basically does not regulate remote work. This has proven to be both a plus and a problem for most Czech employers, who had to completely rearrange their workforce in the COVID-19 months.

The Labor Code provides only for some exemptions from the general rules of working time, overtime or holiday allowances, and impediments to work with regard to employees who agreed with the employer on work outside of the employer's workplaces.

Most employers who still need their remote workforce available during set (more or less flexible) working hours are left to comply with all Labor Code regulations, without any clear guidelines as to how to ensure this in a remote-work environment.

Developing and implementing a remote-work program

One important note to start with: employees cannot be forced to work remotely. An employee can prevent the implementation of remote work personally without having to state any grounds. As a result, Czech employers must be very careful with their decisions on office-space lease cancellations.

Generally, the first step when implementing remote work is to review relevant employment documentation – what is contained in employment contracts as regards to place of work, whether employees live within or outside the agreed place of work, and whether some rules relating to home-office or remote work in general are already in place. And, of course, mapping employees' willingness to work remotely is essential.

Required employment documentation

Employers usually issue a remote-work policy (internal regulation), setting out rules for remote work and related employee obligations. A very important part of this policy is health and safety at work so that potential work-related injuries and related employer liability is minimized.

It is recommended to sign a remote-work agreement with each eligible employee in which the employee will also agree to comply with the remote-work policy.

Where the contents of the employment contract, such as place of work, are affected by the change to remote work, an amendment to the employment contract must be included in the remote-work agreement.

The role of unions and works councils

As a general rule, measures affecting a higher number of employees require prior communication to employee representatives (trade unions or work councils) and consultation with them. If the employer decides to implement remote work and it shall affect a higher number of employees, those consultation obligations must be fulfilled.

Where there is a trade union active in the place of business, the remote-work policy can only be issued with prior consent of the trade union.

Key issues

There are no legal guidelines regarding privacy and confidentiality. It is thus very important to carefully regulate these matters in an agreement with employees. It is the employer's obligation to monitor working hours of employees who work remotely. Electronic monitoring of employee activity is subject to strict rules of privacy protection.

If there are additional costs arising from remote work proven by the employee, such as for utilities or equipment, the employer is obliged to compensate such costs. The current legislation does not allow for lump-sum compensation. Any compensation must be reviewed from a tax perspective.

Must-do advice for employers

To avoid additional costs (e.g., on travel allowances) and legal, tax, social security, health insurance issues, employers should limit the places from which employees are allowed to perform work remotely. Special caution must be exercised in the case of any remote work from abroad.

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Denmark



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Reimagining work: key remote working considerations, including confidentiality and privacy

When setting up a remote-work program in Denmark there are a lot of factors to include in the preliminary considerations. This article focuses on the main legal areas that an employer should be aware of.

Setting up a remote-work program

When hiring new employees, the remote work should be agreed upon as a part of the employment contract terms.

If the remote-work program requires existing employees to begin to work from home or other remote places, it can be a material change in the employee's employment terms. If it is a material change (this must always be assessed in each individual case), the employer must give notice. The notice must be the employee's individual notice in accordance with the employment contract, and the changes cannot enter into force before the notice period has run out unless the employee accepts the change with immediately effect. Employees can choose not to accept the material change and regard themselves as being terminated from the contract with the specific consequences

of a termination, such as compensation, for unfair termination. If the employee accepts the change, the employment contract must be updated accordingly or an amendment to the existing employment contract must be made.

Working environment

It is the employer's duty to ensure that work from home or other remote places can take place in accordance with the Danish workplace health and safety regulation. Therefore, if the work from home takes place on a regularly basis (one day per week or more), the employer must ensure that the home office has remote-work equipment, which includes an ergonomic chair and a screen that is separated from the keyboard.

The employee can lodge a complaint to the Danish Working Environment Authority if the employer does not observe the rules, and the Danish Working Environment Authority can – even without a complaint from the employee – impose fines on the employer if the authority performs an inspection and the employer has not followed the rules.

Accidents that take place during remote work

If an employee works from home and gets injured while working, it may be a job-related injury covered by the Danish Protection Against the Consequences of Industrial Injuries Act. The crucial factor will be if the injury happened due to circumstances the employer could have had influence on or if the injury happened due to the employee's own furnishing or organization of the home office. If an employee, for instance, gets injured because he or she falls over a bike in the driveway, it will not be covered by the law as this is a circumstance on which the employer could not have influence. As another example, an employee will not be covered if an incident happens while he or she runs private errands while working from home, e.g., grocery shopping.

The role of unions, works council and employees

In Denmark we do not have a system of generally binding collective bargaining agreements (CBAs). Therefore, it must be assessed whether the employer is bound by

a CBA or not. In addition, it must be assessed whether the CBA states any duty to inform and consult the union.

A CBA might state the duty to inform and consult employees. If the employer is not bound by such, the Danish Act on Information and Consultation of Employees requires the management of the company to inform the elected employee representatives prior to the implementation. This act applies if the employer employs more than 35 workers.

The purpose of this duty to inform is to enable the employee representatives of a company to form their own opinion on implementation on remote work and consult with management to understand the impact of remote work on employees.

The consultation under the Danish Act on Information and Consultation must take place so that the employee representatives have time to meet with the employer and discuss the implementation.

Reimbursement of expenses

There is no regulation in the area of expense reimbursement. However, this does not exclude the employer from offering reimbursement of expenses in relation to remote work, such as electricity bills.

The employer should be aware of whether the reimbursement is taxable or not. As an example, reimbursement of expenses to an alarm device will be taxable under Danish taxation laws even though the alarm is set up to protect the employer's property (computer, screen, etc.) from being stolen from the employee's house.

Privacy issues

Under the Danish GDPR regulation, the employer is obligated to inform employees of their obligation to ensure data privacy when working from home or other remote places.

The employer is also obligated to ensure sufficient privacy security measures that enable employees to work under sufficient organizational and technical privacy measures, e.g., VPN, passwords and screen locks. Overall, the general GDPR regulation must be followed.

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Finland



Maiju Kurvi

Reimagining work: key remote working considerations in Finland

Developing a remote-work program

Due to the Finnish Government's recommendations to work remotely whenever possible, remote work is currently one of the most topical working-life subjects.

Remote working is voluntary and is based on the employer's and the employee's consensus. Remote work may be done based on a separate agreement or the company's general remote-work program – typically depending on whether employees work remotely full-time, on a regular basis or only occasionally.

Basically, all rights and responsibilities in an employment relationship applies while working remotely. In order to make the rules and responsibilities clear to everyone at the workplace, attention should be paid to drawing up and implementing a remote-work program

in cooperation with employees, covering the rules and best practices of working outside the regular place of work.

Remote work rules and documentation

The main topics to be covered in a Remote-work program should particularly include provisions related to the monitoring of working hours and the employees' performance, communication between employees and the employer, and data protection and securing privacy outside the office, as well as matters related to work safety and well-being and arranging working facilities and equipment.

Remote-work programs and any agreements on remote working should be made in writing, and employee-specific remote-work agreements are to be concluded with the individual employees.

The employer must also ensure that special features and health hazards in remote work must be included in the employer's occupational health and safety assessment.

Further, proper implementation of the rules plays an important role in the management of successful remote working. It should be ensured that both parties are aware of their obligations and any special features related to working remotely. For example, the coverage of the employer's statutory accident insurance is rather limited outside the workplace and may come as a surprise to the parties.

The role of cooperation

The principles for remote working are among the topics to be handled in a cooperation procedure under the Finnish Act on Co-Operation within Undertakings (334/2007). Before introducing the principles or the company's remote-work program, the employer must negotiate

in good cooperation with the employees' representatives of the objectives, purposes and effects of the remote-working principles.

Privacy and confidentiality

Privacy and confidentiality matters must be taken into consideration in the remote-working rules and practices as there are notable risks related to processing confidential data outside the workplace. It is advised to create firm practices for the protection of the company's and its clients' confidential information. While working from home, or especially from public spaces, employees must put special attention to ensure that they do not disclose business secrets or other confidential information to any third parties, including family members.

Going forward

During the past months, employees and employers have had to adopt new ways of working. In one way or another, remote working has come to stay, and companies need to ensure that the rules and practices of remote working are being updated and implemented properly for the workforce's functionality in the changing environment.

After several months of working remotely, employees and employers have gained valuable insight on best practices. Now is a good time to review and update the company's remote-working program or principles in cooperation with employees and their representatives.

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France



Roselyn Sands

The rise of remote working: one of the most important HR challenges for companies in France

As for many countries worldwide, the current COVID-19 crisis has generated the development of remote working (teleworking) in France. More than half of employees worked from home during the past lockdown, and this working modality has even been recently promoted again by the Government as a key measure to contain the second wave of contaminations impacting Europe.

Several options for its implementation

The French labor code offers companies several options to implement teleworking.

As early as 2017, the legislator had facilitated the use of a home office in the event of a pandemic. Due to exceptional circumstances, in particular the threat of an epidemic or a force majeure, teleworking can be implemented without formality as it is considered as a “workstation adjustment” made necessary to allow the continuity of the company’s activities and to guarantee the protection of employees.

Apart from these exceptional circumstances, remote working can be implemented by concluding either an in-house agreement at the company level with representative union delegates or establishing a policy (“a charter”) after having obtained the formal opinion of the works council. Whatever its legal source, such a document must contain several mandatory clauses, such as the determination of eligible employees, the monitoring of the employee’s working time and the determination of time windows during which the company can contact the employee.

As soon as the employee complies with the eligibility criteria, the provisions of the agreement or policy are immediately part of the employee’s employment contract. In exchange, any refusal from the company must be justified.

Alternatively, in the absence of internal provisions on teleworking, the company can enter into a direct agreement with each employee. This can be done by any means, such as via an exchange of emails.

Key issues to address

What are the key issues an organization must address before implementing remote working?

- ▶ The necessary clarification of the work equipment (IT tools, printers, etc.) used by the employee to perform duties and the reimbursement of the employee’s professional expenses
- ▶ Ensuring the good integration of the employee within the company’s organization. In this respect, the employee must benefit from the same rights as the ones of every employee working physically within the premises of the company. It is very important to ensure that the employee complies with the working-time regulations while working from home.

Moreover, the company must be very careful about the reality of the employee’s working conditions since:

- ▶ The employee’s private life must be preserved. As for all employees, if any monitoring system is used by the company, it is subject to the employee’s prior information and to the consultation of the works council.
- ▶ The prevention of mental health issues is also key, particularly due to the risk of abuse in the use of IT tools. The right to disconnect must also be handled upstream.
- ▶ Any accident occurring at the employee’s home during professional time is deemed as a work injury.

Finally, it is important to establish under which conditions the company, the works council or the administrative bodies can access the employee’s home to exercise their respective prerogatives.

These visits are subject to the prior agreement of the employee.

Best practice

Despite the apparent flexibility in the use of remote working in France, it is key for companies to establish clear regulations, either at the company or individual level, to mitigate the very specific risks relating to the working conditions of this population.

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Georgia



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Labor and employment law strategic global topics

Developing a remote-work program

According to the recommendations related to the new infection (COVID-19) issued by the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, the country has developed a program suggesting to reduce contact between employees at the workplace, as well as between employees and customers. It is believed that, by introducing a remote-working system, employees can minimize the risks of spread of the virus. The rules of remote work differ according to specific sectors, however, the general recommendations apply to all businesses and are considered to include basic rules of safety.

For example, some institutions have adopted the practice of a two-week period of homestay shifts to reduce the total number of employees being present at the facility.

Remote-work rules

According to the previously mentioned general recommendations, employers should ensure that they implement a flexible work schedule to develop a sufficient working environment at the workplace during uncertain times, such as the COVID-19 pandemic. Further, they should implement measures reducing physical contact, such as working via phone from home, the organization of drive-through spots to receive services distantly and providing policies about working schedule, sick leave, etc. The policies must be in compliance with the guidelines laid down by the public health authorities, however, employers have certain flexibility related to the content of those policies. An employer must make sure that the information is sufficiently provided to employees and they understand the importance of following those policies. One of the feasible ways to do so is to conduct trainings.

To make sure the remote-work rules are implemented, employers are expected to monitor processes at the workplace.

Required employment documentation

As a general rule, an employee, upon return to the office, is required to disclose any information regarding possible contact with the virus (including contact with infected people and visiting places with high risk of contagion). If employees have been in contact with the virus within the last 14 days, they may be required to take a PCR test.

Key issues

Employers are requested to balance interests of infected and non-infected employees and to decide time and means of disclosure of health-related information to others.

In terms of monitoring work performance, the respective authorities deem that setting up deadlines, requesting production of daily or weekly reports, and conducting online meetings are best practices. In addition, such means guarantee the protection of employee personal data while working from home.

As for expenses, the general rule applies, according to which employers are required to reimburse all work-related expenses to employees.

The state authorities pay particular attention to enforcement issues of the provided recommendations. In case of breach, employers may be fined or their activities may be suspended before the rectification of deficiencies.

Conclusion

The spread of the virus has become the triggering point for employees to switch to the new setting, which is a remote-working system. The practice has proven that it can be just as effective in various areas, both in private and state sectors, for work.

Adjusting to the new reality will further open additional opportunities for advancing remote-working ways in Georgia and will increase the need for smart solutions to balance the interests of employees and employers.

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Legal framework for remote work

Legal basis

Employees do not have a legal claim or a legal obligation to work remotely. Therefore, it is essential to provide a legal basis to implement remote work. If remote work should be implemented for an unlimited period of time, this cannot be done unilaterally by the employer's right of instruction. Common legal bases are supplements to the employment contract, works council agreements and less often collective bargaining agreements. However, a unilateral implementation remains possible for a limited period of time in special situations, such as a pandemic.

Co-determination rights of works councils

The implementation of software or tools that enable employees to work remotely is most likely subject to the co-determination of works councils.

This means, as long as the employer and the works council haven't agreed on the implementation and application of a specific software or tool, the works council can obtain a prohibition of the use of these new tools. In addition, works councils have further co-determination rights with regard to health and safety measures and the allocation of employees to the home-office.

Health and safety obligations

According to German health and safety regulations, in particular a risk assessment must be made and instructions must be given to employees regarding the risks of remote work and how to minimize or avoid them. It is very controversial what employers specifically need to do to comply with health and safety obligations (e.g., access to the home-office or use of a questionnaire to review the health and safety situation in the home-office). However, in general it can be said that less strict health and safety requirements apply if employees can independently choose their workplace and are not bound to a specific domestic location.

Further legal obligations

Apart from safety and health obligations, employers must ensure confidentiality and privacy. Employers remain obliged to take technical and organizational measures to ensure data security. In addition, employers are obliged to ensure compliance with the Working Time Act, which applies for remote work as well.

Costs for work equipment

In principle, employers must provide all necessary work equipment. If employees are allowed to use their own work equipment, they are generally entitled to reimbursement of these expenses. However, such a claim

for reimbursement of expenses is disposable, meaning it can be agreed that a lump sum will be paid. In addition, according to German jurisdiction, such a reimbursement claim does not apply if remote work is in the predominant interest of employees (e.g., there is still a workplace in the office for employees and employees are working remotely on a voluntary basis).

Conclusion

Since the COVID-19 crisis began, a lot of good and new ideas have been coming out to leverage the benefits of remote work. However, these new ideas must comply with the legal framework for remote work. Therefore, it is crucial to have the legal framework in mind at an early stage to be readily compliant.

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Reimagining work: key remote working considerations, confidentiality and privacy

Developing a remote-work program

Seeking a win-win in normal times is hard enough, and the COVID-19 crisis exponentially elevates the challenges in the workplace. Developing a remote-work program, given the market and human impact, requires a thoughtful response to both business and employee needs to maximize employee potential and achieve cost savings. The key questions related to the topic are:

- **What is possible?** What is the total number of employees that are allowed or can be accommodated in physical locations?
- **What is critical?** Which of our employees would we prioritize in terms of working in a safe workplace, i.e., who do we most need to work at a location?
- **What is safe, feasible and preferred?** Which of our employees should not physically work at the office, regardless of what is possible or critical?

Remote-work rules

While this article is under publication, the Greek Government is elaborating a new draft bill for teleworking rules to address the new challenges of the future of workplaces (such as health and safety issues and monitoring of working hours). The current framework is ruled by Law 3846/2010, which stipulates that teleworking may not be imposed unilaterally and that the employer bears the cost to compensate the employee for all expenses arising from the use of telecommunications and other technical equipment, including equipment belonging to the employee.

The employer is obliged to communicate within eight days from the commencement of the teleworking agreement, in writing, to the employee all the information related to the execution of his or her working tasks and duties.

Apart from the above, in view of the pandemic, the Greek Government introduced as extra measures a) the ability of the employer to unilaterally impose a teleworking model to its employees, b) the obligation of employers who employ white-collar personnel in regions that face red-alert COVID-19 risks to place 40% of them under a teleworking system, and c) the obligation of employers to seek a teleworking environment for employees with high-risk health profiles.

The role of employee representatives

Social dialogue and the role of employee representatives are crucial for the evolution of the teleworking agenda. The first relevant rules were introduced through the National Collective Labor Agreement for the years 2006 to 2007. The Greek Confederation for Workers, through its 2020 annual report, suggested that teleworking should be further regulated to ensure a positive employee environment.

The position of the Greek Data Protection Authority

The Greek Data Protection Authority issued guidelines encouraging employers to support teleworking, but at the same time, to take all necessary measures to protect employees' privacy.

Health and safety

The employer's responsibility toward its teleworkers includes the obligation to provide them with all the available information about the company's health and safety policy. To verify the correct application of health and safety provisions, both the employer, employee representatives and the competent labor authorities may have access to the place where teleworking is provided (Article 8 of the National Collective Labor Agreement 2006-2007 related to teleworkers).

If services are provided from a private residence, then the above is subject to employees' prior notice and consent.

Conclusion

While the current Greek legal environment addresses basic teleworking issues, the new draft bill creates high expectations to assist companies in strengthening their resilience in view of the current unpredictable circumstances.

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Honduras



Andrés Lacayo Rodríguez

Reimagining work

Remote-work programs

As time passes by, countries around the world are still struggling with the COVID-19 pandemic, and Honduras is no exception.

Honduras has no specific home-office law that regulates the relationship between an employee and employer. However, as we stated in the past, there is an article from a decree that mentions the home office as a possibility to deliver work. This not only applies to private companies but public employees as well.

Honduran law defines the home office or working from home as an activity that is done outside the facilities of the contracting company, relying on information and communication technologies for the development of the work.

Developing a remote-work program with rules

Companies in Honduras can develop specific remote work-from-home programs; there is no law that prohibits such a program. However, employers must comply with the provisions stated in the Honduran Labor Code. To mention some of those obligations or provisions, employers must define and document the employee's salary, working hours, vacations, holidays and other sanctioned days off.

There must be a written contract, which mentions working from home as an option. This contract must be based according to our law and new biosafety measures. It is also very important that if the company has an internal regulation, such regulation must be modified according to the new reality, which of course includes remote-work programs.

The role of unions, works councils and employees

The role of unions in Honduras has not changed, since the Honduran Labor Ministry remains closed for most of the processes. However, once the Labor Ministry reopens its offices, we have no doubt that union workers will have several complaints due to pandemic. Many employees have been separated or suspended from their jobs. In general, the outlook for workers is uncertain, not only for those who are members of a union, but for those who are not. The capacity of the authority will be tested today more than ever, since we foresee a historical number of labor claims in the face of the large number of labor-rights violations that have taken place, using the excuse of the pandemic.

Required employment documentation

It is essential that companies keep all the agreements they have reached with their employees, including flexibility measures in light of the pandemic, as well as those documents that prove the validity and legality of the decisions that have led to labor suspensions or terminations. Not having this documentation creates a high risk for employers and exposes them to sanctions by the labor authority; the outcome would be a significant economic impact caused by violations of Honduran labor regulations, aggravating the company's situation.

Key issues, such as privacy and confidentiality, monitoring working time and expense reimbursement to employees

The reality is that we live in a historic moment, work has invaded our homes, and companies must redouble their efforts to protect customer information that is, now more than ever, outside the confines of the workplace and in the home of each employee. Today investing in cybersecurity seems less an extra expense and more the right way

to protect customer information and the business itself. On one hand, employees have the task of protecting client information, attending to the recommendations of the company and following the right established protocols. At the end of the day a mutual commitment is the main guarantee to maintain the security and confidentiality of the information.

On the other hand, one of the most important challenges for companies is to effectively monitor working time. Companies have implemented different platforms or applications to try to register the effective working time of their employees now at the home office. However, the effectiveness of these apps is difficult to determine. In this sense, there are two circumstances: the employers need to know how much time the employee works, but then the employee is tied to work even more than when he or she is at the office. The formula is simple: the employee commits himself to fulfill his schedule, and the employer understands that by being at home, the employee does not have the obligation to be available 24/7. Here, the intervention of the authority will be important by collaborating with employers and employees. The scope of protection of the Labor Ministry will be fundamental to protect and preserve the rights of employees and employers.

Honduras has a major challenge to guarantee workers the protection of their fundamental rights. Today more than ever the labor sector requires the protection of the state and its laws. Reality cannot be hidden. Only little by little have the conditions of the home office been regulated; employers and employees do not have clear rules.

Employers must adapt as quickly as possible to the new normal. One recommendation is to do a complete analysis of the home office as an opportunity to reduce costs, and not as a drop-in production.

Our advice for employers is to create a remote-work program with the same rights and obligations that the Honduran Labor Code already establishes – with the same work schedule, salary basis, vacations and holidays.

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Gábor Jagicza

Remote work in Hungary – new regulation in the making

Current legal background of remote work

The Hungarian Labor Code regulates “remote work” as an atypical form of employment. It is agreed in an employment contract, according to which the employee must work on a regular basis at a place other than the employer’s facilities, using computing equipment and delivering the results of work by electronic means. Yet the labor code does not expressly regulate the matter of when employees must work at the premises of the employer or may often (or during certain periods) work at home (either at the employer’s initiative or based on the employer’s unilateral instruction).

It is understood that the employee may be obliged to perform work from his or her home if such is agreed in the employment agreement, or if the employer does this unilaterally using the legal concept of “employment deviating

from the employment contract” (which is maximized at 44 working days per calendar year). However, it is less clear what rules apply to working at home: for example, whether (i) all or some of the rules of “remote work” (such as the specific obligations of the employer to establish a safe work environment in the employee’s home, set forth in Act No. 93 of 1993 on the Work Safety Act) must apply to home-office work, or (ii) the employer may regulate home-office work in internal policies at its own discretion (limited practically by the rules concerning employers’ policies in the labor code).

Confidentiality aspects

An obvious interest of the employer is to prevent any business secret or other delicate data to be disclosed (even unintentionally). Accordingly, the employer may instruct the employee about the exact storage method of the work equipment outside working hours (i.e., closable storage unit). Also, it is highly recommended to give instructions to the employee regarding any copying of data and the storage of data – these regulations may be subject to internal policies of the employer.

Importance of health and safety

Although it is not clear if the occupational-safety rules of remote work are applicable in the case of a home office, according to our approach, these requirements should be met in order to avoid any legal dispute. It must be emphasized that if the employee suffers an accident in his or her home in connection with working, it is considered as an occupational accident.

The home-office area of the employee must be sufficient for working purposes and from an occupational health and safety point of view, which the employer must validate beforehand, along with the preparation of a risk assessment.

The validation process may be performed in person, but it also can be carried out by photography taken by the employee. If the validation is carried out in person, the validation process cannot unnecessarily disturb the employee or persons living with the employee.

Re-regulation on its way

On 20 July 2020, the Government announced its plan to comprehensively amend the regulation of remote work and home-office work, for which purpose they began discussions with key economic operators. The announcement also contains the main subjects of the proposed amendment, such as the extension of the characterization of remote work, a redefinition of the agreement between the employer and the employee regarding remote work, an aim to assert the interests of both parties, an intention to provide the employee with the right to choose the place of work (if health and safety requirements are met), and making it possible to choose remote work for only part of the usual working days, based on agreement of the parties. It is predicted that the amendments will be debated and voted on by the Hungarian Parliament in the autumn of 2020.

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Reimagining work: key remote working considerations, including confidentiality and privacy

Continuing impact of the COVID-19 pandemic has caused many employers to move to a remote-work environment for their employees to ensure their safety and health. While a few industries were familiar with remote working, the current pandemic has also caused industries that traditionally required employees to work on-site to switch to remote working. While most organizations were quick to adapt to this new style of working, which provides unique opportunities, it has come with its own set of challenges.

Developing a remote-work-program

The concept of remote working, which was not promoted pre-COVID-19, is now becoming the new normal. It is essential that employers develop a detailed remote-work program to safeguard and align mutual interests. A critical element of the remote-work program is to develop an effective remote-working policy to address the various scenarios arising out of it, e.g., hours of work, technology requirements, confidentiality and leaves. Employees must also understand that other policies as applicable on regular

working continue to apply for remote work, e.g., reimbursements, anti-harassment and monitoring. Employers must provide necessary tools for employees to do remote work with ease and without compromising data security and confidentiality obligations. Remote-work programs must focus on work-life balance and encourage non-work-related interactions to develop the feeling of social bonding and avoid instances of employees feeling isolated.

Remote-work rules – Implementation and monitoring

Employers must adopt effective tools for implementing and monitoring compliance with the remote-working policy. Some employers have created a time-based log-in system to ensure that employees are at work during the designated working hours. Employers must provide complete transparency to the employee regarding the scope of monitoring as well as the employer's expectations from the employee to avoid any issues surrounding privacy, data collection, etc. Employers may also offer allowances for procuring necessary infrastructure

The role of unions, works council, employees

Employers must, prior to implementing the remote-work rules, ensure that advance notification is given to all relevant employees. The law requires 21 days of advance notice in the case of changing service conditions for workers. Also, while employee consent for implementing remote work is not necessary, it is advisable to seek employees' written consent, especially if any monitoring mechanism is to be implemented.

Similarly, while approval of trade unions and work committees is not necessary prior to implementing remote working, it is advisable to see the terms of any settlement or other arrangements existing with such unions to ensure compliance with the same.

Key Issues

Health and safety: Indian laws impose a duty on employers to ensure health and safety of employees at the workplace. Employer compensation liabilities arise for injury or accident to an employee during the course of employment. While employees are working from home, it may be determined that the employer would continue to be liable for any accident that may arise with the employee during the course of employment. Adequate guidance as to the health and safety of the employees must be provided.

Confidentiality and information security: Employers are legally bound to protect all sensitive personal data stored on their computer resources. Further, employers may also be contractually bound to third parties by confidentiality obligations. Accordingly, employers must ensure adequate confidentiality and that data-protection obligations are imposed on employees under the employment agreement, remote-work policy etc. Further, a robust information technology system must be in place with the necessary safeguards.

Conclusion

While the world battles a one-of-its-kind scenario in the form of COVID-19, it is imperative for employers to ensure that they take all necessary steps to create a happy and healthy work environment for its employees while they work remotely. This must be accompanied by the development of necessary technology infrastructure and remote-work guidelines to ensure that employees remain productive while complying with employer's policies and achieve individual as well as organizational professional goals.

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Italy



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Remote working and smart working in Italy

In Italy, working performance outside the workplace is governed by two different types of organizations for the work activity: remote working and smart working.

The first, remote working (in Italy it is also known as “teleworking”) has been introduced with the Interconfederal Agreement of June 2004, with Article 1 defining teleworking as a form of organization or performance of work using information technology in the context of an employment relationship, where work, which could also be carried out at the company’s premises, is regularly carried out outside the company’s premises.

The other type, smart working (also known as agile work), indicates a flexible way of working – both in time and in place – recently implemented with Law no. 81/2017. It is an alternative way to perform work activities: in this case, the contractual working place is the office, but employees sometimes perform their

activities from home or other authorized places, with the use of technological tools and an agreement between the parties and a specific company policy.

Main features and implementation

The main difference between teleworking and smart working lies in the fact that with the second one, employees are not obliged to “tie” themselves to a fixed physical place to work when outside from the office: the activity can be carried out in any place where they can bring a computer or other technological device that allows them to work remotely and there is a Wi-Fi connection (with the limitations usually set by the employer in the company policy).

Concerning the implementation in both cases, it is the result of a voluntary choice made by the employer and employee: in the case of remote working, it is usually included in the initial employment contract or it results from a subsequent commitment made voluntarily; smart working, in turn, is set up with a written agreement between the parties and a company policy, which governs the performance of the service outside the company premises, the procedures for the exercise of managerial power by the employer, the rest periods, and the right to disconnection for the worker.

Therefore, the involvement of unions is not required, but it is possible in certain cases. As a general rule, both in the case of remote working and smart working, employees enjoy the same legal and contractual rights and benefits as those applicable to employees in comparable situations working on company premises.

According to the applicable regulations, both remote and smart workers manage the organization of their working time autonomously. In other words, with exception to the main rules related to health and safety, these employees are

not strictly subject to the provisions relating to daily breaks and maximum weekly duration, since their working time is determined by the workers themselves.

Last, as a rule, in the case of remote working, the employer is responsible for the supply, installation and maintenance of the tools necessary for regular teleworking and must compensate or cover the costs directly arising from the work, particularly those related to communication.

Similar agreements may be done for smart working. Moreover, some companies may allow employee reimbursement for expenses linked to the home office.

Conclusion

In Italy, recent events have forced employers to make extensive use of a hybrid form of remote work, which is neither purely smart working nor teleworking. Thus, in the near future a new regulation on remote work will be necessary to deal with new labor and social layouts.

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Remote work

How to implement remote work

To make it clear that an employee may be requested to work remotely from home, it is recommended to draw up an internal rule for remote work. The rule should be treated as a part of the rules of employment (shugyo kisoku), and so when drawing them up, statutory procedures to amend them are required (i.e., obtaining an opinion from relevant employees' representatives and filing the amended rules with relevant Labor Standards Inspection Office)..

Working hours management for remote work

Basically, the same rules apply to working at the office and working at home concerning work hours. An employer is, in principle, required to ascertain an employee's working hours on a daily basis by objective records, such as log-in data on his or her computer.

Remote work may work well with a flexible working-hour system. A flexible working hour system is a system where an employee can start and finish working on each scheduled working day flexibly, as long as he or she works a certain number of hours by the end of predetermined settlement period (e.g., each month).

A flexible working hour system allows an employee working at home to take work-life balance more efficiently.

Employee's cost for remote work

By implementing remote work, employees start bearing additional communication expenses and utility costs, as well as cost for IT equipment that had been borne by employer when the employee worked at office. Employers need to consider how to deal with this. This point is recommended to be made clear in advance and to be included in the internal rules for remote work. It is often seen that an employer pays an employee a fixed amount of allowance monthly (which is often called a "remote-work allowance") while employees pay communication expenses and utility costs themselves. At the same time, the employer may want to consider revising the commuting allowance, especially when it pays for a one-month (or longer) commuter pass for public transportation regularly, regardless of the actual amount of commuting during the month.

Harassment relating to remote work

Increased remote work has resulted in increased video conference calls in domestic settings. Employers need to pay attention to the possibility of harassment in this new situation. This includes reprimanding in front of other attendees and making careless requests or questions about the attendee's privacy (such as

a request to show one's living space). Employers are encouraged to provide sufficient training to employees to prevent this behavior from happening.

IT security relating to remote work

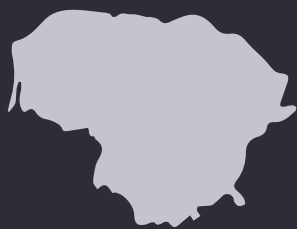
IT security is one of the important points to consider when implementing remotework. Regarding this point, the Ministry of Internal Affairs and Communications provided the Telework Security Guidelines, which show basic measures that should be taken and measures recommended to be taken.

Remote work and team work

Team leaders whose team members work remotely need to have skills to communicate well with one another using digital tools; they also should encourage group communication and provide timely feedback to them. Team members may wonder how they are evaluated in a remote-work setting. Employers need to establish a new working style to address this, in addition to paying attention to regulations.

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Remote work

Developing a remote-work program

Remote work was an unexpected challenge both employers and employees had to face and quickly implement. To ensure a smooth transition and avoid excessive tension in the workplace, developing a detailed remote program (with rules and guidelines) is key. What are the crucial elements of a quality remote-work program? First, the working time should be set so that the maximum working and minimum rest time requirements would not be breached. Also, the system of delegating tasks remotely should be specified, e.g., identifying employees who are responsible for providing tasks to others, the methods or means used for delegating the work, and the persons or departments employees must report to on the work performed. Additionally, the agreed means of remote communication between team members should be set. Moreover,

the remote-work rules should establish the requirements for setting up a healthy and safe new workplace at home or any other place outside the regular workplace. Last but not the least, the rules for using tools (personal or provided by the employer) required for work should also be set. It should be noted that depending on the nature of the work, the company's activities, employees' responsibilities, and more specific requirements for remote work could be regulated.

Implementing the remote-work rules

Under Lithuanian labor laws, remote-work rules may be prepared, adopted and amended solely by the employer. Nonetheless, it is extremely important to ensure that these rules are properly and clearly introduced (and easily accessible) to all employees. This could be simply done by using electronic means. In addition, employees should be notified each time the respective legislation or internal company laws change. Informing employees is a piece of cake, however, the complicate part of remote work is monitoring how the new rules work in practice. That is where the mutual trust between the employer and employees plays an important part. Additionally, time-reporting systems may be installed, and clear deadlines of each task should be set. However, communication and trust are still the bases that makes it actually work.

The role of the work council

It is obligatory to engage a work council (trade union) only when the rules of procedure and other key internal laws are adopted or amended (the labor law provides an exhaustive list of such internal documents). Although not specifically required by law, it is still recommended for employers to consult with the work council

while drafting the remote-work program to ensure that these rules properly reflect the needs of both the employer and employees.

Key issues

Remote-work rules should also cover confidentiality, data and cybersecurity – how employees should protect and use confidential data to ensure that it is not disclosed to third parties, how to securely connect to the wireless network, etc. Moreover, working remotely usually incurs additional expenses to the employee, such as utilities. Although these costs should be reimbursed to the employee under the agreement with the employer, it is not a common practice in Lithuania.

What to consider?

The new way of working rapidly changes the employee-employer relationship. Employees are entrusted with taking care of healthy work conditions, controlling the work-rest time and the workload. Having all these new responsibilities make employees seem more like service providers rather than employees working under the direct control of the employer. Additionally, as in most cases, since remote work incurs additional costs to the employee, companies should review their budgets. As less money is spent for maintaining the office and organizing office parties, etc., this money could be invested for new tools and equipment that make remote work more secure and comfortable, and therefore, more effective.

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Laurence Chatenier

Reimagining work: key remote working considerations, including confidentiality and privacy

Developing a remote-working program

In the early stages of the COVID-19 pandemic, many companies were taken aback by the suddenness of the Luxembourg Government's decision to go into lockdown. Companies scrambled, attempting to reorganize their workforce with a view to keeping their business running. Remote working was rapidly adopted and has since proven a particularly efficient tool in keeping businesses afloat.

As companies now embrace a work-from-home culture, extending that option to employees even as confinement rules are lifted, it remains to be seen whether Luxembourg's Government will back these initiatives. A paper published by the Economic and Social Council in late September indeed highlighted the abysmal impact of teleworking on Luxembourg's retail and hospitality sector – a day of remote working a week would cause an estimated €350 million annual shortfall.

Remote-working rules

In consideration of the significant development of remote work during the pandemic crisis, a new convention governing remote work was signed on 20 October 2020 by the employers and employees trade unions. This text still must pass through the Government before it becomes a Grand Ducal regulation applicable to all employers, which is likely to happen by the end of the year.

This new convention notably stresses that remote work is neither a right nor an obligation and remains a voluntary measure.

The role of unions and work councils

Under Luxembourg's labor code, an employer is required to inform the staff delegation and the health and safety delegate about any risks weighing on its employees' health and safety. They must notify them about any protective or preventive measures taken to alleviate said risks – this latter limb being of particular relevance during the COVID-19 pandemic.

Also of note is the Luxembourg Inspectorate of Labor and Mines' recommendation that staff representatives help identify risks and are consulted on the feasibility of any employer-driven, COVID-19-related action.

Required employment documentation

Among changes introduced by the new convention is that the new agreement recognizes remote work without requiring an amendment to an employment contract. An email or SMS will be sufficient for supporting documentation to demonstrate that remote work was agreed on between parties.

Key issues

Remote working raises concerns of varying magnitude. This includes ensuring an adequate work-life balance, accurately accounting for overtime by employees, protecting clients' data, and arranging for the maintenance of employees' work

equipment, to name but a few. These are some of the numerous challenges employers will face in embracing the work-from-home trend.

Finally, a key issue is still the Social Security affiliation and personal taxation for the 200,000 commuters working, in principle, in Luxembourg but living in and remote-working from France, Germany or Belgium. Some temporary measures have been adopted by each Government to suspend the tax thresholds and avoid negative tax consequences for these employees. However, some adjustments are still needed to solve these issues in the future on a permanent basis.

Conclusion

Remote working is here to stay. Employers must adapt, set up the necessary technical devices and software infrastructure to enable their employees to effectively work from home and ensure their clients' data is secure. Despite the numerous challenges it faces, remote working has already become a key component of employer attractiveness for job applicants.

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Mexico



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Remote work in Mexico

Rule of thumb over the legislation

Scope of the provisions

The available legal framework in Mexico is not sufficient to clearly regulate all the aspects associated with a long-term remote-work policy.

The origins of the legislation are more oriented to regulate activities related to handcrafted products, by means of which the employer assigns some raw materials to the employee in order for the latter to deliver specific products. The employee is free to work from home or any other place, but without being under the control of the employer with respect to the work shift.

A minor recent amendment to law introduced specific language to include work performed through the use of information technologies as part of remote work.

The most relevant conditions of remote work are: (i) the employment agreement must refer to the exact place in which the employee will conduct the activities; (ii) the agreement must be approved by the Ministry of Employment, and (iii) the employer must have in place an up-to-date registry of all employees working remotely.

Consultation

To implement a remote-work policy, it is essential that employees' consent is required since, per statute, the place of work is considered as an employment condition, and it can only be changed by mutual consent of the parties or by judicial resolution, force majeure or acts of God.

Moreover, with respect to unionized personnel, the employer must secure the union's authorization to implement this type of work and, consequently, amend the collective-bargaining agreement to regulate the terms and conditions of remote work.

Legal documentation

As mentioned, remote work must be regulated in an employment agreement (white-collar staff), and in the collective bargaining (in the case of unionized personnel).

In a nutshell, the minimum provisions to be included in the agreements are: (i) an inventory of the work-tools provided by the employer; (ii) salary and tariffs when the employee is paid based on the quantity of the job performed, and (iii) general health and safety obligations.

It is also advisable to have in place a special code of conduct as explained below.

Privacy and confidentiality

Despite the fact that the law sanctions in general any nonauthorized disclosure of sensitive information or any breach on privacy rules, it is advisable to implement a special code of conduct referring to the specific measures to be adopted by the employee while working from home or in any public place (e.g., connection in public Wi-Fi, store of information, use of records on portable devices in public places, among others).

Additionally, it is advisable also to agree with the employee on the use of a webcam during video conference sessions.

Right to disconnect

There is no specific provision on this subject, so the standard rules on work shifts and overtime shall apply. It is essential to clearly stipulate a general time frame in which employees must conduct the daily work shift, and with that, reduce exposure to overtime claims.

Implementation – Rule of thumb

Some companies have transitioned to partial remote work schemes (limited to some weekdays) to identify employees' adaptation and performance. Whether it's a full-time or partial scheme, there is no limitation on eligible employees, provided their acceptance.

Also, employers have the ability to cancel the remote-work program provided that such a scenario has been agreed on in advance.

Finally, it is expected that in the following months Congress will discuss a more complete legislation.

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Remote work: the new standard?

Since the first COVID-19 outbreak in March 2020, the Dutch Government urgently requested all employers to allow their employees to work remotely if possible. As a result, working from home has become the “new standard” for many companies. It has even led to structural changes in organizations, such as a permanent closure of offices. As companies are struggling with this new standard, many questions have been raised with respect to remote working.

Implications of the shift to remote working

As the shift to remote work was driven by governmental requests, this was sufficient justification, and no additional justification toward personnel was required. However, in the event remote work will indeed become the new standard, this may, under certain conditions, qualify for an amendment of the employment conditions, such as the place of work, and it may trigger

the involvement of the works council. Depending whether or not the employer has reserved the right to unilaterally amend working conditions while weighing the interest of both the employer and the employee, under certain conditions the individual consent of employees might be required. The question is whether a unilateral amendment of the employment agreement is possible. For this, it should be assessed whether the company’s interests outweigh the interests of the individual employee who does not consent to working remotely. The latter does not seem a high burden at the moment, at least when work will be changed to partially working remotely.

New company policy?

As Dutch legislation does not provide a specific framework, it is recommended that organizations implement a remote-work policy. A number of topics can be included in it, such as time registration, possible expense compensation, facilities for the workplace, privacy and confidentiality clauses.

Implementation and monitoring

The implementation of a policy regarding remote work may, depending on the specific content of such policy, require the involvement of the works Council (if in place). This is, for example, at stake in the event a working hours and resting hours policy or issues regarding health and safety are included. Also, in the event the consent of the works council is not required, it is, however, recommended to still inform the works council. Involvement of any labor unions is in principle not required. However, this may be different in the event a collective labor agreement would be applicable to the specific organization.

Privacy and confidentiality

It should be noted that in principle, all regulations that were in place before, remain in place in the event a shift to remote work takes place. In other words, if an employee has signed a confidentiality clause (for example, as part of the employment contract), this still remains applicable. It is, however, advisable to assess whether such arrangements have been made and if not, implement them now (as part of the remote-work policy).

A safe work place

Under Dutch law, an employer is responsible for a healthy and safe environment for its employees. This responsibility includes the obligation to make sure that the employee has a safe remote-work place. To facilitate this, items such as a desk, chair, screen, mouse and keypad may be required. Under certain circumstances, the costs for such equipment can be compensated. The employer may also facilitate the equipment itself, such as by providing the existing equipment from the offices.

Final note

Due to the COVID-19 crisis, remote work has become part of a “new standard” of our working world. This may be challenging at first, however, it could also be a natural opportunity to assess which way of working suits your organization and whether changes should be made for the future.

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New Zealand



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COVID-19 required many New Zealand (NZ) employees to work remotely during lockdown, but many employees are still reluctant to return to work as before.

Tentative and isolated changes in work arrangements have accelerated and solidified. Remote and reimagined working arrangements are quickly becoming the norm, but NZ's existing employment law is struggling to keep pace with this rapid reimagining of work.

Developing a remote-work program

Employment contracts must stipulate where employees are to perform the work. Any change to existing work arrangements can only be implemented with mutual agreement. Unilateral changes cannot be imposed. While employees can request flexible work arrangements, there is no obligation on the employer to acquiesce to the employee's request.

Remote-work rules

Unless the employer provides the necessities for the employee to work from home, employees may refuse the employer's request to implement remote-working arrangements.

The obligation to manage the employee's health and safety – both physical and mental – remains regardless of where employees perform their duties.

The role of unions, works councils and employees

Unions and individual employees are increasingly calling for compensation to cover the additional costs of remote-working arrangements.

Required employment documentation

Amendments to individual employment agreements to record (temporary or permanent) changes to working arrangement is relatively simple, but amendments to collective agreements are more complex. As a result, changed work arrangements have almost exclusively been implemented for employees on individual agreements.

Key issues

While electronic means may be available to monitor employees, the increased level of surveillance may erode the employment relationship of trust.

Employers should review whether there are safeguards in place to ensure personal information (such as client or customer data) is protected at the remote workplace.

Employers should also consider how they will respond if there is a privacy breach at the remote workplace.

Employers can fully reimburse employees for home-office costs on a tax-exempt basis.

In discharging their good-faith obligations, employers will often need to make more effort when consulting with employees who work remotely.

Conclusion

The reimagining of work arrangements in NZ is largely voluntary – but it is progressing swiftly. Although the need to obtain the agreement of employees to implement any change remains, concerns over who bears the employees' additional costs are yet to be resolved. While employers may have been temporarily pardoned because of the haste with which New Zealand went into a short lockdown, the remote-working arrangement has become commonplace. Employers now need to review their employment agreement, policies and practices to ensure they comply with their various employment, tax, health and safety, and privacy obligations to employees, as well as meeting union expectations.

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Reimagining work:

key remote working considerations in Norway Companies around the world are still struggling with the COVID-19 fallout. One dilemma for employers is whether to continue remote working or return to the office. Besides the infection control considerations, many companies are also considering cost-reduction opportunities, as employees working remotely reduces the need for office space. This article sheds light on the right to impose remote working, the rules that apply and issues that may arise.

Can employers impose remote work?

The right to impose remote work, for a temporary period, may be deduced by the employer's legal right to govern. However, this right may be limited through employment contracts, legislation and collective agreements. Whether employees may legally be imposed to work remotely will depend on a specific assessment.

When remote work is imposed, the order entails only a temporary change of the agreed workplace. Consequently, the other rights employees have through employment contracts, laws and collective agreements, including the right to a safe working environment, are still valid and must be safeguarded by the employer.

Through regulations, a distinction has been established between remote-work schemes of a temporary and permanent nature. When a remote-work scheme is no longer short-lived and accidental, the regulations on work

performed in the employee's home, apply. In such cases, additional rules regarding an employment contract, working environment, etc., applies.

Key issues of remote work

Safeguarding the employees' work environment

The employer must, as far as possible, ensure that the remote-working conditions are fully justifiable. The extent of the obligations must be explicitly considered. However, it is important to note that the employer is neither expected nor allowed to carry out all measures that would typically be acceptable. A demand to access the employee's home to provide a health and safety check, for instance, would be an interference with the person's right to privacy in their home.

The employer must ensure that employees who need special facilitation have access to the necessary equipment if this is practically possible. This may be ergonomic or other adapted equipment for the home office. For example, if employees lack necessary equipment at the remote-work location, the employer may in some cases be obliged to cover the employee's expenses for such equipment.

To avoid possible disbursement obligations, we recommend that the employer and the employee, at an early stage, enter an agreement concerning the loan of necessary equipment. When implementing and monitoring remote work, the employer should involve safety representatives, working environment committees and elected representatives in the ongoing health and safety work.

Privacy and confidentiality

Rules regarding confidentiality and processing of personal data apply correspondingly when working from home as at the employer's premises. The employee must ensure that work-related information is processed responsibly so that unauthorized persons do not have access to them.

Employers should offer employees digital solutions for the processing of internal documents and personal data. If employees do not have access to digital solutions at work, it is more difficult for the employee to meet his or her duties when working from home. Furthermore, we recommend that employers continuously remind employees of their responsibilities in connection with privacy and confidentiality.

Control measures

The employer may experience a greater need for control to ensure that employees perform work when working remotely. Even if employees work from home, the employer still has a right to control and may thus organize, lead and distribute the work as before, within the limits of the employer's right to govern.

The employer may only apply control measures if there are objective grounds for controlling the employees. Also, the control measure must not last longer than necessary and cannot be too intrusive toward the employee. The objective need, necessity and intrusiveness must therefore be explicitly weighed and evaluated for each control measure. Such evaluations should always be documented.

Registration of working hours and the reporting of work tasks are examples of control measures that are generally unproblematic. More intrusive control measures, such as monitoring employees' screen activity or browser history on digital equipment, on the other hand, are often illegal to implement.

Conclusion

Several companies see the positive effects of remote work. Remote work is surprisingly effective, and consequently, many companies are considering cost-reduction opportunities. If an employer considers introducing a permanent remote-work solution, it must be done in compliance with the rules regarding remote work. Furthermore, regardless of the nature of remote work, the employer must continue to safeguard the employee's other stipulated rights according to law, employment contract and collective agreements.

Communication with employees, elected representatives and working environment committees are essential when implementing and monitoring remote work. Through open dialogue, it is easier for the employer to uncover how employees are affected by the situation and their potential needs.

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Paraguay



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Long-term plan for remote work

Developing a remote-work program

It is essential in these times to ask yourself the following question: does my company have a long-term plan for remote work? It is essential to plan in a way that allows you to fully articulate what you hope to achieve with your team in this new normal of working from home, or “telework.”

Remote-work rules – both implementation and monitoring

There are no established rules for the formalization of telework contracts other than the agreement between the parties. Nowadays, there is still no single law that exclusively regulates telework in Paraguay.

There are no specific rules or monitoring mechanisms for this work modality by the employer or employees. For its part, the Ministry of Labor of Paraguay established by a specific resolution, a mechanism for recording and reporting these contracts through their official digital platform.

The role of unions, work councils and employees

Paraguayan labor code recognizes and regulates the labor relationship with unions. The main role of unions is to enter into collective labor agreements, enforce the rights that arise from them, and sponsor their members in labor disputes.

Normally, companies with a large number of workers decide to adopt an internal work regulation. Workers must be actively involved in its elaboration through their representatives, even when there is no union. This document has the main goal to regulate order, sanctions and security in the workplace and must be approved by the Ministry of Labor. Considering the telework modality, this document must allow workers’ personal and family life to be reconciled through flexibility to carry out work from home or a teleworking station, all of them guaranteeing quality of the services.

Required employment documentation As mentioned above, there is still no single law that exclusively regulates telework in Paraguay, therefore, there are no mandatory documents required in this work modality. However, we would like to emphasize that not having signed labor contracts could generate fines in the case of an intervention by the Ministry of Labor. In the case of facing an eventual controversial situation, a written and signed labor contract is reliable proof of the employment relationship and the agreed working conditions, providing in this way a greater transparency and support for both parties.

Key issues

By law, every employer must provide employees with the necessary elements to carry out their work. Consequently, in the telework modality, the employer must provide the hardware and software necessary for work and implement the corresponding control and access

measures to guarantee the protection of data and the equipment, including the access to internet. Regarding privacy and working time, all workers must have a reasonable break during the working hours. They can also use time credits or outstanding holiday entitlements. If there is an internal work regulation in force, it is suitable to include a clause that promotes telework in terms of achieving objectives rather than time spent.

Sanitary measures enacted by the Government are mandatory and there are no exceptions. Each company, commercial establishment or workplace must designate a duly trained “health and safety agent.” In the case of corporate offices, they must work with 50% of their employees, doing rotations. In the same way, the Ministry of Labor continuously promotes implementing teleworking whenever possible.

Conclusion

We consider it to be essential to continuously carry out improvement actions that allow the adoption of good practices in a long-term plan for remote work, adapting to the new reality and not losing the data protections and controls in all areas of the company. This will generate effectiveness, sustainability, flexibility and trust in the employee-employer relationship.

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Remote work challenges

Peru was one of the first countries in Latin America to implement strict quarantine due to the COVID-19 pandemic, and although social isolation measures have been eased in recent months, both the Government and most employers have chosen to maintain remote work until December 2020, and are likely to extend until at least July 2021.

Telework and remote work

In Peru, there is a form of telework implemented since 2015 that requires the express agreement between employer and employee, the latter being able to revoke its decision at any time for the return to face-to-face work. Under this legislation, which is still in force, the employer must bear all costs incurred by the employee as a result of the adoption of this modality. However, with the declaration of the state of emergency in Peru and quarantine, it was decided to implement an alternative modality called “remote work” that allows the employee to work from home or from the place where the isolation measures are being complied with.

This modality does not require an agreement between the parties and may be arranged unilaterally by the employer. In addition, the parties may agree on how the expenses incurred by the employee will be offset, not necessarily having to be borne by the employer.

Occupational health and safety aspects

In response to Peru’s existing health emergency, employees over the age of 65, as well as those with high blood pressure, diabetes, obesity, cardiovascular disease, chronic lung disease and cancer must perform remote work. If this is not possible, they must be paid leave until the end of the health emergency by December 2020.

The employer is obliged to ensure the safety and health of the employee performing remote work so that there are no non-ergonomic and psychosocial risks associated with this type of work, determined through feedback from the employee.

Compensation and benefits

The implementation of remote work cannot affect the compensation of employees, but the benefits contingent on effective attendance at the workplace can be replaced by compensation measures for remote work performed.

Workday and schedule

The workday applied is the same as that applied before this mode of work was started and as long as it does not exceed 48 hours per week or eight hours per day. However, the parties can agree that employees can freely distribute their workday schedules that best suit their needs, but with a maximum of six days a week.

Means of control by the employer

The employee must be available during the workday for task coordination, but the employer must assign the necessary facilities for the employee’s access to computer systems, platforms or applications as necessary, and has a duty to communicate to the employee the rules of confidentiality and protection that are applicable.

The employee cannot be replaced in the execution of his duties, nor allow access to third parties of confidential information or company data. In this sense, the employer has the power to restrict the access it deems necessary to the employee in safeguarding the care of information. Finally, the employee has an obligation to inform the employer of any damage to his systems to continue remote work.

According to data from the Ministry of Labor in Peru, “Before remote work was only used by around 2,000 employees, but today it has risen to 200,000.”

Remote work is part of the present and the future of work, so employers must prepare to have a contractual, salary and technological structure suitable for this new reality.

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Reimagining work: key remote working considerations, including confidentiality and privacy

Developing a remote-work program

Before the COVID-19 pandemic outbreak, the possibility of working remotely was occasionally used in Poland. However, it has not been formally regulated by the provisions of the Act of 26 June 1974 – Labor Code and has not required developing a remote-work program.

The Labor Code recognizes only “telework” (defined as regular work outside the workplace, by use of electronic means of communication, in accordance with the obligatory, formal rules adopted by the employer and additionally determined between the parties of the employment relationship), which is a different form of work than remote work.

Remote-work rules – both implementation and monitoring

The Act of 2 March 2020 on extraordinary measures aimed at preventing and combating COVID-19, other infectious diseases and crisis situations caused by them (the Anti-COVID Act) introduced remote work to the Polish legal system. The Anti-COVID Act, in order to counteract COVID-19, enabled employers to order employees to work remotely. The remote work could be performed outside of the workplace, as indicated in the employment contract. Based on current legislation, the employer may order employees to work remotely only if they have the skills and technical accommodation capacity to perform such work and the type of work is possible to be performed remotely. There is no formal requirement to additionally demonstrate a valid reason or business justification allowing to set up remote work. There are also no formal requirements concerning the monitoring of remote working. However, to efficiently implement remote work, monitor workload and results of such work, it is advisable that employers adopt their own rules concerning working remotely.

The role of unions, works councils and employees

Currently there are no formal requirements to obtain a consent from the employee or the trade unions regarding the remote work. The employer may order employees to work remotely.

However, depending on how such form of work would be internally organized, consultation with the employees’ representative bodies may be required. In particular, it may be needed if rules concerning working remotely would be described in the formal, internal regulations or policy of the employer.

Required employment documentation

Currently, no formal type of documentation is required to implement the remote work. However, it is possible and recommended to set up remote work by implementing some relevant internal regulations determining, for examples, the rules governing the method of performing remote work, reporting attendance, monitoring results of work, current workload, etc.

Key issues

While setting up remote work, the employer should take into account the following issues:

- ▶ Scope of tools and devices granted to the employees, as well as the possibility to use private equipment by them
- ▶ Obligations regarding confidentiality and personal data protection while working remotely
- ▶ Proper organization of remote work, including reporting attendance, the results of work and the monitoring of them by the employer

Other key issues in Poland

Except for the matters above, in Poland there are widely discussed issues concerning the reimbursement or payment for using private tools by the employee. Currently, the possibility to grant such equivalent has not been regulated by provisions of the law.

Conclusion – must-do advice for employers

The Anti-COVID Act introduced the possibility to order employees to work remotely. Details regarding conditions of performing such work were under current legislation and are left mainly up to employers’ discretion. Therefore, employers should take actions to properly set up remote work.

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Reimagining work: key remote working considerations, including confidentiality and privacy

Developing a remote-work program

The COVID-19 epidemic in the Republic of Serbia has led both to a reexamination of some traditional notions of labor law and new challenges faced by employers. The organization of work has moved from the traditional way of doing business to working from home or working remotely (collectively "remote work"). However, due to the sudden and significant shock that the pandemic caused to the labor market, there is still a lot of work to be done to harmonize employee's rights and obligations regarding remote work arising from the Serbian Labor Law with the current situation.

Remote-work rules

In accordance with the law, remote work can be established only if such work is envisaged as a possibility in the employment rulebook of the employer and established via a specific employment

contract that, other than mandatory elements required for every employment contract, must contain additional elements such as: work equipment (which the employer is obliged to procure, install and maintain, or usage of the employee's work equipment and compensation for such usage) and compensation for other costs of work and how they are determined.

Key issues

Due to the sudden turmoil that the global pandemic has caused in the labor market, the majority of employers in Serbia had to adjust quickly, making compromises between trying to organize work during the pandemic on one side and complying with their obligation toward employees in accordance with the law. This dichotomy has raised two important issues.

- ▶ Even after the state of emergency was lifted in May 2020, most employees are still working remotely. The vast majority of them do not have provisions in their employment agreements regulating the usage of work equipment or reimbursement of their expenses for such work. Employer's decisions often failed to cover these important matters, thus creating room for different interpretations.
- ▶ Most of the employees using their own work equipment do not have installed technical measures to comply with Serbian Law on personal data protection and ensure safety of personal data stored on such devices. As personal data protection, resembling that prescribed by GDPR, is still in its infancy in Serbia, this new situation has left open questions to be solved by future practices.

Conclusion

Since not all answers to many current questions can be found in the applicable laws, case law, changes in regulations and the creation of new business customs will be key to harmonize the functioning of this new organization of work, ensuring employees' rights are fulfilled at the highest possible level.

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Reimagining work: key remote-working considerations, including confidentiality and privacy

Developing a remote work program

The COVID-19 crisis raised awareness on the importance of workforce flexibility and developing an agile and adaptable workplace. Remote work became, rather quickly, the default way to carry out the activity.

Many companies that did not use remote working prior to the pandemic were faced with the need to implement this method of working immediately. Even companies that already had remote-work policies in place needed to update them to reestablish new remote-work rules and procedures.

Remote-work rules

Remote work can be established only by mutual agreement with the employee. By law, the company is not obliged to implement remote work if the employee does not consent to it. However, given the COVID-19 context, the law was amended in the sense that companies must analyze the possibility of working remotely

and must have proof that organizing the work through telework was taken into consideration at the company level.

Additionally, when establishing a remote-work policy, the trade unions or employee representatives should also be consulted.

Required employment documentation

Telework must be established in writing by signing an addendum to the individual employment contract.

Additionally, this method of organizing work must be communicated to the labor authorities, who must have a record of the companies that implemented telework.

The lack of telework documentation or failure to notify the labor authorities may occur fines.

Confidentiality and privacy

Confidentiality clauses are optional in the individual employment contract. However, in the case of remote working, given the special circumstances in which the activity is carried out, the parties should conclude a confidentiality agreement.

Telework legislation requires that the company must ensure confidentiality and security of information and personal data, which is accessed outside company premises.

Additionally, by law, the company and the employee must set up timekeeping rules as well as the means and schedule for monitoring work performance.

Furthermore, the GDPR and local laws, in terms of employee monitoring, must still be observed.

Thus, it is recommended that companies should implement internal policies regarding the monitoring of teleworkers.

Key issues

Apart from the aforementioned aspects, according to telework legislation employers should design remote-work rules in line with the following:

- ▶ Provide adequate technology, tools and IT systems
- ▶ Allow employees to choose the place where remote work is performed, provided that work health and safety legal requirements are complied with
- ▶ Set the parties' responsibilities regarding occupational health and safety at work
- ▶ Provide remote work cost-sharing and allocation

Conclusion

It is essential that employers encourage flexible working arrangements and develop innovative solutions, not only to adapt to this current pandemic situation but to also build on the cost-reduction advantages and greater efficiency that is ensured through teleworking.

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Reimagining work: key remote working considerations, including confidentiality and privacy

Developing a remote-work program

COVID-19 forced Russian companies to switch to remote work very quickly. Enabling a safe remote-working environment for their personnel has been a critical issue. Few, if any, employers had time for a smooth transition, and most companies had to focus on the mobilization of IT infrastructure. Even proper formalization of remote work could be omitted, as the Ministry of Labor argued in its Letter of March 2020 that a transfer to remote work was allowed as a temporary measure without amendments to an employment contract. It was only necessary to obtain the consent of the employee.

Remote-work rules – both implementation and monitoring

Russian authorities are still taking steps to stop the further spread of COVID-19. And although the “nonworking days” established by the President have ended, regional authorities may introduce or extend restrictions on the activities of

certain businesses depending on the situation in a particular region. For example, in terms of Moscow, according to Moscow Mayor Order No. 103-YM of 28 October 2020, the requirement to transfer at least 30% of employees to remote work is extended until 29 November 2020. The local authorities monitor compliance with the above on a regular basis and request employers to provide the numbers of mobile phone numbers and personal vehicles of such employees.

The role of unions, works councils and employees

With the view that a switch from office work to the remote-work regime requires an employee’s consent, the most proactive role is attributed to the employee.

The Russian labor law is not flexible enough and currently does not provide for legally safe options of the mandatory transfer of employees to a home office or transformation of a regular employment agreement into remote work, unless the employee agrees to it.

Required employment documentation

Under the law, there are two possible options for changing the work of an Employee, who was originally hired to work at an office, to remote work:

1. By signing an additional agreement to an employment contract (upon the employee’s consent or request)
2. By issuance of an order changing organizational working conditions subject to two months’ notice to employees

In accordance with the recent clarifications of the Federal Labor and Employment Service, employers should use the first option in case they want their employees to work remotely for preventing the spread of virus.

Key issues

The recommendation and best practice is to adopt an internal policy on remote work covering, among other issues, the procedure for the exchange of data, documents, assignments and results of work; the provision of equipment to employees (laptop, stationery, etc.) or compensation for the use of personal equipment for business purpose; and the employer’s forms of control over employees for the duration of remote work. However, adoption of such a policy is rather an exception than rule. At best, these issues are regulated in the employment contract for remote work.

Conclusion

Remote-working arrangements have become a new reality, and companies are adjusting and adapting to working remotely post-factum. Many employers were only to develop remote-work programs and formalize those transfers to remote work in April and May 2020.

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The future of work is here – key considerations

Developing a remote-working program

Employers should develop remote-work programs, which can include, among other items:

1. Scope of program – e.g., to whom the program applies and under what situations the program will be applicable
2. Remote-working rules
3. Rules at the workplace – safe management measures at the workplace as established by the authorities (safe management measures) and company-specific guidelines and practices
4. Monitoring and enforcement
5. Consequences for noncompliance

Remote-work rules

Mandatory rules

Under the Requirements for Safe Management Measures at the Workplace (updated as of 23 September 2020), published by the Ministry of Manpower (MOM), employees who are able to work

from home may return to workplaces subject to certain conditions. For instance, employees must spend no more than half their working time at workplaces – this can be achieved by implementing split or shift team arrangements. Also, no more than half of an employer's employees can be at the workplace at any time.

In addition, companies should continue with virtual meetings to the greatest extent possible and minimize physical meetings between employees and other stakeholders. Also, companies should not organize or encourage any social activities in or outside of the workplace.

Company-specific rules

Remote-work rules also include the standards expected of employees in relation to various work-related aspects, e.g., privacy and confidentiality, use of technology, designated responsibilities and key performance indicators (KPIs).

Monitoring

Employers are required to appoint Safe Management Officers (SMOs) to aid the implementation, coordination and monitoring of the system of safe management measures at workplaces.

Separately, the relevant Government agencies will monitor employers' compliance with the safe management measures by conducting regular random checks at workplaces and taking action against noncompliant employers by issuing fines or stop-work orders.

The role of unions, work councils and employees

Trade unions can work with unionized companies to appoint union leaders as SMOs and to implement safe management measures at workplaces and remote-working arrangements for employees.

Employees should comply with the remote-working program. In the event of a breach of safe management measures or company-specific rules, employees can report such breach to MOM or their SMOs respectively.

Required employment documentation
Employers are required to prepare and maintain the documents set out in MOM's Checklist of Safe Management Measures Required at the Workplace for Resumption of Business Activities.

Key issues in Singapore

Remote-working arrangements may result in:

1. Higher risks of personal data breach and breach of confidential information
2. Greater inconvenience in accessing support functions and technical or specialized equipment
3. Difficulty in tracking KPIs and working time of employees
4. Lesser communication among employees
5. Ambiguity if employers do not expressly set out which types of expenses incurred by employees working from home are eligible for reimbursement

Conclusion

The COVID-19 crisis has given employers an opportunity to rethink the use of physical workspaces and to implement flexible working arrangements for employees. Those who can adapt well are likely to thrive.

Also, employers should continue engaging in regular, open communication with employees, discussing expectations, responsibilities and two-way feedback.

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The home office – employers' legal risks and obligations

The COVID-19 restrictions have led to widespread expansion of the home office. It is expected that the home office will remain relevant after the pandemic and will become a standard practice in many companies. In this article, we will outline the need to distinguish the home office from working at home and telework, clarify the legal conditions for a home office, explain the legal risks resulting from inadequate legislation and provide recommendations for their mitigation.

The need to differentiate types of home working

The labor code distinguishes three different legal forms of home working:

1. Working at home
2. Telework
3. Work from a household occasionally or under extraordinary circumstances

The first two entail permanent performance of the employee's work under the labor contract in working time scheduled by the employees themselves.

Telework is defined by its use of IT. The third type, the home office, is not permanent performance of work from home, and the employees do not schedule their working hours themselves. By default, the employee may exploit the home office only under agreement or with the employer's consent. However, during the COVID-19 pandemic there was an amendment to enable unilateral use of this option by both employer and employee.

Lack of legal regulation and open issues

The labor code fails to reflect the significance of the home office and contains almost no specific regulation of it. However, an amendment to the labor code being prepared should bring more detailed regulation on the home office. Nevertheless, at least for the time being, employers are recommended to regulate the open issues of the home office in labor contracts, collective bargaining agreements (CBAs) or internal regulations. In particular, the following aspects deserve special legal treatment:

1. Wages and overtime work

Unlike working at home and telework, occasional home-office work may entitle the employee to payment for working overtime. To record overtime work, the employer should agree with the employee on a form for recording the working time, e.g., through IT systems or submission of daily reports.

2. Reimbursement of costs

Automatic claim to reimbursement of employees' expenses does not explicitly follow from the labor code. Nevertheless, we recommend including the amount and mechanism of such reimbursement in labor contracts or CBAs to prevent possible employee claims. Lump-sum compensation will require additional assessment of its tax regime.

3. Provision of catering

Employers should not forget that even under the home office, the employee is entitled to meal vouchers or the provision of catering.

4. Health and safety

The employer has health and safety prevention and information duties also with respect to the home office. In an internal regulation, the employer may include adequate health and safety recommendations for employees. There is no obligation to provide for an ergonomic workplace, such as buying suitable tables and chairs. Home-office arrangements also need to comply with health and safety requirements for working with display units.

5. Confidentiality and data privacy

The employer should ensure that adequate measures are in place, especially technical (e.g., VPN) and organizational (e.g., instructing employees to secure laptops against theft or damage, to store their work documents in a safe place and to lock their screens). In addition, employees should be made familiar with the security risks related to the home office (e.g., cyber attacks).

In Slovakia, important legislative changes on the home office are being prepared and should enter into force on 2 January 2021. However, we still recommend that employers adjust the conditions for the home office by adopting internal regulations or amendments to labor contracts or CBAs.

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Reimagining work: key remote working considerations

Developing a remote-work program

The forced lockdown caused by COVID-19 has driven many companies into the embrace of remote working as an almost single route to maintain their usual productivity.

In this sense, it is important that companies establish remote-working policies containing measurable, revisable, clear and achievable objectives.

Remote-work rules

Recently, the Royal Decree-Law 28/2020 of 22 September has been approved in Spain. This specifies that remote work is voluntary for employers as well as for employees. Therefore, it will be necessary to sign a written remote-working agreement. The agreement can either be incorporated into the initial employment contract or formalized at a later stage. This individual agreement with each one of the employees has to contain several points such as, among others, the following: (i) expenses that the employee may incur due to the fact of providing services at a distance, as well as the way of quantifying compensation that the company is obliged to pay the employee,

in addition to the time and method to carry out the same. Please note that the development of remote work must be compensated by the employer and may not involve any expense for the employee in relation to equipment, tools and means linked to carrying out work; (ii) the working hours availability rules, if any; (iii) the duration of the remote-working agreement; or; (iv) the means which the company will use in order to control the activity.

Additionally, the remote-working law foresees that employees' representatives must be informed when remote-working policies or agreements with employees are being negotiated.

The right to digital disconnection

As per established in the Organic Law 3/2018 on Personal Data Protection and Guarantee of Digital Rights, employees have the right to digital disconnection, also known as digital detox.

This means that employees have the right to not be connected or available during rest times and holidays to ensure a proper work-life balance.

This right takes on a special significance in the current context, where a large number of employees are providing services from their homes.

In this sense and complying with the provisions stated in the remote working law and the digital rights law, it is clear that companies must guarantee employees the right to digitally disconnect, which should be done through the establishment of a disconnection policy.

It is important to highlight that those companies that have employees' representatives have the obligation to discuss the content of this policy with them.

Business control faculties

As per established in the remote-working law, companies may adopt surveillance and control measures to verify that employees comply with their work obligations and duties, including the use of telematic resources provided by the companies.

There is an express mention included, stating that the dignity of employees must always be respected. Moreover, it is foreseen that the installation of software or applications

on devices owned by the employee, or the use of these devices in order to perform remote work, may not be required from the employer's side. In addition, employers must establish criteria for the use of digital devices that are made available to employees, respecting minimum standards of privacy protection as well as the terms on which employees may use, for personal reasons, the computer equipment made available to them.

In view of the above and to comply with the corresponding law, it is necessary to record the working day by means of a system that guarantees the reliability, objectivity and invariability of the recorded data. Companies must implement a daily working-hour register. In order to carry out this registration, as is the case for those workers who provide services in a presence-based manner, companies may use manual, analogical or digital systems, such as the registration of the switching on and off of the computer device, timing the real activity of the worker or by means of the manual insertion of the worker's own data of his or her corresponding working day.

All methods that are reliable and managed objectively will be valid to perform the registration of working hours.

Conclusion

It is undeniable that the COVID-19 crisis has brought many challenges to companies from the perspective of human resource management. One of the most important changes, if not the main one, that companies have faced in Spain is the implementation, in many cases in a premature manner, of remote-working systems. In this sense, we must be aware of whether the recently approved legislation is enough to regulate all aspects related to remote working.

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Reimagining work in light of COVID-19

Developing a remote-work program

Amid the COVID-19 pandemic and the drastic measures required to stop the spread of the virus, remote working has become the “new normal” for many. As per current recommendations, many people in Sweden will likely have to work remotely well into 2021. This means that employees who have not already had a proper home office may need to implement long-term solutions to optimize their remote work.

At the same time, many companies around the world are considering continuing to let their employees work remotely even after the pandemic, to reduce, among other things, real estate costs. It is clear that remote working is here to stay.

A successful remote-work program requires cooperation and regular communication between the employer and the employee. To avoid conflicts or other issues, it is important for companies to have clear policies and guidelines in place.

These policies and guidelines can, for example, regulate the company’s routines for working hours, communication and the use of work equipment.

Implementation and monitoring

In Sweden, there are no specific regulations regarding remote working. This means that the implementation and monitoring of remote-work rules will largely be subject to the employer’s policies and applicable collective-bargaining agreements.

Regarding the monitoring of working time, the employer must keep track of employees’ working hours to ensure compliance with working-time regulations. Such monitoring can be managed by asking employees to fill in time sheets or recording their time in a similar fashion.

This may be useful for the employer in assessing possible work environment risks. By continuously evaluating the employees’ working time, employers can easily identify and correct excessive workloads and skewed work-life balances. Further, the employer’s obligation to regularly follow up and assess the employees’ working environment remains the same, even as employees work remotely. Such assessments must be made together with safety representatives, if any. Developing routines for how such assessments should be made when working remotely will be an important step in reimagining the workplace.

When assessing what monitoring and integrity-infringing measures an employee must accept, applicable general standards of data protection (e.g., the GDPR) must be taken into account.

Employee representatives

The role and responsibilities of trade unions and employee representatives remain the same even as we work remotely, implying that trade union consultations need to be carried out prior to any major workforce transformations.

Confidentiality and privacy

COVID-19 has shown the need for further regulation on remote work. The increased flexibility to work remotely also raises new issues, such as privacy and confidentiality. When working remotely, confidential information and personal data is handled in a way that neither employers nor their IT systems are used to.

If not managed correctly, this can have a negative impact on the business. To mitigate potential risks, employees need to be informed about applicable policies and other regulations.

With remote work, it is easy to compromise on regular security routines that the company has set up to protect its data. Regardless of where employees work, it is important to protect data so that it does not end up in the wrong hands. For example, it should be made clear that employees may not discuss confidential information in the presence of others who may be sharing their remote workplace and that documents must not be left around for just anyone to find.

As mentioned above, the monitoring of remote work must be in line with the company’s policies and guidelines, as well as any applicable collective-bargaining agreements

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A remote-working program

As a result of the consequences and the developments to which the COVID-19 pandemic has led, the demand for flexible work forms and programs increases continuously.

Remote-work rules

Regardless of the place of work and thus also when working remotely, in principle all employment conditions remain applicable. Regulations, such as the ones concerning working time, data protection and confidentiality as well as the usual code of conduct, must be complied with accordingly.

A respective monitoring of remote employees, their compliance with these regulations and their labor productivity require their prior notification and implementation of appropriate technical and administrative measures, as well as remote-working regulations in accordance with statutory law.

Health protection and safety regulations

Since no direct supervision of applicable health and safety regulations (e.g., regarding the workplace design) is

possible when working outside of the employer's premises, it is particularly required to raise respective awareness to fulfill the employer's statutory information duties accordingly.

Working-time regulations

In principle, the same working-time regulations that must be complied with apply to working remotely as well. As separating work and leisure may be difficult when working remotely, it is important to organize working time in accordance with statutory law requirements. It is the employer's obligation to instruct its employees accordingly.

Privacy and confidentiality

To maintain data privacy and confidentiality during remote work, additional protective measures, such as multifactor authentication, encrypted data processing, electronic archiving, confidential data storage, clean desk policy and a limitation to use the company's IT infrastructure privately must usually be implemented.

Reimbursement of expenses

Whether or not expenses that occur when employees perform their work remotely must be reimbursed by the employer in particular depends on whether these employees would have the possibility to work at the employer's premises or not. If an employee voluntarily works remotely, the employer is not obliged to cover the employee's expenses if it provides a place of work at its premises. However, if an employee works remotely because it is an employer's instruction or because there is not enough space to work at the employer's premises, the employer must reimburse the employee for all expenses necessarily incurred in the performance of work (e.g., rental, energy and internet costs).

Statutory law does not, however, explicitly determine to what extent the amount of expenses must be covered.

Further, tools and materials that are necessary to perform work must in principle be provided by the employer. It is possible, however, to contractually agree that costs for such work tools and materials are already included in the salary. If such an agreement does not (yet) exist, the respective implementation would in principle again require the employee's consent.

Workplaces outside of Switzerland

In an international environment, it is further crucial to take the applicable mandatory foreign labor legislations (e.g., health and safety and working time) as well as social security and tax (individual taxes and permanent establishment risks) aspects into consideration.

Conclusion

The increased demand for flexible work forms should be used as an opportunity to introduce remote working as well as the respective regulations. If such regulations do not yet exist, it is better that these are introduced to establish framework conditions regarding remote work right from the beginning. Such regulations depend on concrete circumstances, such as technical possibilities as well as the existence of a place of work at the employer's premises, and require taking into consideration further social security and tax aspects particularly in an international environment.

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Reimagining work: key remote working considerations

Developing a remote-work program The impact of COVID-19 has forced companies to switch to remote working. For remote working to be successful, a structured approach is essential. It is recommended that employers implement clear guidelines within a remote-working policy addressing issues such as:

- ▶ **Eligibility:** employers need to establish which positions are eligible to work remotely.
- ▶ **Working patterns:** employers need to set clear expectations on employee availability during working hours and whether employees can set a schedule that suits them (perhaps due to childcare issues).
- ▶ **Supervision:** employers should set out arrangements for the management and supervision of remote workers.
- ▶ **Equipment and technical support:** employers should confirm what equipment they will provide to employees to enable them to work from home and any technical support available.
- ▶ **Remote-work rules – both implementation and monitoring**

Employers should make sure that employees know what is expected of them and should regularly assess how their systems and temporary arrangements are working to make any improvements.

Employers looking to implement remote working should consider individual employee needs (e.g., childcare responsibilities or disabilities) and provide reasonable adjustments for employees who are adversely affected by remote working. Employers should also ensure the appropriate technological tools are in place to support remote working.

Monitoring the productivity of employees while they are remote working must be treated as a balancing exercise between the employee's right to privacy and the employer's legitimate business interests. Employers should define the scope of monitoring and ensure that such monitoring is carried out for specified purposes.

The role of unions, works councils and employees

Employers do not normally need to involve trade unions or work councils when considering remote working.

Employees should be encouraged to provide feedback to their employers on working remotely to help establish best-practice procedures. Employees should also communicate with their employers if they have become unwell with COVID-19 in order to help employers manage the risk if certain employees are required to return to the workplace.

Required employment documentation

Employers should put in place a policy around remote working, and the policy should be reviewed and may be amended from time to time.

A new employment contract containing a change of workplace or remote-working clauses is not necessary. Employers can agree to a letter of modification setting out the changes and ask employees to sign as an acceptance of the new terms. A letter of modification should include where the employee will be based, the right to terminate the remote-working arrangement and the supply of work equipment, and confirm that there are no other changes to employment terms and conditions.

Key issues, such as privacy and confidentiality, monitoring working time and expense reimbursement to employees.

The Information Commissioner's Office (ICO) confirmed that it still expects employers to take appropriate action to protect confidential information when working remotely, and it

must be taken into account when considering enforcement action under the General Data Protection Regulations (GDPR).

Employees should be informed that they are responsible for ensuring the security of all information used when working remotely. The remote-working policy should set out that failure to adhere to confidentiality terms may result in disciplinary action and may even be considered as gross misconduct.

Working time should continue to be monitored while employees work remotely. The Working Time Regulations 1998 prohibit employees from working more than 48 hours a week on average unless the employee has opted out of this restriction.

The procedure for reimbursing employee expenses depends on their employment contract or the employer's expenses policy.

Other key issues

Employers owe a duty of care to employees who work remotely, and the remote-working policy should set out how this obligation will be discharged (e.g., by virtual risk assessments).

The normal health and safety legislation, including the Health and Safety at Work Act 1974, the Display Screen Equipment Regulations, and the Provision and Use of Work Equipment Regulations, apply to remote workers.

An employee who intends to work remotely in another jurisdiction will need to satisfy that they are able to do so without any form of permission, such as a visa or work permit. "Working" is defined differently across jurisdictions, and many of which have their own national visa requirements. There may also be tax and social security issues to consider if employees work remotely abroad for any period of time.

Conclusion

A remote-working policy can help overcome many of the issues that employers and employees may face with the transition to more permanent remote working. Employers should be mindful of the wider cultural and social implications of employees spending more time working remotely and should keep in regular contact with their employees to help combat feelings of isolation and to maintain motivation.

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The challenges of remote work – or teleworking – in Uruguay

On 13 March 2020, and as a result of the formal declaration by the Executive Branch, a state of sanitary emergency in Uruguay was announced due to COVID-19. Uruguay – like most of the countries in the region and the world – has had to rapidly face and adapt to the reality of remote work and its constant challenges, with the added difficulty of not having an appropriate regulatory framework.

Despite the regulatory gaps, the Government urged employers to implement and promote – whenever possible – that workers carry out their tasks at home, in order to favor social distancing and prevent the spread of COVID-19.

It should also be noted that two bills have been recently introduced for consideration to the Uruguayan Parliament that seek to provide a much-needed response to some of the main concerns associated with this phenomenon, while regulating rights and obligations merging from the new labor dynamics.

Along the same lines, one of the proposed bills promotes the legislative consecration of the right to “digital disconnection,” understood as the right of workers to disconnect from digital devices to guarantee their resting time. Moreover, this same bill reaffirms that existing mandatory insurance protections

regarding work accidents and occupational diseases will also apply to workers who carry out their activities remotely.

Developing a remote-work program

Before the health emergency declaration, teleworking was not considered an extended practice in Uruguay and was only marginally applied within certain niche sectors of the economy.

In a very short time, employers and workers have managed – with a relative degree of success – to adapt to the new circumstances and promote change within the prevailing paradigms of labor relations, regulating the activity autonomously and in light of the general principles of labor law.

Some of the measures adopted at the market level so far have sought to provide workers with the appropriate technological and connectivity tools for the development of tasks remotely, designing new internal protocols, granting monthly expenditure items or reimbursing expenses such as internet, phone or energy costs. Some employers have even gone so far as implementing monitoring and supervision tools, aimed at guaranteeing the continuity and quality of services, in the best possible way, and in view of the new reality.

Contract revisions and a new formal obligation for employers

With the health crisis and the Government pleading in favor of remote over on-site work, employers may be able to legally justify temporary and substantial changes to employment contracts in force. However, for the future and as a good practice, we suggest a revision (or “novation”) of employment-contract clauses with the express written consent of employees.

On a side note, the Government has also required employers to inform the Ministry of Labor and Social Security (MTSS) when activities are carried out remotely and the moment they cease.

The role of unions and wage councils

Teleworking has not been an issue oblivious to the demands of the most representative union organizations.

Along these lines, one of the recently promoted bills highlights the central role of wage councils and existing collective-bargaining instruments

as suitable tools to fill the prevailing regulatory gaps, always taking into account the actual needs of the different sectors of the economy.

Privacy and confidentiality aspects One of the most challenging issues for the public and private sector has been to adapt current confidentiality and privacy policies to the new normal. This has resulted in the need for a rapid response from a legal point of view, as well as at the technological level, to mitigate emerging risks associated with remote work.

For this purpose, the review and adaptation of confidentiality clauses within labor contracts has been fairly recommended.

Regarding the protection of personal data, Uruguay currently leads the region with one of the most advanced legislations on the matter. Information related to people’s health already counted – even before the COVID-19 crisis – with a special protection status at the regulatory level. The safeguard of employees’ personal health data is especially relevant under the current context and forces employers to rethink and review information governance strategies and security measures adopted.

Conclusion

Looking beyond the current health crisis, we believe that teleworking is here to stay. Employers and workers should put aside traditional approaches to labor relations while identifying opportunities for innovation and improvement.

For now, however, employers are faced with the significant challenge of leading such change strategically while agreeing to solutions with their employees, whenever appropriate.

Finally, we believe that remote or semi-remote work, when duly organized and regulated, has the potential to greatly benefit companies at an organizational level to increase productivity and to offer workers greater flexibility and work-family balance.

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