

Global Telework Report



International Telework Day
September 2020

ECIJA



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1. Foreword

It is not surprising that the celebration of the "International Telework Day", 16 September, coincides with the "World Day for the Preservation of the Ozone Layer", since this type of work is related to the essential contribution it makes to the care and protection of the environment because, for example, as there is less travel by car and public transport, emissions of polluting gases are reduced. Therefore, the commemoration of this day aims to **disseminate and promote the advantages of teleworking in the different environments of the daily lives of individuals, organisations and the planet.**

Teleworking is not a new modality, but the crisis caused by Covid-19, which has confined millions of workers to their homes, has led many to discover it for the first time. In this context, many companies have been forced to implement the telework model in order to continue with their business activity. **This situation has shown that regulation of this model is of vital importance for workers and companies.**

Among the questions to be resolved at the legislative level are: how can productivity be controlled? Who should pay for the costs that the company assumes in the workplace? How to control the working hours? If the worker has an accident while teleworking, will it be considered an accident at work?

At **ECIJA, we support teleworking from our corporate culture, having established a policy of this type of distance working without any restrictions or limits.** From the Firm we would like to commemorate this day by reporting the legislative advances in this matter in the **15 countries where we are present in Europe, Latin America and Asia, responding to**

- Is there a law in the country that regulates teleworking?
- Are there any regulations governing the prevention of occupational risks for teleworking situations?
- Is there a right to telework for the employee or is it voluntary for the parties?
- Are there any formalities to regulate the telework situation in the company?
- Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?
- Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?
- Is there an obligation to record working hours during teleworking?
- Is the right to digital switch-off of teleworkers regulated?

2. Europe

From the legal and employment point of view, it is difficult to talk about the current state of teleworking in the European Union, given the different implementation in each Member State of the European Framework Agreement on Telework (EFA). The Agreement was drawn up in 2002 and has not been revised or extended to a changing reality as distance work implies.

The actors who signed this agreement, including the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Union of Craft, Small and Medium-sized Enterprises (UNICE/UEAPME) and the European Centre for Public Enterprise (CEEP), in order to



provide greater security for teleworkers in the European Union. The aim of the agreement was to develop a general framework at European level on working conditions for teleworkers and to reconcile the needs of employers and employees for flexibility and security.

However, the non-binding nature of the MEA, together with its limited content, has been criticised.

2.1 Legislation in Spain

1. Is there a law in the country that regulates teleworking?

In Spain, distance working or teleworking (with the use of NNTTs) is regulated by Article 13 of Royal Legislative Decree 2/2015 of 23 October, which approves the revised text of the Workers' Statute (ET) Act. This regulatory precept establishes that "distance work shall be considered to be that in which the work activity is carried out predominantly in the worker's home or in the place freely chosen by the worker, as an alternative to carrying it out in the company's work centre".

This general regulation establishes that remote workers will have the same rights as those who provide their services in the company's work centre, except for those inherent to carrying out work in the same in person.

Currently, there is a draft bill on teleworking (currently in the parliamentary negotiation process) as a *lege ferenda project*, which will regulate, among other issues, the percentage of minimum non-presential working hours to be considered as teleworking, the contribution of means and expenses by the company to the teleworker, the prevention of occupational risks, reversibility of presence at work, minimum content of the teleworking agreement, the registration of the teleworking hours and working day or the right to digital disconnection in a teleworking situation, among other aspects.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

Currently there is no specific legislation in Spain that regulates the prevention of risks during teleworking. The general regulations set out in Law 31/1995 of 8 November on the prevention of occupational hazards and its implementing regulations are generally applied to these cases. The aforementioned draft law on the new law on teleworking does establish specific provisions on the prevention of occupational risks during teleworking, such as a specific risk assessment and planning of preventive activities for teleworking, taking into account the characteristic risks of this type of work, paying special attention to psychosocial, ergonomic and organisational factors.

3. Is there a right to telework for the employee or is it voluntary for the parties?

Teleworking is voluntary for the parties in general, although, as a result of the current COVID-19 regulations, it is possible that either the company will impose it as a preferential work mode to avoid contagion (temporarily until September 21, three months after the end of the state of alert in Spain on June 21, unless the regulations are extended further) or the worker will request teleworking for care duties due to exceptional circumstances related to the COVID-19 (art. 6.2 Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to deal with the economic and social impact of the COVID-19), a request before which the company and the worker must make every effort to reach an agreement.

4. Are there any formalities to regulate the telework situation in the company?

The teleworking agreement, either initially through the employment contract or subsequently, must be formalised in writing, in accordance with the regulations in force



(Art. 13.2 ET). Although no minimum content is established in this precept, the Preliminary Draft does include a series of details that must be included in any teleworking agreement:

- Inventory of the means, equipment and tools required for the development of concerted distance work, including consumables and furniture, as well as the useful life or maximum period for renewal of these.
- Mechanism for compensating all costs, direct and indirect, that the worker may have due to the provision of services at a distance.
- Working hours of the working person and within it, if applicable, rules of availability.
- Distribution between presence work and distance work.
- Work centre of the company where the remote worker is assigned.
- Usual place of work.
- Where appropriate, means of corporate control of the activity.
- If applicable, term or duration of the agreement.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

At present, Spanish regulations do not provide for this possibility, so it will be up to the parties to the telework agreement or the regulations in the collective agreements. However, the draft telework law establishes a specific regime for the reversion of the telework situation to face-to-face work, establishing in general the voluntary nature of this reversion and a trial period to opt for this reversion.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

At present, the Spanish regulations in force do not establish any mechanism for the compensation of expenses or contribution of means, so it will be up to the parties to the teleworking agreement or to the regulations in the collective agreements.

However, the draft telework law establishes a specific regime for the provision of means (the employer is responsible for providing all the means, equipment and tools necessary for the development of the activity), as well as the business obligation to compensate for the expenses incurred in connection with teleworking, leaving it to the collective agreements or company agreements to regulate the specific compensation mechanism.

7. Is there an obligation to record working hours during teleworking?

Yes, in any case. The company's obligation to guarantee the registration of workers' working hours is maintained during the teleworking situation, under the terms established by current labour regulations (Art. 34.9 ET). In this sense, the company will continue to guarantee the daily record of the working day, which must include the specific start and end times of each worker's working day, without prejudice to the flexible hours that may be agreed in each case.

As for other workers, companies must organise and document this record of working time, through collective bargaining or company agreement or, failing that, by decision of the employer after consultation with the legal representatives of the workers in the company.

8. Is the right to digital switch-off of teleworkers regulated?

Yes, the right of teleworkers to be digitally disconnected is expressly regulated in Article 88 of Organic Law 3/2018, of 5 December, on the Protection of Personal Data and the guarantee of digital rights. In particular, the right to digital disconnection will be preserved in cases of total or partial distance work, as well as in the home of the employee linked to the use of technological tools for work purposes.



In any case, the modalities of exercising this right will take into account the nature and purpose of the labour relationship, will enhance the right to balance work and personal and family life and will be subject to the provisions of collective bargaining or, in its absence, to the agreement between the company and the workers' representatives.

After hearing the workers' representatives, companies will draw up an internal policy for workers, including in particular teleworkers, and those in management positions, defining the procedures for exercising the right to disconnection and training and awareness-raising activities for staff on the reasonable use of technological tools to avoid the risk of computer fatigue.

2.2 Legislation in Portugal

1. Is there a law in the country that regulates teleworking?

Yes, the Portuguese Labour Code regulates teleworking in its articles 165 to 171 and has been doing so since 2003.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

No. Only the legal reference that the teleworker should be treated equally with respect to all his or her co-workers, i.e. those working face-to-face, and that the employer has an obligation to avoid the isolation of the teleworker.

This equal treatment is expressly provided for in the Portuguese labour code:

- a. The teleworker has the same rights and duties as other workers, namely with regard to training and promotion or career development, limits on the period of normal work and other working conditions, health and safety at work and compensation for damage resulting from accidents at work or occupational diseases.
- b. In the field of vocational training, the employer shall provide the employee, if necessary, with appropriate training in the use of information and communication technologies inherent in the exercise of the respective activity.
- c. The employer must avoid isolating the employee, i.e. through regular contact with the company and other employees.

The teleworker's address should be included in the insurance policy because it is the same as his work address and where accidents at work may occur. There is no special rule for the prevention of occupational risks in telework

3. Is there a right to telework for the employee or is it voluntary for the parties?

There is a right to impose teleworking when it is compatible with their duties and when the worker has children up to 3 years old or when they have a risky illness (in these Covid-19 times). Apart from this, only by agreement of the parties.

In Lisbon and Porto, from 15 September, due to the contingency situation, companies are obliged to adopt the following procedures:

- Mirror equipment
- Rotation scale between teleworking and face-to-face work
- Time difference required:
 - Differentiated entry and exit times
 - Differentiated rest and meal times

4. Are there any formalities to regulate the telework situation in the company?

The telework contract or the annex to the pre-existing contract must be in writing:



- a) Identification, signatures and address or seat of the parties;
- b) Indication of the activity to be carried out by the employee, with express mention of the teleworking regime, and the corresponding remuneration;
- c) Indication of the normal working period;
- d) If the period of teleworking is less than the foreseeable duration of the employment contract, the activity to be carried out after that period
- e) The ownership of the working instruments and the person responsible for their installation and maintenance, as well as the payment of the corresponding consumption and use costs;
- f) Identification of the establishment or department of the company to which the employee belongs and who should be contacted in the context of the provision of work.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

Through an agreement of essential and vital needs for the company that can force the employees to return to work in a well-founded way.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

Yes, in accordance with article 168 of the Labour Code, it is stipulated that

- a. In the absence of a stipulation in the contract, the working instruments relating to information and communication technologies used by the employee belong to the employer, who must ensure their installation and maintenance and the payment of the corresponding costs.
- b. The employee must observe the rules of use and operation of the work tools made available to him/her.
- c. Unless otherwise agreed, the employee may not make use of the working tools made available to him by the employer, except those inherent to the performance of his work.

7. Is there an obligation to record working hours during teleworking?

Yes, the common rules on the recording of working time, including overtime, will apply to teleworkers. This has been a much-discussed issue in Portugal precisely because the teleworker - unlike the on-site worker who enters and leaves the company through his biometric data or by signing his own document - must have the same rights and, in this sense, the normal working and rest period provided for by law must be respected. I have outlined the solution that a teleworker can and should - in order to comply with working hours - do the registration when he starts his working day and the registration when he finishes or interrupts it.

8. Is the right to digital switch-off of teleworkers regulated?

The right to disconnect as we know it in other countries is not yet in place. Although it is currently a much discussed topic in Portuguese society and will soon reach the Portuguese Parliament. On the other hand, if employers comply with the rules on working time, normal working periods and overtime, I would say that, in the absence of this right, workers are already protected in some way against abuse, provided that there is an inspection by the authority for working conditions in Portugal.

3. Latin America

3.1 Legislation in Dominican Republic

1. Is there a law in the country that regulates teleworking?



In the Dominican Republic, there is no special rule aimed at regulating telework in the general sense. However, the Labour Code addresses "home work" in Articles 266 to 276, establishing that home work is that which is performed by workers in the premises where they live, on behalf of an employer. This is not, however, a general regulation for all types of work, but is intended for manufacturing work that can be performed by the worker from his or her home or in a premises or workshop other than that of the person on whose behalf he or she is working, i.e. outside the employer's industry or workshop.

In this sense, the application of teleworking is not opposed by the current Labour Code. It is therefore perfectly possible for the employer and the worker to do so:

- i) Agreeing that the employment contract will be in a distance mode; or
- ii) Modify the conditions of the employment contract so that, for a determined or undetermined period of time, the services agreed upon will be provided at a distance. This is in accordance with the provisions of Article 36 of the Code, namely: "The employment contract shall be binding on that which has been expressly agreed and on all consequences which are in accordance with good faith, equity, usage or the law".

On the other hand, it should be noted that there is a Draft Law on Distance Work or Teleworking that is pending in the Senate of the Republic. This project defines telework as that which is carried out outside the company's premises, using automatic, telecommunications and similar means. In a general sense, it is a fairly simple text and does not deal in depth with the peculiarities of this special type of work.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

There is no rule that specifically regulates the prevention of occupational risks in teleworking situations. In fact, this aspect is one of the points that should be addressed in future legislation. If we apply the provisions of the Labour Code, the employer has a general obligation of safety and prevention of occupational risks for all his employees (see article 46 of the Labour Code).

However, as this is a special type of work, such obligations should be analysed in detail and in any case made more flexible, since it is debatable whether if a worker suffers an accident while working at home or elsewhere, the employer should assume this occasional security. This is because the occupational safety obligation, in principle, is on the premises of the enterprise. The employer has no control or supervision over the worker's safety when he or she is working outside the enterprise.

3. Is there a right to telework for the employee or is it voluntary for the parties?

There is no right to telework in our current legal system, so it must be a voluntary agreement between both parties, as long as this modification of the employment relationship does not imply a prejudice to the worker (see article 37 of the Labour Code).

4. Are there any formalities to regulate the telework situation in the company?

There is no such formality, because our law does not address the application of teleworking in a general way. In this scenario, it is recommended that the company establishes an internal policy to delimit teleworking, so that the company can ensure its normal and routine functioning regardless of whether the worker is working on its premises or not. This policy should be included in the internal work regulations, with the main purpose of organizing the company's work. This policy should also address control mechanisms that address issues such as the following:

- i) technical and administrative rules applicable to teleworking;
- ii) hours at the beginning and end of the working day, time for lunch and rest periods during the day; and
- iii) disciplinary provisions and the ways in which they are applied



5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

This is not expressly addressed in the current Labour Code. However, as the parties are free to modify the form of the employment contract, if the reversibility does not imply a prejudice to the worker, the employer may well ask the worker to return to work in person.

In addition, Article 6 of the Draft Law on Distance Work or Teleworking, currently before the Senate of the Republic, establishes that if distance work is not part of the initial job description, the decision to move to face-to-face work is reversible, by agreement between the parties. It also states that reversibility may involve a return to work on company premises at the request of the worker or the employer.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

No, there is no such obligation in the current labour law system. In principle, the employer's obligations are limited to those set out in article 46 of the Labour Code. However, the employer must consider that, in addition to the payment of the salary, he or she may have to assume, by agreement with the worker, certain expenses of the worker while working from his or her home or any other place different from the company premises, namely: electricity, internet, telephone, among others, because the worker will be assuming these expenses to fulfil his or her functions. On the other hand, with respect to work tools, the Labour Code provides for a general obligation on the part of employers to provide work tools when it has not been agreed that workers will use their own tools, an obligation that we believe would also apply to the modality of teleworking.

7. Is there an obligation to record working hours during teleworking?

There is no such obligation to register in the current legislation. However, the company should include this aspect in its internal policy in order to properly organize its operation, and thus avoid future contingencies.

8. Is the right to digital switch-off of teleworkers regulated?

It is not expressly regulated. However, article 163 of the Labour Code states that every worker has the right to an uninterrupted weekly rest period of thirty-six hours. Therefore, the presence of telework cannot prevent the employer from fulfilling his obligation to respect the worker's weekly rest. In addition, article 164 of the Labour Code states that if the worker is employed during the period of his weekly rest, he may choose between receiving his regular salary increased by 100% or enjoying in the following week a compensatory rest equal to the time of his weekly rest. This weekly rest is perfectly comparable to the so-called "right to digital switch-off".

3.2 Legislation in Nicaragua

1. Is there a law in your country that regulates teleworking?

There is no legislation or administrative regulation.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

None. All existing labour legislation presupposes the provision of labour service at the employer's workplace.

3. Is there a right to telework for the employee or is it voluntary for the parties?

It is entirely voluntary.

4. Are there any formalities to regulate the telework situation in the company?



No public regulation. However, it is highly advisable that, if the employer offers this type of work, it is done on a voluntary basis, without discrimination, under equal working conditions and, above all, by means of an Addendum to the Employment Contract that establishes the terms and conditions that would specifically apply to this situation (e.g.: provision of equipment, working hours, confidentiality of information, voluntary termination of the scheme).

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

It is not regulated. However, it is highly advisable that private agreements between the parties provide for this scenario to prevent unnecessary litigation that is difficult to administer, given the lack of precedents.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

It is not regulated. However, bearing in mind that the costs of the employment relationship are borne by the employee, it is reasonable and fair that a certain amount of the time spent should be borne by the employer. It is highly desirable that all of this be contemplated in the contractual documents between the parties.

7. Is there an obligation to record working hours during teleworking?

It is not regulated. Teleworking should not be a cause for the distortion of working time, so the employer should ensure that these conditions are clearly set out in the private documents concluded with his employees.

8. Is the right to digital switch-off of teleworkers regulated?

It is not regulated. Logically, under the private conditions between the parties, this situation should be regulated (e.g. digital connection costs and possible disconnection at the employer's discretion and for objective reasons).

3.3 Legislation in Mexico

1. Is there a law in the country that regulates teleworking?

Yes, the Federal Labour Law ("LFT") in its Title VI which refers to special jobs and in turn in Chapter XII regulates home work by defining it as that which is performed at a distance using information and communication technologies.

On the other hand, it should be noted that there is a bill presented by the Senate now turned over to the Chamber of Deputies that seeks to regulate telework in greater detail by adding Chapter XII BIS in order to improve productivity, performance and quality of life of workers.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

There are no regulations governing the prevention of occupational risks for teleworking situations in particular. However, the Mexican Labour Authority is empowered to supervise compliance with health and safety provisions in places where telecommuting is performed by home workers.

3. Is there a right to telework for the employee or is it voluntary for the parties?

The LFT does not establish as such a right to work remotely. In any case, this modality must be agreed upon by mutual agreement between worker and employer.

On the other hand, the following assumptions would justify agreeing on the modality of teleworking, being (i) the Mexican government issues a declaration of health emergency; or (ii) there is reasonable cause for infection and the company's Health and



Safety Committee determines that telecommuting is necessary as a preventive measure to avoid contagion among employees.

4. Are there any formalities to regulate the telework situation in the company?

Under the terms of the LFT, the working conditions of a homemaker must be in writing and each party shall keep one copy and the other shall be delivered to the Labour Authority. The writing must contain (article 318 of the LFT):

- I. Name, nationality, age, sex, marital status and domicile of the worker and employer
- II. Location where the work will be carried out;
Nature, quality and quantity of the work
Amount of salary and date and place of payment; and
- V. Any other stipulations agreed upon by the parties.

In addition, the employer must submit this document within three working days to the Labour Authority, which, within the same period, will proceed to review it under its strictest responsibility. In case it is not in accordance with the Law, the Labour Authority, within three days, shall make the corresponding observations to the parties, so that they can make the respective modifications, and the employer shall submit it again to the same Labour Authority (article 319 of the LFT).

As an additional formality, employers are required to keep a Home Worker Registration Book, authorized by the Labour Authority, which will contain the following data (article 320 of the LFT):

- I. Name, nationality, age, sex, marital status of the worker and address or premises where the work is performed;
- II. Days and hours for delivery and receipt of work and for payment of wages
Nature, quality and quantity of the work
- IV. Materials and tools provided to the worker on each occasion, their value, and the method of payment for objects lost or damaged through the worker's fault;
- V. Form and amount of salary; and
- VI. Other data indicated by the regulations. The books shall be permanently at the disposal of the Labor Authority.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

The LFT does not address this situation, but the individual employment contract containing the working conditions must be complied with and in any case agreed upon by both parties.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

In terms of article 324 of the LFT, among other obligations of the employer, the employer is required to provide its workers with the materials, instruments and working tools at the agreed dates and times. As regards expenses, there is no express provision obliging the employer to pay them.

7. Is there an obligation to record working hours during teleworking?

No, there is no obligation to register the working day and time foreseen in the LFT. Such obligation, if any, must be agreed upon between the worker and employer. On the other hand, the fact that the work is done by teleworking makes no difference with respect to the duration of the working day, which must be subject to the maximums established by the LFT.

8. Is the right to digital switch-off of teleworkers regulated?



It is not yet regulated in Mexico, however, if there is a bill presented by the Senate in February 2020 that seeks to regulate it by recognizing the right of workers to disconnect and abstain from participating in electronic communications related to their employment, such as emails, telephone calls or other forms of communication, during non-working hours.

3.4 Legislation in El Salvador

1. Is there a law in your country that regulates teleworking?

Yes, its name is the "Telework Regulatory Law". It came into force during the month of March this year 2020.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

Yes, the "General Law for the Prevention of Risks in the Workplace" and the "Telework Regulatory Law".

3. Is there a right to telework for the employee or is it voluntary for the parties?

Teleworking is voluntary. In the case of all workers who, before the entry into force of the law regulating teleworking, are voluntarily transferred to this modality, they will have a 30-day trial period, in order to decide to remain under this regime. For all other cases in which it is agreed to telework from the beginning of the employment relationship, this will be compulsory.

4. Are there any formalities to regulate the telework situation in the company?

The corresponding telework addendum, or a telework contract, must be signed and must comply with the requirements set out in the Telework Act, e.g. it must clearly describe the functions, connection times, equipment and systems placed at the disposal of the teleworker, address of the telework centre/worker's home, etc.

Additionally, provisions related to teleworking should be incorporated into the company's Internal Work Regulations, specifically regarding working hours, wages, protection of information, confidentiality, remuneration for internet services, electricity, telephone.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

It is not reversible, unless there is express consent between the parties to the change of modality, which, in addition, could imply a change in the conditions of the employment contract, in relation to salary, interconnection expenses and use of equipment.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

In any case, the employer will recognize a percentage of payment for the services of Electricity, Internet connection and essential services for the development of the work. The employer is obliged to provide work tools, such as computers, mobile phones, subscriptions to computer systems and platforms, among others. In the event that the Worker voluntarily uses his/her own devices (under the BYOD modality), the employer will recognize a cost for the use of these.

7. Is there an obligation to record working hours during teleworking?

Yes, in the case of those telework contract modalities in which the salary is paid by effective hour, not in those cases in which the salary is paid according to objectives. However, in any case, in El Salvador there is a constitutional limit on the working day, established at 8 hours in the daytime and 7 hours in the nighttime, and another limit on



the weekly working day, which may not in any case exceed 44 hours per week in the daytime and 35 hours per week in the nighttime, which must be respected.

8. Is the right to digital switch-off of teleworkers regulated?

No. However, for those workers who are subject to wages for actual hours of work, remuneration will be applied in proportion to the time at the employer's disposal.

3.5 Legislation in Guatemala

1. Is there a law in your country that regulates teleworking?

Guatemala is a country where teleworking has not been implemented as a common work modality, there are few companies that use this work modality, and this is seen more frequently in foreign international companies that hire Guatemalan workers with residence in Guatemala under this modality, without the need for them to move from their locality.

Guatemalan legislation only expressly regulates work at home, understanding our legislation as work where the worker makes items from home, without contemplating the use of ICT, which is due to the fact that our labour legislation is not updated with telematic and digital information and communication technology, which makes it necessary for this legislation to be updated.

The need to update legislation on labour matters relating to telework or remote-connected work is revealed by the current crisis in our country and the world arising from the COVID-19 Coronavirus, in which the central government has decreed the closure of labour activities in the public and private sectors, requesting the implementation of telework.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

Currently there is no specific legislation in Guatemala regulating risk prevention during telework. The necessary recommendations should be made so that the teleworker implements good practices in this modality, reducing risks. It should be noted that, based on the teleworking modality, there are employers who provide their workers with the necessary elements to be able to respond to a risk situation; however, the employers who provide these elements are a minority.

3. Is there a right to telework for the employee or is it voluntary for the parties?

It is the parties that agree to carry out teleworking, however, it is a modality that companies have also implemented to continue carrying out their activities, doing so in a taxable way for the worker. As there is no legislation specifically regulating it, teleworking is implemented in both ways, both tax and by agreement of both parties.

4. Are there any formalities to regulate the telework situation in the company?

Currently, the deputies to the Congress of the Republic of Guatemala have presented a bill that seeks to promote work from home or teleworking as a measure of work continuity in the face of social distancing. The objective of the proposal is to promote, regulate and implement telework as a labour modality that stimulates the generation of employment and modernization of the public and private sectors. Telework is mainly governed by the agreements established by employers and workers to carry out their activities and continue with the labour relationship.



5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

As in Guatemala this possibility is not foreseen, so it depends on what has been agreed by the parties, as well as on collective agreements. In the same way, the reversibility of the telework situation varies from company to company, since depending on the activities to which each one is dedicated, it allows or does not allow a return to face-to-face work, but it will depend on the measures adopted to carry out its activities normally, this anticipating the risk of COVID-19, allowing such reversibility freely and also by agreement of the parties.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

In Guatemala, there is no regulation in force establishing mechanisms for compensation of expenses or contribution of means, so it will practically be governed by what has been agreed by the parties. The draft law regulating teleworking will also be governed by the legal norms already established in Guatemala, especially the Labour Code.

7. Is there an obligation to record working hours during teleworking?

As the modality of teleworking is not legally regulated, as in the majority of cases, the parties will have to agree and in most cases it is agreed to maintain the company's obligation to guarantee the registration of the workers' working hours. Companies are responsible for organizing the way to keep records of the working hours of their workers, always in accordance with the agreement to adopt the form of teleworking between the parties.

8. Is the right to digital switch-off of teleworkers regulated?

As the telework modality is not legally regulated in Guatemala, the right to digital disconnection of teleworkers is governed by agreements between workers and companies, regarding how to maintain control of the connectivity that the teleworker must maintain when working at home. Digital disconnection will depend largely on the nature and direction of the employment relationship, as well as on the need to implement worker connectivity in the form of teleworking.

3.6 Legislation in Brazil

1. Is there a law in your country that regulates teleworking?

Yes, the CLT (Consolidação das Leis Trabalhistas) - Consolidation of Labour Law.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

Yes, the CLT, the Department of Labor's health and safety protection regulations and the company's internal rules.

3. Is there a right to telework for the employee or is it voluntary for the parties?

Free adjustment between the parties, by means of a formal written contract.

4. Are there any formalities to regulate the telework situation in the company?

Yes, it is compulsory to sign a contract between the parties.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

A formal and signed agreement between the parties is required.



6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

Yes, the CLT does.

7. Is there an obligation to record working hours during teleworking?

As a general rule, there is no time control in teleworking, but the company can practice the opposite, if it wishes, but there you will have to pay overtime if there is a job of more than 8 hours a day or 44 hours a week.

8. Is the right to digital switch-off of teleworkers regulated?

No.

3.7 Legislation in Puerto Rico

1. Is there a law in the country that regulates teleworking?

Only in the context of the public sector.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

Yes.

3. Is there a right to telework for the employee or is it voluntary for the parties?

Volunteer

4. Are there any formalities to regulate the telework situation in the company?

No.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

Yes.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

No.

7. Is there an obligation to record working hours during teleworking?

Yes, but it is from any job, whether or not it is teleworking.

8. Is the right to digital switch-off of teleworkers regulated?

No.

3.8 Legislation in Chile

1. Is there a law in your country that regulates teleworking?

Yes, Law No. 21,220, published on 26 March 2020.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

Yes, in accordance with the law on telework (Article 152 quarter m of the Labour Code), regulations were issued establishing specific occupational safety and health conditions to which workers providing services under the telework or distance mode must be subject.

3. Is there a right to telework for the employee or is it voluntary for the parties?



It is voluntary, the parties must agree. Except in special circumstances such as those that occur around the COVID in periods of mandatory quarantine.

4. Are there any formalities to regulate the telework situation in the company?

Yes, the parties must regulate this type of work in the employment contract (for those entering) or through contract annexes (for those who were already dependent before). In both cases, there are certain minimum mentions that must be considered, for example, whether this modality will be total or partial; the place from where the services will be provided under this modality; the minimum time of disconnection; the duration of this modality if it has been agreed during the validity of the employment contract; etc.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

If the telework mode was agreed during the term of the employment relationship, either party may terminate it by giving the other at least 30 days' notice. On the other hand, if the teleworking modality was agreed upon from the beginning, in the employment contract, to modify it, an agreement between the parties is required.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

Yes, such work tools are the responsibility of the employer.

7. Is there an obligation to record working hours during teleworking?

If the worker is one of those who, under the modality of telework, is subject to a limitation of working hours, there is an obligation to register the working hours and schedules and the employer must implement a registration system to this end. However, it should be noted that under this mode it can also be agreed that the worker is exempt from time limitations (provided that in practical terms this does not actually happen) and in that case there would be no registration.

8. Is the right to digital switch-off of teleworkers regulated?

Yes, the minimum legal disconnection time is 12 continuous hours.

3.9 Legislation in Costa Rica

1. Is there a law in your country that regulates teleworking?

Yes, at the end of 2019, the Legislative Assembly approved the Law to Regulate Teleworking, number 9738, which establishes specific labour rules to implement teleworking.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

Although the law does not expressly state this, all the rules concerning occupational health and prevention of risks at work remain in force during teleworking.

3. Is there a right to telework for the employee or is it voluntary for the parties?

There is no right to telework. The voluntary nature of applying for teleworking depends on whether the job was offered and contracted under the teleworking modality, or whether it will be implemented during an already existing employment relationship.

4. Are there any formalities to regulate the telework situation in the company?

Although it does not expressly say so, the law would oblige employers who wish to implement this modality to have several of its elements incorporated into their Internal Labour Regulations, collective bargaining agreement, internal policy, or any internal regulation. The bill mentions two specific issues in which this is required: (1) when any party



wishes to revoke the telework modality, the procedure established in the internal regulations must be followed to justify that decision, and (2) establish the procedure to investigate whether or not the unforeseen event generated to the work tools was intentional, due to some negligence, carelessness, or lack of skill on the part of the worker.

In addition, as with any change in the employment relationship, it is recommended that an addendum be signed to the original contract, to demonstrate the voluntariness of the parties, and to clarify issues such as the occupational health measures to be followed, the minimum conditions that must be in place for teleworking, the working tools to be used during teleworking, the forms of control to be applied in remote work, and any other that the parties see fit.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

If teleworking is implemented from the beginning of the employment relationship, the modality cannot be revoked, unless there is a willingness on both sides to do so.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

Law 9738 is rather ambiguous when it "creates" the obligation to reimburse expenses, particularly electricity, since it establishes that: "(a) To provide and guarantee the maintenance of equipment, programs, the value of energy determined according to the form of mediation possible and agreed upon by the parties, and travel expenses, if the tasks assigned so require". This wording does not make it clear whether or not there is an obligation to recognise any amount of electricity. In practice, it has not been seen that recognition is granted when the "energy" consumed by the worker is very low. For example, in cases where teleworking basically involves a laptop computer. In that case, the exception indicated in the article would apply ("...if the tasks assigned warrant it.").

7. Is there an obligation to record working hours during teleworking?

No. Legally in Costa Rica there is no obligation to apply a time and attendance register, either for face-to-face workers or teleworkers.

At present, the legislative trend is to pass Bill 21,182, which seeks to "make working hours more flexible". In addition, article 144 requires "(...) to record in the appropriate books (physical or digital), duly separated from that relating to ordinary work, what each of its workers is paid for extraordinary work, holidays and rest days worked". This article mentions that this information must be given to the worker each time he receives his payment, and each time he requests it. In addition, access to the Ministry of Labour must be allowed when requesting such information.

No differences are specified in their implementation for different types of workday, or what happens to exempt workdays, such as those of trusted workers. These types of employees do not normally record their entry and exit hours, and even jurisprudence has said that this is a requirement for applying this exception to the working day.

The project also does not establish a transitional period for implementing this day record. This means that every employer, large or small, must implement a physical or digital register from the moment the law is approved and published in the Gazette.

This is why the legislative proposal is not very precise. At present, it establishes this obligation for all employers, regardless of their activity or number of workers. The draft does not say so, but we can assume - as with many situations in this regulation - that the register should be sufficiently robust, reliable, verifiable and non-manipulable, so that it fulfils its purpose.

The proposed text is expected to be voted on and implemented in the coming months.



8. Is the right to digital switch-off of teleworkers regulated?

No. There is no mention of the right to digital switch-off in our labour regulations. We do have regulations on maximum working hours, rest days and the way in which workers are paid extraordinarily. This means that if messages, emails and calls are sent outside working hours, the worker could refuse to answer them because they are not subordinate to their employer during the rest periods, or that if they do answer them, it would be considered extraordinary time, which should be paid as indicated in our regulations.

3.10 Legislation in Honduras

1. Is there a law in your country that regulates teleworking?

In Honduras, there is no specific Labour Law that regulates Telework

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

There is no specific labour regulation that regulates the prevention of occupational risks for teleworking situations. In this sense, if there is an occupational risk derived from teleworking, it would be subject to the existing labour regulations of general application, such as the Labour Code.

3. Is there a right to telework for the employee or is it voluntary for the parties?

As there is no specific labour regulation that regulates teleworking and all its implications, it is advisable that the Teleworking Relationship be agreed by both parties either through a Contract, addendum or agreement between the parties, in order to establish the rights, obligations and conditions under which the teleworking relationship will be governed.

4. Are there any formalities to regulate the telework situation in the company?

There is no regulation that contemplates a formality to regulate in the company the situation of teleworking, however, it is advisable that the rights, obligations and conditions of teleworking are contemplated in a Contract, Addendum or agreement signed between the Employer and the Worker.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

As there are no specific labour regulations governing this point, it is advisable to sign an Agreement between the Worker and the Employer, setting out the rights, obligations and conditions of the face-to-face working relationship.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

There is no specific labour provision that indicates as an obligation the compensation of expenses and the provision of means and tools for teleworking. However, the provision contained in Article 95.3 of the Labour Code, which indicates as an obligation of the employers, to provide the workers with the tools, instruments and materials necessary to carry out the agreed work, could be applied in a general and analogical way.

7. Is there an obligation to record working hours during teleworking?

In Honduras, there is no specific regulation indicating the obligation to register the working hours of teleworking, however, the provisions of Article 20 of the Labour Code would be generally applied, which establishes that the mode, time or quantity of work is one of the indispensable requirements for the existence of an employment relationship, therefore, it would be understood that the teleworker is obliged to register his working hours.



8. Is the right to digital switch-off of teleworkers regulated?

There is no specific regulation covering the right to digital switch-off of teleworkers.

3.11 Legislation in Panama

1. Is there a law in your country that regulates teleworking?

In the Republic of Panama, the regulation that governs everything related to teleworking is Law 126 of 18 February 2020.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

It is correct, Law 126 of 18 February 2020, specifically in its articles 9, 13 and 14, in addition to the rules relating to occupational risks present in the Organic Law No. 51 of 2005 of the Social Security Fund.

3. Is there a right to telework for the employee or is it voluntary for the parties?

Essentially, it is voluntary between the parties, but if the employment relationship begins in person and the proposal for teleworking is made later, the employee may reject or accept the offer. The rejection by the employee may not be grounds for termination of contract, in accordance with Article 3 of Law 126 of 18 February 2020.

4. Are there any formalities to regulate the telework situation in the company?

The contract must be in writing and signed in three copies, one by each party, which must be digitally or analogously stamped by the Ministry of Labour and Labour Development, as established in Article 5 of Law 126 of 18 February 2020.

If the employment relationship already exists, the respective addendum must be signed with the corresponding conditions.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

It is not allowed. The employer shall have the capacity at any time to require the worker to return to work in person, giving the prior notice agreed in the employment contract or addendum, as provided in article 3 of Law 126 of 18 February 2020.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

It is correct, the company has the obligation to pay all the expenses incurred by the worker for the performance of his work as well as the training related to the equipment for the performance of the work, according to articles 10, 11 and 12 of Law 126 of 18 February 2020.

7. Is there an obligation to record working hours during teleworking?

Teleworking may be partial or complete, in accordance with the provisions of each individual employment contract, which is understood to depend on whether your workday is partial or complete.

8. Is the right to digital switch-off of teleworkers regulated?

At present it is not regulated, Law 126 of 18 February 2020 has not been regulated by the Executive Body, which has the constitutional power to regulate this law.

3.12 Legislation in Ecuador

1. Is there a law in your country that regulates teleworking?



On 22 June 2020, regulations on teleworking were incorporated into the Labour Code and the Organic Law on Public Service at the legal level. This regulation was incorporated into the aforementioned legal bodies by the Organic Law on Humanitarian Support, issued to combat the effects of the health emergency suffered this year. Previously, the Ministry of Labour issued technical standards based on its ability to regulate special working relationships, although there was no specific law on telework.

In view of the declaration of a health emergency in the country in March 2020, a Ministerial Agreement was also issued to regulate what was called "emerging telework", and at the time of the declaration of a State of Emergency by the President of the Republic on the 16th of the same month and year, this modality of work was declared to be of preferential application, unless the activities can only be carried out in person or are of the utmost importance for the functioning of society.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

According to the Ministerial Agreements issued prior to the issuance of the Organic Law on Humanitarian Support, and in accordance with the general rules of the Labour Code, the employer is responsible for ensuring the occupational safety and health of teleworkers. Therefore, they must ensure that health and safety conditions are met and inform teleworkers of the applicable rules and regulations. In any case, the new regulation included in the Labour Code by the Organic Law of Humanitarian Support requires the Ministry of Labour to issue secondary regulations for the application of this modality of work, so in my opinion in the near future more specific regulations will be issued on this subject.

3. Is there a right to telework for the employee or is it voluntary for the parties?

Except for the provisions of special regulations issued by the health emergency, which provide that in some cases teleworking is mandatory (which shall cease to be valid as soon as the government authorities declare the extinction of states of emergency or health emergency), teleworking must be agreed upon, either at the beginning of the employment relationship or later.

4. Are there any formalities to regulate the telework situation in the company?

Firstly, the agreement on the form of teleworking, either at the beginning of the employment relationship or during its validity, must be in writing. On the other hand, the employer must inform the labour authority of the employment of staff under this mode. In Ecuador, it is mandatory to issue an Internal Labour Regulation and a Health and Safety Regulation, starting with the existence of 10 workers, which must be adapted to include regulations on this type of work.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

The recently introduced legislation in the Labour Code does not provide language on the reversibility of teleworking and should require agreement between the parties as well as for adoption. However, if the conditions that supported the adoption of this form of work or the implementation of teleworking are prevented, they should support reversibility. This will probably be an issue to be included in the regulations to be issued by the Ministry of Labour.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

The specific standard included in the Labour Code requires the employer to provide the equipment, work elements and inputs necessary for the development of telework.

7. Is there an obligation to record working hours during teleworking?



There is no specific rule that requires a record of working hours. The text on this subject is open: "In this mode the employer will exercise control and management tasks remotely and the worker will report in the same way".

8. Is the right to digital switch-off of teleworkers regulated?

The right to digital switch-off is regulated. The employer is required to respect the right of the teleworker to disconnect, guaranteeing the time in which he will not be obliged to respond to his communications, orders or other requests. The disconnection time must be at least twelve continuous hours in a twenty-four hour period.

Likewise, in no case may the employer establish communications or formulate orders or other requirements on workers' annual rest days, leaves or holidays.

4. Asia

4.1 Legislation in China

1. Is there a law in your country that regulates teleworking?

No. China's Labour Law is from 1995, and there was no concept of telework at that time.

2. Are there any regulations governing the prevention of occupational risks for teleworking situations?

No. There are regulations for the prevention of occupational risk, but not specifically for the issue of teleworking. It is a legal vacuum in Chinese legislation in this area, given that the prevention of occupational risks at home is very difficult to determine.

3. Is there a right to telework for the employee or is it voluntary for the parties?

Will of the parties, it is not defined in the Labour Law, taking into account that the Labour Law of China is from 1995. However, due to the situation of the Covid-19 pandemic, the provincial and local governments have published various recommendations/instructions to encourage teleworking.

4. Are there any formalities to regulate the telework situation in the company?

No, it depends on each company, each city has its recommendations, but in general, the Chinese government recommends the issue of teleworking, and no specific declaration or formality is required, leaving it up to the companies to negotiate with the workers.

5. Is free reversibility of the telework situation allowed for face-to-face work or is agreement between the parties required?

Not regulated, usually requiring employer consent, China's Ministry of Social Security recommends that the company negotiate with workers to determine the need for telework.

6. Does the law regulate that the company has the obligation to compensate for expenses and provide means and tools for work?

No. Teleworking is recommended for companies with sufficient means and technology, but it is not an obligation.

7. Is there an obligation to record working hours during teleworking?

No. Each company has to take the appropriate control measure.

8. Is the right to digital switch-off of teleworkers regulated?

No, but the same rest is demanded as if it were face-to-face work.

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