

## Remote Work Bill

### Reform bill regarding the organization of labor relations under the scheme of "remote work" or "home office".

On December 8, 2020, the Chamber of Deputies approved the Draft Decree to amend article 311 and add Chapter XII BIS of the Federal Labor Law ("LFT"), on remote work, passing it to the Senate on the same date (the "Bill").

On December 9, 2020, the Senate unanimously approved the Bill to regulate the remote work on the LFT, just one day after it was approved by the Chamber of Deputies.

Therefore, the Bill has been sent to the Federal Executive for its approval and, provided there are no observations by the latter, it will be immediately enacted.

The following are relevant aspects of the Bill:

**a) Definition of "Home working".** The definition of "Home working" is reformed in order to exclude from this concept the work that is carried out remotely using information and communication technologies; since, precisely this characteristic is given to the definition of remote work.

**b) Definition of Remote Work.** It is defined as the subordinate labor organization form consisting of performing remunerated activities, in places other than the employer's establishment(s), using primarily information and communication technologies, for contact and command between the worker and the employer, thereby making unnecessary the physical presence of the worker at the workplace;.

Labor relations developed 40% or more of the time in the worker's home or at the location chosen by them, shall be considered as remote working. Therefore, occasional or sporadic remote activities shall not be considered as remote work.

**c) Definition of Information and Communication Technologies.** Defined as the set of services, infrastructure, networks, software, computer applications and devices with the purpose of facilitating the tasks and functions in the workplace, as well as those needed for information management and transformation, particularly, the technological components allowing the creation, modification, storage, protection and retrieval of this information.

**d) Individual Employment Agreement.** The labor conditions corresponding to this form of work organization, remote working, must be in writing and the employment agreement must include the following:

- (i) Nature and characteristics of the job.



- (ii) The work equipment and tools, including those related to the safety and health obligations delivered to the worker under the remote work modality;
- (iii) The description and amount that the employer shall pay to the worker under the remote work modality, for the payment of utilities related to the same (e.g. electricity and internet services);
- (iv) The mechanisms of contact and supervision between the parties, as well as the duration and distribution of work schedules, provided that they do not exceed the legal maximum length of a working day.

Said requirements are additional to those provided for in Article 25 of the LFT

**e) Unions and Remote Working.** In collective labor law, remote working shall form part of the collective bargaining agreement, which, if applicable, exists between unions and companies, and a copy of this agreement must be given free of charge to each of the workers under this modality.

Similarly, the employer must facilitate the mechanisms of communication and dissemination at a distance which the work center has, including e-mail or others, in order to guarantee that workers under the remote work modality have knowledge of the procedures of freedom of association and collective bargaining.

Employers who do not have a collective bargaining agreement must include remote working in their internal labor regulations and set forth mechanisms to guarantee the involvement and contact between the workers who perform their work under this modality.

**f) Employers' obligations.** The following are established as obligations of employers in matters of remote work:

- Provide, install, and maintain the necessary equipment for remote work such as computer equipment, ergonomic chairs, printers, among others;
- Receive the work in a timely manner and pay wages in the form and on the dates agreed;
- Assume the costs derived from the work through the remote work modality, including, in its case, the payment of telecommunication services and the proportional part of electricity;
- Keep a record of the inputs delivered to the workers, in compliance with the provisions on occupational safety and health established by the Ministry of Labor and Social Welfare ("**STPS**");
- Implement mechanisms that preserve the security of the information used by the workers. For example: by conducting security tests and detecting vulnerabilities of the company's technological infrastructure, the implementation of security standards for equipment and systems, as well as BYOD ("Bring Your Own Device") policies, training and information security awareness for workers, among others.
- Respect the right of workers to be disconnected at the end of the working day;
- Register workers in the remote work scheme under the mandatory social security regime;



- Set forth the necessary training and advisory mechanisms to guarantee the adaptation, learning and adequate use of information technologies by workers, with special emphasis on those who change from face-to-face scheme to the remote work scheme.

As additional obligations of the employer, it is established that the employer must promote the balance of the labor relationship of these workers, so that they enjoy a dignified or decent job and equal treatment in terms of remuneration, training, education, social security, access to better job opportunities, among others. Likewise, it must observe a gender perspective that allows a balance of personal life and the availability of workers under the remote work modality during the working day.

**g) Obligations of the Workers.** The workers shall have the following obligations:

- Take the greatest care in the storage and conservation of the equipment, materials and tools that they receive from the employer;
- Provide timely information on the agreed costs for the use of telecommunications services and electricity consumption, derived from remote work;
- Comply and behave in accordance with the provisions on safety and health at work established by the employer;
- Follow and use the mechanisms and operating systems to supervise their activities;
- Follow the security mechanisms set forth by the employer, as well as the restrictions on their use and storage, during the performance of their activities.

**h) Switch to remote work and reversibility to on-site work.** Modality switches from on-site to remote work must be voluntary and in writing. Parties which had switched to remote work, have the right to reverse to the on-site modality, agreeing on the necessary mechanisms and timing to validate their transition to the presence-based modality.

**i) Guarantee of the worker's privacy right.** Mechanisms, operating systems, and any technology used to supervise remote work must be proportional to its objective, guaranteeing the privacy right of workers under the scheme of remote work, and respecting the applicable legal framework regarding personal data protection; including compliance with the obligation to make workers aware of the treatment to which their personal data will be subjected by making a privacy notice available and obtaining their consent for such purposes.

Only in extraordinary circumstances, or when the nature of the functions so requires, video cameras and microphones shall be used to supervise remote work.

**j) Health and safety conditions of workers.** The special health and safety conditions for jobs under the remote work scheme *will be established by the STPS in a Mexican Official Standard, which should consider ergonomic, psychosocial factors, and other risks that could*



cause adverse effects on life, physical integrity or health of the workers who work in the remote work modality.

For the purposes of the above, **the STPS will have a period of 18 months from the entry into force of this Bill, to publish a Mexican Official Standard that governs the obligations in terms of safety and health at work for remote work.**

**k) Responsibilities of the labor inspectors.** Labor Inspectors will have the following special responsibilities and duties:

- I. Verify that employers keep a record of the inputs delivered to workers in the remote work scheme, in compliance with the health and safety obligations at work;
- II. Ensure that wages are not lower than those paid in the company to the on-site workers with the same or similar functions;
- III. Verify the due compliance with the special obligations referred to herein.

In light of the foregoing, it is necessary for employers to adapt and adjust their work organization schemes under the remote work modality. In this regard, employers shall make modifications in individual and collective labor matters, so that individual employment agreements and collective bargaining agreements, internal labor regulations, protocols and any other internal policies set forth by the companies, incorporate the provisions contained in this Bill, whose publication appears to be imminent.

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