

Remote work at the expense of the employer made possible

I. The Sejm has passed regulations on remote work and sobriety checks

On 1 December 2022 the Sejm passed a government bill amending the Labor Code and certain other acts. The bill permanently adds remote work to the Labor Code, as well as forms a basis for employers to introduce and perform, when necessary to protect certain assets, preventive tests of employees for the presence of alcohol or other similarly acting substances. The bill has now been sent to the Senate.

II. Work location to be indicated by employee once agreed with employer

The amendments introduce the concept of remote work. The amended Labor Code will provide that work may be performed in whole or in part at a place indicated by the employee and agreed with the employer, including at the employee's residence address, in particular with the use of direct remote communication. The parties to the employment contract will be able to agree on remote work either at contract conclusion, or in the course of employment. In the case of the latter, this may be done at the initiative of the employer or at the employee's request submitted in paper or electronic form.

The Sejm has amended the Labor Code by adding regulations on so-called remote work, including at employee request. The regulations also specify those groups of employees who cannot be refused remote work, as well as the rules for the reimbursement of remote work expenses incurred by employees.



III. Employer to be able to mandate remote work only in certain cases

The new regulations will give employers the ability to mandate remote work only during a state of emergency, state of epidemic threat or state of epidemic and for 3 months after they are lifted, or in a period when the employer is temporarily unable to provide safe and healthy work conditions at the current place of work performance due to a force majeure, but only if directly prior to the mandate being issued the employee submits a declaration, in either paper or electronic form, confirming that he/she has the necessary accommodations and technical means to perform his/her work remotely. The employer will at any time be able to withdraw the remote work mandate with at least a two-week's notice. In addition, the mandate will also have to be withdrawn as soon as a change occurs in the employee's accommodations or technical means that prevents the employee from performing his/her work remotely. At the same time, the employee will have to notify the employer as soon as such a change occurs.

IV. In some cases employer unable to deny remote work

Where an employee requests remote work, the employer will have to grant the request (will not be able to deny it) to: an employee with a child holding a certificate referred to in the "For Life" Support for Pregnant Women and Families Act; an employee with a child holding a certificate of disability, moderate disability or significant disability referred to in the regulations on occupational and social rehabilitation and employment of the disabled; an employee with a child declared to be in need of early childhood development support, special education or remedial classes referred to in the Educational Law Act; a pregnant employee; an employee with a child under the age of 4; as well as an employee who takes care of another close family member or another person living with him, who has a certificate of disability or significant disability. In such cases the employer can deny remote work only if such work is not possible due to the organization or nature of the work performed by the employee. The employer will then have 7 working days from the employee's request to inform the employee in paper or electronic form of the reason for the denial.

V. Remote work performance rules in regulations, agreement or order

The rules of remote work performance will be set out in an agreement concluded between the employer and the company's trade union organization, and if there is more than one trade union organization - agreement between the employer and those organizations. If it is not possible to come to such an agreement with all of the trade union organizations, the employer will conclude the agreement with representative organizations, each of which must include at least 5% of the employer's employees. If no agreement is concluded within 30 days of the employer's presentation of the draft agreement, the employer will set out the rules of remote work in relevant regulations, taking into account the terms reached with the trade union organizations during negotiations. Whereas if an employer has no trade unions, the employer will set out the rules of remote work performance in relevant regulations in consultation with employee representatives chosen as is customary at that employer.



VI. Remote work costs to be charged to employer

Under the new provisions of the Labor Code, the employer will have to provide his remotely working employees with: work materials and tools, including technical devices, necessary to perform remote work; installation, service and maintenance of work tools, including technical devices, necessary to perform remote work, or cover the necessary costs of installation, service, operation and maintenance of such tools, including technical devices, necessary to perform remote work, as well as cover the costs of electrical energy and telecommunications services necessary to perform remote work; training and technical support necessary to perform the work. The employer will also have to cover other costs directly associated with the performance of remote work, if the reimbursement of such costs has been specified in the relevant agreement or regulations. Lump-sum reimbursements will also be possible. None of the above forms of cost reimbursement will constitute taxable income for the employee (they will be exempt from personal income tax).



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VII. Employer able to perform checks of employees at remote work locations

Employers will have a right to inspect their employees' performance of remote work, compliance with health and safety regulations, compliance with security and information protection requirements, including personal data protection procedures, as set out in the relevant agreement, regulations or remote work order. Such inspections will be performed in agreement with the employee at the remote work location during the employee's working hours. The employer will have to adapt the inspection method to the location and type of remote work. Inspection activities will not be permitted to violate the privacy of the employee or others, or prevent them from using the home premises in their intended manner. If the inspection results in the identification of deficiencies in compliance with health and safety regulations or information security and protection requirements, including personal data protection procedures, the employer will be able to obligate the employee to rectify such deficiencies within a specified period of time, or withdraw permission for that employee to perform remote work. If permission to perform remote work is withdrawn, the employee will return to working at the regular work location on the date specified by the employer.

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

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