

Remote work regulations in effect as of 7 April

I. Remote work regulated in the Labor Code

The Labor Code defines remote work as work 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 communications. Two modes of remote work will be allowed - ordinary (employee consent required) and extraordinary (mandated by employer). This formula will make it possible to perform work entirely remotely (regular remote work) or partially remotely (hybrid remote work). There will also be so-called occasional remote work - of up to 24 days per year.

II. Remote work agreed and remote work mandated

The parties to an employment contract can agree on remote work both at contract conclusion, and 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. Whereas employers will only be able to mandate remote work 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, and 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. Where remote work is mandated by the employer, the employer will at any time be able to withdraw the remote work mandate with at least a two-week's notice.

III. Occasional remote work

The Labor Code also provides that remote work may be performed occasionally, at the employee's request submitted in paper or electronic form, for up to no more than 24 days per calendar year. In such cases, the employer will be able to inspect the performance of remote work, compliance with health and safety regulations, compliance with security and information protection requirements, including personal data protection procedures, as agreed with the employee. The general rules on the performance and inspection of remote work set out in the Labor Code for other remote work modes do not apply. Importantly - as explained by the Ministry of Finance - an employee's right to submit a request for occasional remote work is not conditioned in his use of annual leave, including the so-called on-demand leave. Employee's request for occasional remote work will not be binding for the employer, so the employer may refuse to grant it. In particular, the employer may refuse to grant it when the performance of remote work is not possible due to work organization or the type of work performed by the employee. The employer's refusal to grant occasional remote work cannot be discriminatory in nature.

7 April 2023 is the effective date of the new Labor Code provisions on remote work. They will replace the existing telework regulations.

The Labor Code will permit remote work in various modes, while at the same time obligating employers to cover certain costs associated with remote work. Changes will also be made in employee documentation regulations.



IV. Cases where employer can refuse to grant remote work

Although the regulations contain no subjective limitations when it comes to requesting occasional remote work, it needs to be noted that the nature of some jobs is such that they cannot be performed outside the location indicated in the employment contract. And so, in accordance with the regulations, remote work does not cover: particularly hazardous work; work that involves exceeding the acceptable norms of physical elements for residential premises; with the hazardous chemicals referred to in occupational health and safety regulations; work that involves the use or release of harmful biological agents, radioactive substances, or other substances or mixtures that emit noxious odors; work that involves intensive staining. Employee's request for occasional remote work will not be binding for the employer, so the employer may refuse to grant it. In particular, the employer may refuse to grant it when the performance of remote work is not possible due to work organization or the type of work performed by the employee. The employer's refusal to grant occasional remote work cannot be discriminatory in nature.

V. Cases where employer cannot refuse to grant remote work

Generally, an employer can refuse to grant remote work to an employee. But not always. Remote work must be granted 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.

VI. Request to discontinue remote work

Where remote work is started in the course of employment, each of the parties may submit a binding request, in paper or electronic form, to discontinue remote work and reinstate the previous terms of work performance. The parties agree the date for the reinstatement of the previous terms of work performance for no later than 30 days of the date of request. In the absence of an agreement, the previous terms of work performance are reinstated on the day following the 30th day of the date of request. The employer cannot submit a binding request to discontinue remote work and reinstate previous terms of work performance for those employees who, under the regulations, cannot be denied remote work (see previous point of the alert), unless the continued performance of remote work is not possible due to the organization or nature of the work performed by the employee.



VII. Reimbursement of remote work costs

Under the new regulations employers have numerous obligations in connection with remote work. Among others, the employer has 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; cover other costs directly associated with remote work, if the reimbursement of such costs was agreed in the relevant agreement, regulations or mandate; provide remote employees with training and technical support necessary to perform the work.

VIII. Equivalent or lump-sum allowance for use of own materials and tools

The parties may agree the terms on which a remote employee uses work materials and tools, including technical devices, necessary to perform remote work and not provided by the employer. In such cases, the remote employee is entitled to a cash equivalent at an amount agreed with the employer. The obligation to both cover costs and pay an equivalent may be replaced with a requirement to pay a lump-sum allowance at an amount corresponding to the anticipated costs incurred by the employee in connection with remote work. The amount of the equivalent or lump-sum allowance is determined in consideration of, in particular, the consumption standards of work materials and tools, including technical devices, their documented market prices, as well as the quantity of material used for the purposes of the employer and the market prices of that material, as well as the standards of electrical energy consumption and the costs of telecommunications services.



IX. Employer checks of remote work performance

Under the new provisions of the Labor Code, employers 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 (this does not, however, apply to occasional remote work). Such inspections are performed in agreement with the employee at the remote work location during the employee's working hours. Inspection activities cannot 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 obligates the employee to rectify such deficiencies within a specified period of time, or withdraws 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.



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X. Changes in employee documentation

Please note that the decree issued by the minister of family and social policy on 6 March 2023, amending the decree on employee documentation, was on 13 March 2023 published in the Journal of Laws, item 471. The decree adapts the minister's of family, labor and social policy decree on employee documentation of 10 December 2018 (Journal of Laws item 2369) to the changes made in the Labor Code. They provide that as of 7 April, section B of the personnel file, which contains declarations and documents pertaining to the conclusion and course of employment, will include documents on remote work. The decree also adds a new section E, containing documents associated with employee sobriety checks (these have been in effect since 21 March).



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