



TELEWORK — New Regime

On January 1, 2022, the new rules applicable to telework came into force, under the terms approved by Law No. 83/2021, of December 6th.

We explain below the new regime and the most significant changes to the Labour Code.

1. Which employees can be under the telework regime?

- Any employee can propose the signing of an agreement with a view to having their functions performed in a teleworking regime.

If the activity performed is compatible with the telework regime (due to the way it is part of the company's operations, and taking into account the resources it has), the employer must justify in writing any refusal.

- The employer can offer any employee an agreement to provide telework. The employee can refuse, not needing to substantiate the refusal. The employee's refusal cannot give rise to dismissal or application of sanctions.
- Employees who are victims of domestic violence have the right to start working under the telework regime, when this is compatible with the activity performed (and under the conditions provided for in article 195 of the Labour Code).
- It is also a right of employees with children aged up to 3 years, and the employer cannot oppose this request when the activity carried out is compatible and the employer has the resources and means to do so.

This right can be extended up to 8 years of age in the following situations (with the exception of micro-enterprise employees):

(i) In cases where both parents are eligible to exercise the activity, provided that it is exercised by both in successive periods of equal duration within a maximum reference period of 12 months.

(ii) In single-parent families or situations in which only one of the parents is demonstrably capable of exercising the activity in a telework regime.

- The employee who has been recognized the status of non-primary informal caregiver, when it is compatible with the activity and the employer has the resources and means to do so, for a maximum period of four consecutive or interpolated years.

The employer may oppose this right when the necessary conditions are not met or based on overriding requirements of the company's operation, and must comply with the procedure provided for in paragraphs 3 to 10 of article 57 of the Labour Code.

2. How should the telework agreement be formalized?

The implementation of the telework regime always depends on a **written agreement**, which may be included in the initial employment contract or be autonomous in relation to it.

The agreement must contain:

- Definition of the regime of permanence or alternation of periods of distance work and face-to-face work.
- The identification, signatures and domicile or seat of the parties.
- The place where the employee will habitually carry out his work, which will be considered, for all legal purposes, his place of work. The workplace can only be changed by the employee, upon written agreement with the employer.
- The normal period of daily and weekly work.
- Working hours (timetable).
- The activity contracted, with indication of the corresponding category.
- The remuneration to which the employee will be entitled, including supplementary and ancillary benefits.
- Ownership of the work instruments, as well as the person responsible for their installation and maintenance. - The agreement must specify whether they are supplied directly or purchased by the employee (with the employer agreeing on their features and prices).
- The periodicity and the way in which face-to-face contacts are made.

3. Should the telework agreement have a defined duration?

The telecommuting agreement can be entered into for a fixed or indefinite duration:

- a) Determined duration: it cannot exceed 6 months, automatically renewing itself for equal periods, if neither party declares in writing, up to 15 days before its expiration, that it does not intend to renew.
- b) Indefinite duration: either party may terminate it by written communication, however, it only takes effect on the 60th day after the communication.

Either party may terminate the agreement within 30 days of its conclusion.

4. What are the rights of employees subject to the telework regime?

Employees subject to the telework regime have the same rights as other employees in the company with the same category or identical function, including:

- a) Right to receive, at least, the remuneration equivalent to that which he would receive if working in person.
- b) Participate in person in meetings held at the company by union committees or workers' committees.
- c) Integrate the company's collective representation structures.
- d) Use the work instruments to participate in meetings of the workers' collective representation structure.

5. What are the duties for employees and employers who agree to provide the activity under the telework regime?

The employee must:

- a) Timely inform the company of any malfunctions in the equipment and systems used in the provision of work.
- b) Comply with the employer's instructions regarding the security of the information used or produced.
- c) Respect the restrictions imposed by the employer regarding the use of work instruments for personal purposes.
- d) Observe the employer's guidelines on occupational safety and health.
- e) Appear at the company's premises or at another place designated by the employer, for meetings, training sessions and other situations that require physical presence, for which the employee has been summoned at least 24 hours in advance.

In these situations, the employer is responsible for the cost of expenses, to the extent that it exceeds the normal cost of transport between the employee's home and the place where he would normally work in person.

The employer must:

- a) Respect the employee's privacy, the working hours (timetable) and the rest times of the employee and his/her family, as well as providing him/her with good working conditions (from a physical and psychological point of view).
- b) Provide the equipment and systems necessary for carrying out the work and for employee-employer interaction.
- c) Inform the employee about the characteristics and how to use all the devices, programs and systems adopted to monitor his/her activity at a distance.
- d) Refrain from contacting the employee during the rest period, except in situations of force majeure.
- e) Strive to reduce the isolation of the employee, promoting, with the periodicity established in the work agreement, or in case of omission, at intervals not exceeding 2 months, face-to-face contacts between the employee with hierarchical superiors and other workers.
- f) Ensuring or defraying maintenance and repair actions for equipment and systems used in telework, regardless of ownership.
- g) Consult the employee, in writing, before introducing changes to the equipment and systems used in the provision of work, in the functions assigned or in any characteristic of the contracted activity.
- h) Provide employees with the training they may need for the proper and productive use of equipment and systems that will be used by them in telework.

6. What kind of expenses is the employer required to bear?

The employer must compensate the employee for all additional expenses that the employee is proven to bear as a direct consequence of the acquisition or use of computer or telematic equipment and systems in carrying out the work.

Are included:

- a) Energy cost accruals.
- b) Accrued costs of network installed at the workplace at a speed compatible with service communication needs.
- c) Equipment and systems maintenance costs.

Additional expenses are those corresponding to the acquisition of goods and/or services that the employee did not have before the teleworking agreement was signed, and those determined by comparison with the employee's homologous expenses in the same month of the last year prior to the application of this agreement. Compensation payment is due immediately after the employee has incurred the expenses. For tax purposes, compensation is considered a cost to the employer and does not constitute employee income.

7. How should it be organized and how can the work performed by the employee be controlled?

Remote work meetings, as well as tasks that must be carried out at precise times and in conjunction with other workers, must be held during working hours and scheduled, preferably, 24 hours in advance.

The powers of direction and control are preferably exercised through the equipment and communication and information systems related to the employee's activity, respecting his/her privacy. The employee must be informed in advance of these procedures.

The control of the provision of work by the employer, must respect the principles of proportionality and transparency, being prohibited to impose a permanent connection, during the working day, by means of image or sound.

The visit to the workplace by the employer must be communicated with 24-hour notice and the employee's agreement. This visit can only have as its object the control of the work activity, as well as the work instruments, and can only be carried out in the presence of the employee during working hours.

The capture and use of image, sound, writing, history, or the use of other means of control that may affect the employee's right to privacy is prohibited.

8. What measures should be taken in terms of safety and health?

The legal regime for repairing work accidents and occupational diseases applies to teleworking situations.

Employers must organize the necessary means to fulfill their responsibilities in terms of health and safety at work, namely complying with the measures provided for in Decree-Law No. 349/93, of October 1, regarding the minimum safety and health requirements relating to working with display equipment.

Workplace is considered to be the place chosen by the employee to habitually carry out his/her activity and working time whenever he/she is demonstrably providing his/her work to the employer.

For the purposes of defining an accident at work, the place of work is considered as that which is included in the telework agreement.

The employer must promote the performance of health examinations at work before the implementation of telework and, subsequently, annual examinations to assess the employee's physical and mental aptitude.

The employee must provide access to the place where he/she works to the professionals designated by the employer responsible for assessing and monitoring health and safety conditions. The visit must be agreed in advance, between 9 am and 7 pm, during working hours.

9. Can companies approve an internal regulation with the rules applicable to telework?

Yes, the employer can define, by publicized internal regulation, the activities and conditions under which the adoption of teleworking in the company can be accepted.

The internal regulations may establish the conditions for the use of work instruments. No sanction may be applied to the employee for the use of equipment or systems beyond the service needs, when such use is not conditioned by the internal regulations or the telework agreement.

10. What is the scope of application of the new rules?

They are applicable to all situations in which the provision of work under a regime of legal subordination of the employee to an employer occurs, in a location not determined by the latter, through the use of information and communication technologies.

Matters relating to the provision of equipment and compensation for increased expenses, duties, organization and control of work, visits to the workplace and matters of safety and health at work, are also applicable to all situations of distance work without legal subordination, but under economic dependency ●