



### TELEWORKING - WHAT WILL IT BE LIKE AFTER THE PANDEMIC?

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But teleworking is not a novelty. This possibility has always been available to companies and workers, despite its reduced application in Portugal.

The main factors that led this type of work to have a very residual adoption in Portugal were the lack of investment in IT, a business vision that is not flexible and a certain prejudice regarding the productivity of workers outside the office environment.

Legally obliged to adopt the teleworking regime, companies quickly adapted and implemented the necessary measures to allow their workers to work from home.

The future of the teleworking legal regime is under discussion, but a party consensus is not expected in the near future. And having already ended the state of emergency in Portugal, there are many questions raised about the mandatory maintenance of telework and the rules applicable in the coming months.

So, let's go to the clarifications, provided to everyone who is interested.

## What is in effect

Until 13 June 2021, teleworking is mandatory in all municipalities in the continental territory.

This obligation is the result of the recent Resolution of the Council of Ministers that declared the situation of calamity in the entire continental national territory until that date.

### A — Rules that must be observed during this period:

1. Mandatory teleworking whenever the functions permit and the worker has conditions to perform them.
2. Written agreement between employer and worker waived.
3. If the functions are not compatible with teleworking, the employer must inform the employee in a reasoned and written manner.
4. The worker may, in the three working days following the communication from the employer, request the intervention of the Authority for Working Conditions which he decides within five working days.
5. The employer must provide the necessary work and communication equipment. When such availability is not possible and the worker consents to it, teleworking can be carried out through the means that the worker has, with the employer being responsible for programming and adapting to the needs inherent to the provision of teleworking.

## And after 13 June 2021?

If nothing else is approved by the Government, teleworking is mandatory until 31 December 2021 only for companies located in the territorial areas where the epidemiological situation justifies it, and in the municipalities considered by DGS to be of high, very high and extreme risk.

This means that it will be necessary to approve and publish a diploma that defines such areas and municipalities, and the criteria for determining the risk.

### B — Rules that must be observed during this period::

This obligation results from Decree-Law No. 25-A / 2021, of 30 March, which extended until 31 December 2021, the validity of Decree-Law No. 79-A / 2020, of 1 October.

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6. For companies with an establishment and workers who live or work in the municipalities considered by DGS to be of moderate risk, teleworking is also mandatory in the following situations:
  - a) The worker, through medical certification, is covered by the exceptional regime for the protection of immunocompromised and chronically ill patients;
  - b) The worker has a disability, with a degree of disability equal to or greater than 60%;
  - c) The worker has a child or other dependent dependent who is under 12 years old, or, regardless of age, with a disability or chronic illness, who, according to the guidelines of the health authority, is considered to be at risk and who finds it impossible to attend classroom teaching and training activities with group or class text.

### The year 2022: is teleworking here to stay?

It is not possible to predict what will happen next year, nor the measures that may have to continue to be approved to halt the evolution of the pandemic.

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If no changes are made to the Labor Code, this is the regime that can be adopted by companies and workers:

- Need to conclude a written agreement between employer and worker.
- A worker with a child aged up to 3 years is entitled to carry out the activity on a teleworking basis, when this is compatible with the activity performed and the employer has the resources and means to do so.
- If the worker is not hired to perform functions under the teleworking regime, but such change only occurs during the execution of his contract, the teleworking cannot exceed three years, or the term established in a collective labor regulation instrument.

- The employer must ensure the installation and maintenance of the work instruments and the payment of the related expenses.
- Whenever teleworking is carried out at the worker's home, the visit to the workplace should only have as its object the control of the work activity, as well as the work instruments and can only be carried out between 9 and 19 hours, with the assistance of the worker or person designated by him/her ●

*Text written in accordance with the rules in force on 28 May 2021.*