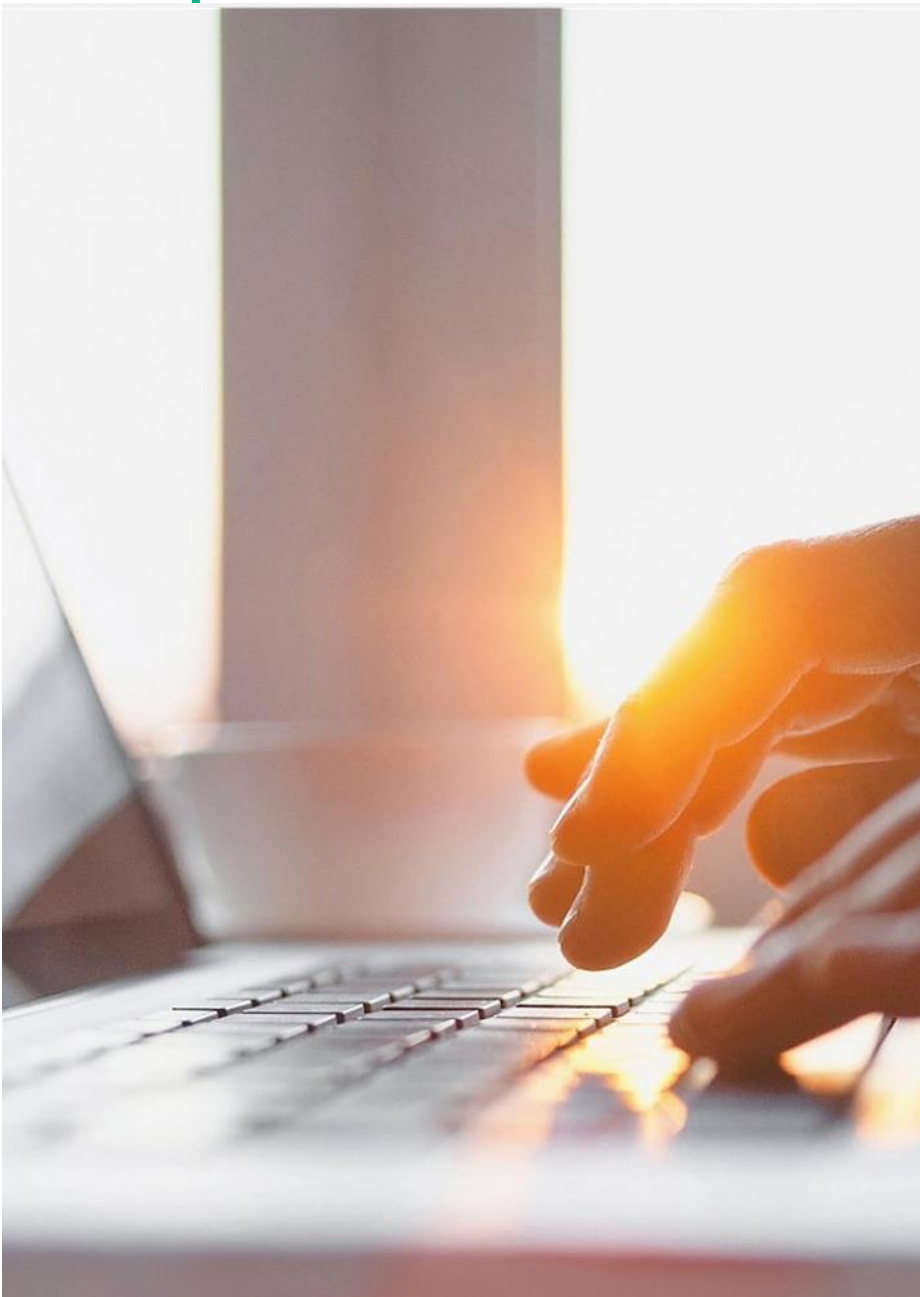


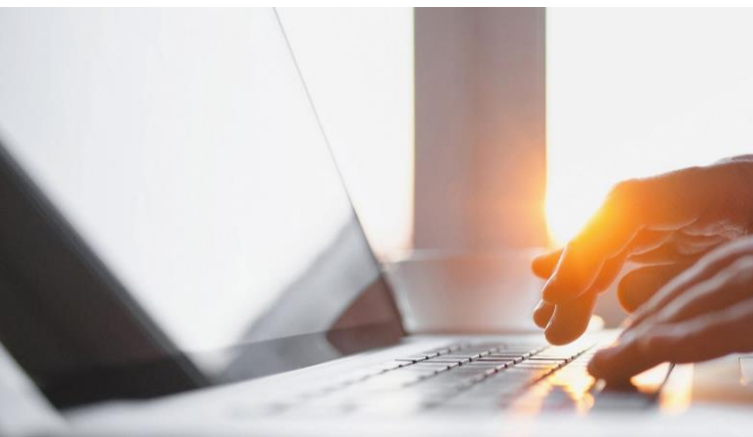
LABOUR

NEWS 2022: TELEWORKING & BAN ON EMPLOYERS CONTACTING EMPLOYEES OUTSIDE WORKING HOURS

VdA EXPERTISE



December 2021



Law 83/2021, of 6 December 2021, amends the Teleworking Framework set forth in the Labour Code, certain provisions of Law 98/2009, of 4 September 2009, which establishes the workers' compensation framework, and imposes a ban on employers contacting employees outside regular working hours.

Teleworking:

- The concept has been developed to include both work performed within a relationship of legal subordination and work not performed within such relationship but where the worker subject to economic dependency.
- The new act no longer requires work to be performed outside the company "on a regular basis" to qualify as teleworking, also including work performed remotely on an "occasional basis".

Framework:

- If the teleworking agreement is suggested by the employer, the employee is not required to justify any possible refusal, which is not grounds for dismissal or for the application of any sanction.
- If the teleworking agreement is suggested by employee and the latter's activity can be performed remotely, the employer can only refuse the agreement in writing and must justify its refusal.

Form:

- New mandatory statements.
- The employer is free to establish in duly published internal regulations, pursuant to the General Data Protection Regulation, which activities may be performed under a teleworking agreement and the conditions for the company to accept teleworking.

Duration and termination:

- The teleworking agreement may be concluded for a fixed term or for an indefinite term.
- Fixed term agreements cannot exceed 6 months and are automatically renewed for equal periods if neither party states in writing that it does not wish to renew it, no later than 15 days prior to the expiry of the agreement.
- Agreements of indefinite duration may be terminated by either party upon written notice to the other party. Termination becomes effective within sixty days of the notice.
- Either party may terminate the agreement during the first 30 days.
- If the teleworking agreement is terminated within the scope of an employment contract of indefinite duration, or whose term has not been reached, the employee resumes in-person work, without prejudice to his or her category, seniority and any other rights.

Right to teleworking in special instances:

- Domestic violence;
- Employees with children up to the age of 3. The new act extends the age limit to 8 in specific cases;
- "Secondary" informal carers;
- Employers cannot oppose a request for teleworking in the first two instances, but can do so in the third instance, if the relevant requirements have not been met or based on overriding requirements of the company's operation.

Equal rights and duties:

- Teleworkers have the same rights and duties as other company employees, including the right to remuneration equivalent to what they would earn in-person.
- The act is silent on food allowance.

Work tools:

- The employer is responsible for providing the employee with the equipment and systems necessary for carrying out the work and for employee-employer interaction, and the written agreement should specify whether they are supplied directly or acquired by the worker, with the employer's agreement as to their characteristics and prices.

Expenses:

- The employer is to be compensated in full for all additional expenses which the employee incurs as a direct consequence of acquiring, or using, the equipment and computer or telematics systems necessary for the performance of the work, including the additional costs of energy and of the network installed at the place of work in conditions of speed compatible with the communication service requirements, as well as the maintenance costs of the same equipment and systems.
- Additional expenses are defined as those corresponding to the acquisition of goods and/or services that were not available to the worker prior to the execution of the agreement, as well as those determined by comparison with the employee's homologous expenses in the same month of the last year prior to the application of that agreement.
- The compensation must be paid immediately after the expenses are incurred by the employee, and this compensation, for tax purposes, is considered as a cost for the employer and not as income for the employee.

Employee privacy:

- The employer must respect the employee's privacy, working hours and family rest and leisure times, as well as provide him with proper working conditions, both from a physical and psychological point of view.
- Employees working from home must be given 24 hours' notice by their employer, should the latter wish to visit their workspace, and consent to such visit. The visit's sole purpose is to control the work proper and the work instruments. The employee must witness the proceedings, which can only be carried out during agreed working hours.
- When in the employee's home, the employer's actions must be appropriate and proportionate to the objectives and purposes of the visit.
- It is forbidden to capture and use images, sound, writings, history or other means of control which might affect the employee's right to privacy.

Inspection:

- The Labour Inspection (known as ACT) is responsible for monitoring compliance with the rules governing teleworking, including legislation on health and safety at work, and for contributing to the prevention of occupational risks inherent to this work model.
- Inspections that involve the relevant authorities visiting the home of the employee require his/her consent and the notice of the inspection must be given at least 48 hours in advance.

Work organisation, direction and control:

- Remote work meetings, as well as tasks which, due to their nature, must be carried out at precise times and together with other employees, must take place within working hours and preferably scheduled 24 hours in advance.
- Employees must be present at the company's premises, or another location designated by the employer, for meetings, training sessions and other situations requiring physical attendance, upon at least 24 hours' notice.

- The employer is responsible for reimbursing to the employee any travel costs in excess of the usual cost of transport between the employee's home and the place where he/she would usually perform in-person work.
- The control of work performance must abide by the principles of proportionality and transparency. No permanent image and sound connection can be imposed during working hours.

Health and safety at work:

- Teleworkers cannot work with, nor be exposed to, substances and materials hazardous to their health or physical integrity, save where the related work is performed in facilities certified for such purpose.
- The employer must cause its employees to undergo occupational health examinations before they start to telework and, after that, annual examinations to assess the physical and mental fitness of the employee to perform the activity, the impact of the activity and the conditions in which it is performed on his/her health, as well as any appropriate preventive measures.
- The employee must give the professionals designated by the employer and responsible for monitoring safety and health conditions at work access to the place where he/she works, over previously agreed period within working hours, between 9 am and 7 pm.
- The legal workers' compensation framework applies to teleworkers, whose "workplace" is the place chosen by the employee to perform his/her activity on a regular basis, and whose "working hours" is the time during which he/she is demonstrably performing work for the employer.

Ban on employers contacting employees outside working hours:

- This ban on employers contacting employees outside working hours applies to all employment relationships.
- The employer must refrain from contacting the employee during rest periods, except in situations of force majeure.
- Any less favourable treatment given to a worker, namely as regards working conditions and career progression, because of exercising the right to a rest period, is a discriminatory action.

Entry into force:

- 1 January 2022

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