



LaborNet No. 1015

Telework in Switzerland – The first court ruling ordering payment of a part of the rent for an employee who works from home

Dear All,

One of the challenges for Labor and Employment Law in the future will be to reshape the notion of work. The aim is to revise the standard of work under labor and employment law to deal with the significant features of work on digital platforms

Today the focus of Telework to prevent the spread of Coronavirus emphasizes the need for revision of such rights as the right to health, non-discrimination, data protection, the need to have HR policies and compliance. Employees are told by government officials at different levels that it is advisable to stay at home to flatten the curve, and this is a real challenge for the present HR management approaches.

Knowledge work is becoming mainstream in all spheres of the world of work. Information technology, and especially digitalization, enables decoupling of time and place from work.

The Coronavirus Pandemic shows that organizations should develop and implement objective policies establishing which jobs could be done remotely and under which conditions. These policies should be based not only on what the current crisis needs but also on what suits companies and organizations best in the future. [The European countries that currently make the greatest use of these types of flexible working are Denmark, Sweden, the Netherlands, the United Kingdom, Luxembourg, and France.]

Italy has widely discussed the new labor and employment regulation Act No. 81/2017 on “Smart Working”, for teleworkers (lavoro in remote). [“Smart working” is an agreement reached between an employer and an employee that allows the employee to complete the work he or she is contracted to perform without the constraints of a fixed location or fixed working hours.]

Along this line, and considering that the option to telework is possible, it is imperative to have transparent policies. Guidelines should establish when and for how long it is possible to work

remotely. We share experiences and trends about guidance and policies about Smart Working – Flexibility Arrangements – Work from Home

This is the necessary framework so that corporate policies include telework, which has not been regulated in Argentina yet.

These guidelines are intended to organize teleworking arrangements for adequate use while pursuing the business goals.

It is worth mentioning that corporate policies, codes, procedures and legal requirements applicable to employee conduct are still in place for all flexible working arrangement options, including performance policies, professional demands, overtime, rest breaks, meals, protection and safety, confidentiality, bookkeeping, and IT that are in place when an employee joins a flexibility working plan.

The flexible working scheme is based on the following guidelines:

- Remote work

Full-time regular employees may work remotely; they must keep company information in the strictest confidence. Teleworkers must ensure compliance with the duty of confidentiality and corporate policies, principles and practices.

Why is it so important to have legal rules and regulations beforehand?

- Telework in Switzerland – The first court ruling ordering payment of rent for an employee who works from home.

In Switzerland, the COVID-19 Pandemic has fostered telework, a model that will be kept after the crisis. In April 2019 the Supreme Court of Switzerland ruled that the Company should pay part of the rent of an Employee working from home at the Company's request.

- The Company argued that it had not reached a previous agreement with the Employee, so it did not feel obligated to pay part of the Employee's rent.
- The Swiss Highest Court rejected this argument of defense, and found that the Employee was entitled to request payment when she worked from home.
- Furthermore, the Court analyzed the Employee's right to request compensation retroactively, equal to part of the rent, even when the employment agreement was no longer in place.
- Under Swiss labor laws, employers are required to reimburse their employees for any expenses incurred in the performance of their jobs.
- And in the case of telework, rent should be paid by employers, in accordance with the decision by the Supreme Court of Justice of Switzerland.
- The Federal Court in Switzerland has estimated a monthly compensation of CHF150 (equal to 154 US dollars) when the employee had to find an additional room or larger apartment to be able to work.
- However, it further explains that this order will only be applicable to employees, and not to freelancers.
- The judgment dated April 2019 refers to regular telework, ordered by the company.

- This ruling does not deal with the possibility of claiming compensation due to telework as a result of COVID-19 or remote work at the request of employees; it refers to long-term work at the request of employers.
- This has been reported in local newspaper Tages-Anzeiger

Thomas Geiser, labor law professor at the University of Saint Gallen, Switzerland, said that “under the law employers must reimburse employees for any expenses incurred in the performance of their jobs.

One of the effects of the COVID-19 Pandemic has been the changes in the world of work.

In Switzerland, the measures of semi-confinement declared in mid-March by the Federal Council (Government) have caused many employers to promote and extend the practice of telework or even implement it for the first time at their companies.

The Employee had asked the Company to be paid a monthly compensation to cover rent expenses because she had to rent a larger apartment to work from home.

Even though the Company argued that they had never reached that agreement in the initial contract, the Court ruled in favor of the Employee, ordering the Company to pay a part of the rent.

The main reason why the Court issued this ruling is that under the law companies must cover all the expenses that an employee needs to incur in the performance of his/her services.

The Secretary General of the Swiss Confederation of Trade Unions believes that the Courts have taken too long to pass specific legislation about telework.

Actually the problem is that companies are forcing their employees to bear services and office costs, without paying them any compensation in exchange.

Please feel free to contact us for further information.

Best regards,

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