



Labornet No. 1208

Working hours when Working From Home (Full Availability) and the Right to Disconnect

Dear All,

Some first thoughts on Act No. 27555 and its Regulation No. 27/21. Labor and Employment. How work has changed and the future of labor law

I. Remote Work: Analysis on labor laws

I. a) Working hours while working from home (full availability) and the right to disconnect.

- Act No. 27555 and Regulation No. 27/21 state that working hours when working from home will have statutory restrictions, and employees shall have the right to disconnect.
- Consequently, it is important to have a written note indicating the degree of flexibility for organizing the work schedule while working remotely.

Today many companies have implemented sophisticated monitoring systems to control remote workers' activity in an interactive way where employers can monitor employees' performance in real time through software installed with employees' previous consent.

I. b) What about the issue of full availability and the concept of working hours while working from home?

Remote workers do not work on site, but work from home or any other remote location, and this poses the risk that they may be working "longer" hours, for example when answering phone calls beyond regular office hours.

For instance, when it comes to absences or authorizations to suspend the employment contract, sometimes "employees end up taking free time during their working hours" and

inactivity becomes part of working hours (caregiving responsibilities). It is crucial to go over the concept of working hours.

Full availability is increasingly common in the new models of business organization, whose origins may date back to the so-called “on-call time” or special workdays in certain special industrial relations (domestic service).

Now collective bargaining agreements usually contain provisions about availability as one of employers’ management rights, whereby they may impose disciplinary actions if employees fail to answer the call during a portion of their workday, outside regular office hours and overtime.

Full availability means employees are not actually working but are available, they cannot move or act freely or engage in other for-profit activity outside regular office hours.

Some rules and regulations state that workers should remain within a certain radius to be reachable and available. They are not necessarily required to be physically on site but should go to the workplace when they are asked to do so for a period of less than 60 minutes in a time slot (8 a.m. to 10 p.m.) and in a period of less than 90 minutes during the rest of the workday, or available when required by clients in a maximum period of time, e.g. one hour, for any repair or revision that cannot wait.

When working from home, employers and employees may agree on different arrangements, like working from anywhere depending on the mode and type of activity under the employment agreement.

Under labor law there is a number of specific provisions that regulate working hours at industrial sectors whose main characteristic is that they abide by the working hours set forth in the law and collective bargaining agreement at their workplace.

For instance, there are certain industrial sectors whose collective bargaining agreements accept flexibility provided they observe the restrictions of maximum working hours and rest breaks based on company business.

In some countries for remote work to be feasible, the employment agreement should not be subject to a particular scheme of working hours or schedule. This means that employees must work a certain number of hours per year and can organize their days at their convenience, compensating for time-off, and employers do not control their work schedules provided the nature of the business permits.

Once the job is done, remote workers hand it in personally (in discs or printed copies) or by email, for employers to control their work. With this scheme remote workers can organize their working hours and rest breaks, and choose when to work, for how long and when to stop. All in all, this management system is not subject to working modes or duration.

Act No. 27555 regulates the main guidelines on working hours and introduces the new concept of the right to disconnect.

- Working hours must be agreed in writing under an employment agreement in accordance with the restrictions currently in force in the law and collective bargaining agreement in place, both in relation to the number of hours and targets.
- Employees should use the platforms and/or software implemented by employers for the specific purpose of remote work only.
- Working people doing remote work have the right not to be reachable outside office hours and the right to disconnect outside working hours and during leaves of absence.
- Employees shall not be imposed any disciplinary action for exercising their right to disconnect.
- Employers cannot ask remote workers to work or send any communications outside office hours.

Then Sections 4 and 5 pose the following legal challenge:

Section 4: Working hours must be agreed in writing under an employment agreement in accordance with the restrictions currently in force in the law and collective bargaining agreement in place, both in relation to the number of hours and targets.

Employees should use the platforms and/or software registered by employers in accordance with Section 18 and implemented for the specific purpose of remote work only.

Section 5: Working people doing remote work have the right not to be reachable outside office hours and the right to disconnect outside working hours and during leaves of absence.

Employees shall not be imposed any disciplinary action for exercising their right to disconnect. Employers cannot ask remote workers to work or send any communications outside office hours.

REGULATION ACT No. 27555

#### REMOTE WORK CONTRACT – LEGAL SYSTEM

- Purpose: The provisions of Act No. 27555 shall not be applicable when the employment relationship occurs at the facilities, establishments or branches of clients to whom employers render services continually or regularly, or in those cases where work is sporadically or occasionally performed at employees' home, whether at the request of employees themselves or under any special circumstances.
- Section 5: Right to disconnect: Messages may be sent outside office hours when the company's activity is performed in different time zones or whenever it is indispensable for some objective reason. However, employees are not obliged to reply until their workday starts except for the circumstances described in Section 203 of Act No. 20744 (consolidated text 1976). It is expressly stated that employers cannot propose incentives for employees not to exercise their right to disconnect, clearly indicating that any raises related to overtime shall not be deemed to be incentives.

- Section 6: Caregiving responsibilities: Those who exercise the right to stop working to meet their caregiving responsibilities under the terms of Section 6 of Act No. 27555 shall report this situation virtually and indicate exactly when they stop working and when they resume tasks. Whenever for caregiving reasons employees cannot work the statutory number of working hours set forth in the applicable law or collective bargaining agreement, their wages may be reduced in accordance with the conditions agreed in the collective bargaining agreement.
- Section 8: Reversibility: The right to reversibility and fulfillment of the resulting obligation shall observe the rights under Section 9 y 10 of the Civil and Commercial Code of Argentina (principle of good faith) and Sections 62 and 63 of the Employment Contract Act, in accordance with the purpose intended in the law. Once employees make a request for reversibility, just by claiming a reasonable unexpected cause, employers shall fulfill their obligation to accept reversibility as soon as practically possible given the situation of the company at the time of the request. By no means can employers take more than thirty (30) days to decide. In order to determine whether it is impossible to meet this obligation, it is crucial to consider the time elapsed between the date in which in-person work changed to a remote work arrangement. Employees who agree on remote work arrangements from the start when they join the company cannot revoke their consent or exercise the right to be assigned in-person tasks, unless otherwise provided in collective bargaining agreements or individual contracts.
- Section 9: Business tools: The provision of business tools is not salary in nature and therefore is not included in the basis for calculating any item arising out of the employment contract, union dues or social security contributions. The parties may agree on guidelines to determine the nature of business tools in those cases where employment is not covered by any applicable collective bargaining agreement.
- Section 10: Expenses: Compensation for expenses, even without receipts, is not deemed to be salary in nature, like business tools.
- Section 13: Union representation: Section 13 of Act No 27555 states that employees shall be given the right to union representation at the establishment where they used to work in person. For those cases where the parties agree on a remote work arrangement from the start when the employee joins the company, union representation shall be decided after discussions with the union.
- Section 14: Hygiene and Social Security: The Department of Labor as the enforcement authority of this Act, through the Workers' Compensation Supervising Authority, shall conduct a study on the applicable hygiene and safety conditions, and the eventual need to include occupational diseases related to remote work arrangements in the list under subsection 2 of Section 6 of Act No. 24557, as amended, in accordance with the procedure mentioned in the law.
- Section 15: Right to privacy and surveillance system: As mentioned in Section 15 of Act No. 27555 unions shall be involved through joint audits, made up of technicians

appointed by the union and the company, ensuring confidentiality of processes and data, and with limitations to preserve the rights of those who telework under Act No. 27555.

- Section 18: Enforcement authority: Registration. Monitoring. The Department of Labor may delegate registration tasks on local administrative authorities, as provided by Section 18 of this Act so as to centralize registration under the administration of different jurisdictions. Requests for information cannot include data about companies' line of business. The union, within the scope of representation, can only receive information about companies' list of employees, new hires and terminated employees. This limitation does not apply to obligations under Title II, Chapter IV of Act No. 25877, as amended.