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Legal challenges for this new mode of working, and what the future of labor law will look like in light of Remote Work as a result of the Covid-19 pandemic

Dear All,

Flexible Work – Remote Work

Legal challenges for this new mode of working, and what the future of labor law will look like in light of Remote Work as a result of the Covid-19 pandemic

Remote Work around the world

Please find below a description of remote work arrangements adopted by multinational companies, their flexible systems, working hours while working from home and additional benefits: **(We share successful experiences in Spain)**

Emblematic issues, such as overtime, working hours, managerial prerogative and employment agreement, and modern trends in employee compensation, special working hours, work schedules and compensation for remote work arrangements, have been addressed in different laws in different countries where this type of work has been implemented (Spain, Italy, among others).

Remote workers can do their job from anywhere thanks to new technologies and telecommunications; all of their tasks are significantly performed remotely without employees' physical presence on site or within a certain distance of the workplace in the event that something happens.

It is advisable to have a specific written contract about working hours and compensation for work from home and on-call periods, including **rest breaks**. But the issue of employee availability will depend, to a larger or lesser extent, on the applicable collective bargaining agreement, taking into account its many different variants. Some collective agreements

expressly contain employees' duty to be connected during their whole workday and reachable at any time on the cellphone provided by the company to this end. Other agreements establish employee's mandatory availability for an 8-hour slot while they work remotely.

In practice, in those countries where remote work has been regulated under collective bargaining, the principle of equal treatment applies to remote work, whereby remote workers are put on an equal footing with workers on site.

As a matter of fact, the solution necessarily calls for regulation dealing with specific cases and the inclusion of remote work arrangements into a new system of special workdays that should be made in writing. This is how working hours while working from home should strike a balance between flexible employment and occupational safety and health.

In times of Covid-19, employers should ensure employees' safety and health providing minimum adequate rest breaks, indicating at least when and for how long employees are expected to be available and reachable by the company.

Be transparent about the rest periods that employees actually enjoy, and all rest breaks they may take while working from home, allowing them to organize their working hours and stipulate their schedule under a remote work agreement at each company. This is all aimed at striking an adequate work-life balance, and protecting employees' safety and health, including rest breaks and vacation.

Likewise, under a work-from-home system it is the employee who manages their working time, and given the lack of an ordinary work schedule and the prevailing hyper-connectivity, a new contractual form or mode arises whereby as a general rule employees are available for a certain period of time, taking into account the ordinary work schedule of these employees, which is already significantly flexible, and this marks a big change in industrial relations.

All in all, in our opinion it is absolutely necessary to regulate remote workers' availability to protect working time and personal life by clearly stipulating on-call schedules under the employment agreement.

"Remote work for personal reasons" opens up the possibility of having projects outside the office when employees cannot commute for personal or unexpected reasons.

In those cases where a hybrid system is adopted, alternating between in-person and remote work, employees' working hours should be stipulated in writing. The most logic method for measuring work should observe the principle of free self-management for remote workers and equality in working conditions.

Both working time and compensation for remote work should be measured according to target achievement, with greater flexibility and availability, adapting working time to market needs and company business.

Working time is generally agreed on at least two days, which may be extended by mutual consent of the parties –remote worker and line manager- when the business permits and with HR approval. Employees may exceptionally work an equivalent workday.

With more freedom for self-managing their working time, employees should comply with the work schedule agreed on the contract. Finally, considering the recommendations to cope with the feeling of isolation that remote work can cause, there is a set of measures aimed at encouraging communication. Then team meetings should be a must, to include the participation of co-workers and line managers. These online meetings should be held once a week and at least one day on site.

It is always important to have employees' previous consent, and when they request this mode of working, they should request it in writing expressly indicating their intention to do remote work.

Remote work can be full-time, i.e. every day of the week, or part-time, some days from home and others on site at the employer's or client's office, in which case if workers are required to work in-person for a project, it should be specifically agreed.

As to compensation for remote work, the new models of work organizations are increasingly adapting to the new flexible economy, whereby salaries are tied to performance, productivity, incentive or results.

With the emergence of new technologies (ICT's), employees' compensation has changed as well. Salary is then paid within the framework of flexible, versatile industrial relations. For remote work, salary tends to remain unchanged in spite of the change in the location where employees work.

For instance, IBM payroll used to be 100% remote, where employees' performance and results determined raises, and then the company offered its staff the possibility of joining a new variable compensation system called "Performance Bonus" in relation to business results and a new employee evaluation according to target achievement.

The coming changes in the new remote work arrangement:

The use of telematics tools as a new way of work organization brings about a change in perspectives and a transition where remote workers' subjective aptitudes for the job and the necessary skills for performance will play a relevant role.

Employees should not only speak one or more languages to communicate with other companies or accept international assignments (international remote work) but also know how to handle the updated software and operating system, and the computer "jargon" to be able to use telematics tools appropriately.

Flexibility for working hours and the new systems of work organization may replace other more traditional approaches, such as attendance and punctuality, which as a general rule tend to disappear under remote work arrangements but may remain still in place at big corporations as part of the process of adaptation to a structural change.

As a general rule, the expenses for remote work installations, maintenance and management of support systems to ensure employees' connection and performance should be covered by employers, who are the owners of business tools.

In Italy many remote work agreements contain provisions whereby employees are required to return any computer equipment that belongs to the company when they stop working or keep these tools in good conditions, except for normal wear and tear.

Remote work agreements state that the company will provide employees with the necessary tools (computer, software, phone) to do their job, unless they expressly indicate that they wish to use their own equipment.

Work from home means that employees' expenses are higher because they use a part of their home to work (e.g. home office allowance), in addition to ordinary expenses such as electricity, cleaning, heating, furniture, phone, which are usually covered by employers and agreed with employees.

Some companies provide all the necessary equipment, such as a landline for professional purposes, an allowance for additional costs such as office space at home and any extra electricity expenses, insurance against equipment or furniture damage, with the respective supporting documents.

For example, if employees supply their own hardware and software, they should be paid for any eventual replacement, provided they regularly work from home during a significant portion of their workday.

The EU Framework Agreement states that "as a general rule, employers are responsible for providing, installing and maintaining any necessary equipment for regular remote work, unless employees use their own equipment".

Since the onset of remote work, any salary differences have been justified by employees' voluntary acceptance of remote work arrangement, which was regarded as a "reward" for remote workers who reduce their expenses in commuting, clothing, meals, which accounted for around 10% of their salary.

In a remote work arrangement, employees' safety and health are very important because they are constitutional rights. Occupational hazards while working from home may be physical (eye, bone, muscle pain), psychological and psychosomatic. In general, employees experience pain due to poor postures, and in particular due to computer use, which may also affect their general mood and state of mind, and then lead to a feeling of isolation or work-related stress.

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