



DE DIEGO & ASOCIADOS
ABOGADOS



Labornet No. 1222

Legal System for Telework Agreements. A Written Agreement Is Required to Shift from In-Person Work to Telework. This Agreement Is Not Replaced By Any Remote Work Arrangement Implemented During the Pandemic. Resolution No. 142/2021 by the Department of Labor.

Dear All,

Imminent Resolution by the Department of Labor 142/2021 March 19, 2021

DEPARTMENT OF LABOR

- Based on the text of this Resolution our interpretation is that the parties must make a written agreement under Section 7 of Act No. 27555 even when employees do not go to the employer's workplace in person. In other words, nobody is exempt from signing this agreement.
- In our opinion, based on the interpretation of the text of Resolution No. 146/2021, the fact that employees work from home due to the pandemic (whether because of a rule or policy implemented by employers to reduce the risk of infection) does not mean that they are actually Teleworking, and therefore the requirement under Section 7, whereby a telework agreement must be made in writing does not apply to this universe of employees.
- For those employees who work as "teleworkers" the Company must establish "in writing" whether from now onwards they will be governed by the terms of the Telework Act.

- For its application the principles of voluntary acceptance and reversibility under Sections 7 and 8 of the abovementioned Act must be observed; it may be revoked at any time during employment.
- As from April 1, employees who are subject to mandatory preventive social quarantine shall give their consent in writing within the framework of Section 7 of the Telework Act. But then which is the difference with the rest of employees? All of them must give their consent. In practice, the main specific purpose of this Rule is -in our opinion- to make it clear that those employees who are exempt from working due to mandatory quarantine are not automatically governed by the Telework Act but they must give their consent. In other words, if they do not give their consent, they will be in a sort of hybrid condition that is not exactly telework under the law or regular working conditions, either, at least not until quarantine restrictions are finally lifted.
- Our interpretation is that these employees are not automatically turned into teleworkers but they must enter into a written agreement. In other words, if before the pandemic they used to work at the office in person, and now they do not sign any document, in our opinion, they continue to be subject to the Employment Contract Act as usual without telework.
- In our opinion, work from home as a result of mandatory quarantine and without any written agreement is not governed by the Telework Act.
- After analyzing the wording of the Resolution, and the effects of the abovementioned provisions, the Telework Act “would not apply” to those employees who do not work in person but rather work from home due to the mandatory quarantine. But if they give their express consent in writing, it seems that they may be subject to the Telework Act. At least, this Resolution by the Department of Labor does not provide otherwise.
- However, the stay-at-home mandate is still in place for employees under the circumstances described in subsections a), b) and c) of Section 1 of Resolution No. 207/20 by the Department of Labor, as amended, together with the recommendation under Section 4, whereby employers should take any action to reduce the number of workers at the workplace, limiting it to the indispensable staff for a correct business operation and implementing any necessary measures for remote work arrangements.
- Therefore, it is indispensable to have this Resolution to establish that such circumstances do not replace the meeting of the minds under the terms of Section 7 of Act No. 27555.

Then Section 1 states as follows: “As from the effective date of Act No. 27555 and while the public health emergency restrictions and/or recommendations by the national, provincial or local authorities are still in place, the fact that employees stay home and work remotely based on the provisions of Executive Order No. 20 of March 12, 2020, as amended, and Resolution No. 207 by the Department of Labor on March 17, 2020, as amended, and according to any prevention measures taken by employers to reduce the risk of infection, does not mean that their remote work arrangement replaces the written agreement under Section 7 of the Legal System for Telework Agreements as a meeting of the minds of the parties.”

To sum up, in our opinion, this Resolution does not provide any accrued rights or release the parties from their obligation to make a Telework Agreement whenever possible.

Ma. Solana de Diego

Julián A. de Diego