

Remote work beyond Covid-19



Contents

Introduction	3
Executive Summary	4
Working time	6
Skills demands	8
Technology	10
Digital Divide	11
Occupational safety and health (OSH)	13
Cross border Mobility, Tax and Social Protection	14
Associated economic costs and benefits	16
Productivity	19
Challenges, limits and opportunities	20
IOE support	22
Policy Recommendations	23
ANNEX: Regulation and standards	26
AFRICA	26
South Africa	26
Kenya	26
Nigeria	26
AMERICAS	28
Argentina	28
Chile	29
Colombia	30
Ecuador	31
México	32

Panama	33
Peru	34
Uruguay	35
ASIA	36
Australia.....	36
Cambodia.....	37
India	38
Philippines	39
Singapore.....	39
Thailand	40
United Arab Emirates	41
EUROPE	42
EU	42
Belgium.....	44
France	46
Germany	47
Ireland	48
Italy	48
Netherlands	50
Norway	50
Poland.....	51
Romania.....	52
Serbia.....	53
Slovakia.....	53
Spain	54

Introduction

The Covid-19 social distance measures and quarantines have pushed businesses to adopt digital strategies and innovate to strive and keep business afloat and remain productive. The shift to the remote work has drastically become the new work modality for many.

With vaccines around the corner, employers, workers and policymakers worldwide have started to think and discuss about what are the changes that the world of work will face after the pandemic? Are we all getting back to the office routine and presential meetings? Will remote work and telework practices remain? What are the needs, challenges, and opportunities? What policies shall be adopted, and at what level?

Before the pandemic, in most European countries, a larger proportion of workers carried out telework occasionally, rather than on a regular basis.¹, however, estimates from Eurofound (2020), evidences a spike in the number of teleworkers in the last year. According to their estimates, close to 40% of those working from home in the EU during the pandemic were new teleworkers.²

In Asia, data on teleworking varies greatly among countries, but according to a Gartner webinar snap poll, 91% of HR leaders across the Asia Pacific region attending their webinar indicated that their companies had implemented working from home to keep workflow going through this pandemic.³

In Latin America, new data from CEPAL indicates an increase of 324% in internet traffic in apps associated to telework, registered for the second quarter of 2020. This finding suggests that in the Latin America region teleworking has tripled, yet high levels of informality make it difficult to measure the proportion of the workforce carrying out telework during the pandemic.⁴

Likewise, in Africa, where high levels of informality also prevail and where only 24% of the population have access to internet, teleworking presents complications. However, there is a visible increase in its digital space that will likely result in a wider use of technology as a working solution in the shorter term.

¹ ILO – Eurofound, *Working anytime, anywhere: The effects on the world of work* (2017), available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_544138.pdf.

² Eurofound, *Living, working and COVID-19*, COVID-19 series (2020) available at https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20059en.pdf.

³ Gartner, “*With Coronavirus in Mind, Is Your Organization Ready for Remote Work?*”, 3 March 2020, available at <https://www.gartner.com/smarterwithgartner/with-coronavirus-in-mind-are-you-ready-for-remote-work/>.

⁴ CEPAL, “*Universalizar el acceso a las tecnologías digitales para enfrentar los efectos del COVID-19*”, 26 August 2020, available at https://repositorio.cepal.org/bitstream/handle/11362/45938/4/S2000550_es.pdf.

Among IOE members, a recent poll showed that more than 80% of business federations intends to continue teleworking after the Covid-19 crisis at least a few days a week, and at least 50% already have a teleworking policy in place. In the same lines, a recent study carried out by Randstad among 400 decision makers in various sectors, revealed that 75% of them plan to maintain the teleworking modality after the crisis; 63% will do it only some days per week and 12% will implement it full time.

Also, on the human resources side, a SHRM survey of over 350 respondents, many of whom are human resources vice presidents, directors or managers, evidenced that they believe that much of the increase in telework that occurred during the COVID-19 outbreak is expected to be sustained afterwards.

Considering a massive return to workplaces appear unlikely. And that many businesses, would have found in remote working and teleworking a beneficial solution for resilience and to further strengthen productivity, mobility and work-life balance for employees, we must acknowledge that teleworking is here to stay beyond this pandemic. And that sooner than later, we will face boarder policy debates around this practice at all levels.

But what are the policy implications of the rapid surge of teleworking practices? What should we expect and what are the areas where business need to draw their attention on this matter?

This paper aims to analyse various employment aspects of remote work with a special emphasis on telework policies and regulations, outlining the challenges and opportunities; as well as exploring the impact of innovative practices and measures that have been adopted in various jurisdictions. There is currently no international definition of remote work and telework. However, remote work can be described as situations where the work is fully or partly carried out on an alternative worksite other than the default place of work, whereas telework has an additional element of using personal electronic devices such as a computer, tablet or telephone (mobile or landline) to perform the work.⁵ The paper proposes policy recommendations to inform and guide policy making around remote work in the post-pandemic world of work.

Executive Summary

This paper explores the different aspects of remote work and how it will impact the way we work after the pandemic. It examines the needs, challenges, and opportunities based on an assessment of teleworking regulations in 30 selected countries and the EU (*see Annex for full details*).

⁵ ILO, COVID-19: Guidance for labour statistics data collection: Defining and measuring remote work, telework, work at home and home-based work, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_747075.pdf.

In particular, **working time** is one of the major concerns around policy debates. The existing international standards for “fixed” working time to allow for resting periods and to prevent health impact no longer respond to the current demand for more flexibility. Some countries have adopted regulations that allows a more flexible approach to working time and a balance for flexibility without hindering the right of workers to rest or adversely impact their health.

Other aspects identified in this paper are **skills demands** and **technology**. These are important to enable the workforce to achieve productivity, as well address issues concerning employers’ obligations and workers’ responsibility on security and data protection.

Furthermore, **digital divide** remains an issue to indicate that teleworking is not suitable for every sector or country. However, the fast pace at which access is granted to more regions makes it an issue which we must consider, even in countries or regions where accessibility is more limited.

Occupational safety and health (OSH) is singled out as an important aspect of remote work, leading to questions on liability and compensation. The fact that employers have limited control over the preventive and security measures taken in a working environment different from the workplace, represents some challenges to OSH compliance, and highlights the importance of creating a positive and healthy working culture, and minimizing the risk of stress when teleworking. Examples of countries providing for OSH specific standards in remote work are brought for consideration.

Cross border mobility aspects derived from situations where the teleworker and the employer are based in different countries, draw attention to the application of labour and tax laws across jurisdictions.

The **associated economic costs and benefits** of teleworking are also examined by through considering the benefits of reducing the commuting time, the costs for the workforce associated to working from the office, as well as a wide range of benefits for employers like office space. In addition, many questions are raised such as whether costs associated to remote work shall be covered by the employer or if these are transferred in full or partially to the worker. The considerations around the economic burdens can vary depending on the nature of remote work, whether the working relationship has been agreed as such from the beginning, or if it is provided as a benefit for the workforce; whether is mandated by the employer or agreed bilaterally. The approach taken in various jurisdictions is brought for analysis and the paper calls for more certainty on the related costs associated, so the parties can agree and find a fair and efficient balance between costs and benefits.

Increased **productivity** associated to remote work and external factors at home impacting productivity are leading the discussions around the policy needs and implications of remote working modalities. The paper refers to the findings of various surveys.

Moreover, the paper looks at remote work and telework **limits, challenges and opportunities** from a gender, diversity and inclusion perspective, acknowledging that the use of digital technologies and data, on the one hand has certain limitations and on the other, it can offer new opportunities. The positive impact on inclusion has been recognized by some jurisdictions and used as a tool to foster employability of people with family responsibilities.

Finally, this paper highlights the **role of the IOE** in supporting its members in connection to remote work related policy and offers some policy recommendations on a range of topics identified above for policy makers and employers' organisations to consider.

Working time

Blurring of boundaries between work and private lives has been one of the major concerns around teleworking policy debates. Checking emails after official working hours, taking conference calls during holiday time, connectivity demands with uncertain working schedules, etc. Moreover, mandatory teleworking and full-time telework has further stressed the need to take care of work-life constraints when organising work and collaboration among the workforces. Flexible working hours, part time work, and the necessary policies should be developed to reflect the need for customised working arrangements that better address the workers' and employers' needs. At the same time, policies should seek a balance where nor productivity, nor work life balance are compromised.

While flexible working time has proven to have a positive impact on business productivity, in order to derive in positive outcomes, there is the need for a strong commitment and responsibility on the side of the worker. It is in this context that in some countries such as Germany, trust-based working time arrangements (TBW) can be seen as a prerequisite for telework. Similar to telework, TBW implies giving up control over working time and assessing workers' performance solely based on their outputs. It involves a transition from working time registration to the evaluation of employees by measurable objectives. In other words, a shift from input control to output control, thus reducing the emphasis on when and where work is completed (Beckmann and Hegedues, 2011; Singe and Croucher, 2003).⁶

Yet, working time management varies widely among businesses and sectors, making it difficult to achieve a one size fits all policy. Flexibility attached to the freedom of setting one's work schedules to attain work-life balance, is among the major benefits for the workers, but it shall be balanced with employers' needs on availability and capability to collaborate with other employees and achieve the desired productivity.

⁶ S. Viete and D. Erdsiek, "*Trust-Based Work Time and the Productivity Effects of Mobile Information Technologies in the Workplace*", Discussion Paper No. 18-013, March 2018, available at <http://ftp.zew.de/pub/zew-docs/dp/dp18013.pdf>.

Working time standards development have historically sought to establish reasonable limits to allow resting periods and prevent health impact. For these reasons, the international community somehow addressed these issues in the very first ILO Convention, Hours of Work (Industry) Convention, 1919 (No. 1) and later with the adoption of Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). Nonetheless, it has also presented long standing challenges derived from the diverse nature of business and sectoral needs, as well as for the new working modalities arisen in the context of the future of work and the use of information communication technologies (ICT). Nonetheless, as it was acknowledged by the CEACR in the 2005 General Survey, these instruments, in many respects no longer respond to current needs.

“... the government reports and the information provided by the social partners reveal that Conventions Nos. 1 and 30 do not fully reflect modern realities in the regulation of working time. In fact, there are elements of the Conventions that are clearly outdated. ... In general, these two instruments are viewed by an increasing number of countries as prescribing overly rigid standards. The “fixed” working hours system adopted by both Conventions as a cornerstone for the regulation of working time conflicts with today’s demands for more flexibility from all sides, employers, workers, clients, patients,.... Severe restrictions on the number of hours by which the standard daily and weekly limits of hours of work may be extended have, in many cases, created an obstacle to the ratification of the two Conventions. Furthermore, in an increasing number of countries, hours of work are governed not by laws or regulations, as required by certain of the provisions of the Conventions, but by collective labour agreements or other mechanisms and in many cases by individual agreements. These problems associated with the instruments are reflected in their modest rates of ratification and the absence of perspectives for future increased ratification rates.”

Yet, some aspects of these and other more flexible international standards are worth mentioning for its connection to working time in telework. Such as the case of Article 24 of the Universal Declaration of Human Rights, and Article 7(d) of the International Covenant on Economic, Social and Cultural Rights on establishing rights to rest and leisure, including reasonable limitations on working hours.

The overall aim of good working time policy and regulation in the context of remote work, must be to reconcile the needs and interests of employers and workers in an effective and balanced manner specially in considering the possibility for flexible arrangements and the opportunities brought by the use of ICT tools. This means that governments should focus on setting a basic regulatory framework and rely on employers and workers to work out adequate and adaptable solutions to achieve better enterprise performance, productivity, and competitiveness and at the same time, secure workers’ wellbeing.

The “fixed” working hours system, adopted by both Conventions as a cornerstone for the regulation of working time, conflicts with the demands of employment modalities in telework where there is a demand for more flexibility. It is in this context that various regulations have sought a more flexible approach to working time, while at the same time accommodating the underlying reason of working time regulation, which is to find a balance for flexibility without hindering the right of workers right to rest or adversely impact their health. This is the case of Argentina where the telework regulation prescribes that employees and employers are free to agree on the time working remotely or in the company premises; they may decide on how to distribute the working hours, with a limit of maximum working hours and a minimum of 12 hours of continued rest, where the worker is not obliged to be connected. Similarly, in Colombia it is mandated that the telework agreement establishes the days and times when the teleworker will carry out activities in order to avoid non-observance of the legal maximum working day. Other countries such as Ecuador, Mexico, France, Romania and Spain have included an express reference to the right to disconnect in their telework regulations.

Skills demands

Telework demands both technical skills and human/social skills; computer literacy and the ability to work independently as key aspects to make teleworking modalities feasible and successful, yet these might not be so readily available. Other human and social skills associated with telework shall also be developed by the workforce, such as autonomy, flexibility, interpersonal skills, creativity, organization, management, teamwork and leadership.

Telework will not result automatically in productivity gains, there is a need for the workforce to develop skills and cope with constant changes in using technology for teleworking purposes. Evidence drawn by a recent OECD Survey on Adult Skills,⁷ shows that workers possessing higher levels of skills are significantly more likely to be able to work from home. This is why a learning culture has become more important than ever in a future of work scenario where business will likely benefit from productivity and cost-effectiveness of telework and where the workforce would be more interested in jobs where telework is available.

Embracing telework through effective digital transformation strategies will necessarily include investment, both from the employer to make the workforce readily fit for effective teleworking

⁷ R. Espinoza and L. Reznikova, “Who can log in? The importance of skills for the feasibility of teleworking arrangements across OECD countries”, OECD Social, Employment and Migration Working Papers, No. 242, OECD (2020), available at <https://doi.org/10.1787/3f115a10-en>.

modalities, as well as from the workers' side, to be open and show willingness for continued learning, adapting and updating new skills much more quickly.

According to Eurofund, generational differences in relation to information communication technology skills favour higher adoption of telework among workers in the younger and prime age groups.⁸ However, telework could also be used to boost inclusion of older workers by offering adequate skilling and training packages, that are most commonly agreed between the worker and the employer, and in some cases provided within collective agreements.

Just a few regulations refer to skills in connection with telework. Mexico's regulation provides for the employer's obligation to provide training to the workers, whereas the Philippines regulation, refers to training opportunities, with the aim of protecting teleworkers from discrimination related to skilling and training opportunities. However, some governments, acknowledge the relevance of technological skills and the benefits attached to telework, and offer skilling programs and technical assistance to companies willing to implement teleworking practices. For example, the government of Colombia, through the Ministry of Information and Communication Technology, is in charge of the so-called Pact for telework. It creates a cooperation framework to promote teleworking in Colombia by means of a public-private alliance as an instrument that contributes to the digital transformation in the country. It offers free advice, training, workshops, and conferences, with an aim of promoting the use of telework as mean to increase productivity in organizations, generate sustainable mobility, promote sustainable organization, improve the quality of life of workers, and foster the effectiveness of information and communication technologies in the productive sector.

Other countries contain a more flexible approach to skilling by leaving the issue to the relevant contracts or collective agreements. France for example encourages social dialogue at the company and sectoral levels and in professional branches to determine rights and obligations in connection with the access to training.

In any case, skills and skilling should be seen not only as an imperative to telework, but as a win-win strategy where employers will gain in productivity and become more resilient as they build further on a digitalization strategy comprising telework; and on the other hand, workers will be not only eligible for telework along with its attached benefits but will also become more employable as they will be more adapted to the dynamic nature of jobs. Workers also do not have to wait for employers to propose training programmes. Workers can also take their own initiatives and take advantage of many

⁸ Eurofound, *Telework and ICT-based mobile work: Flexible working in the digital age*, New forms of employment series (2020), available at https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19032en.pdf.

freely-available courses online. This personal time investment (at their own pace) will contribute to their employability and attract recruiters and employers in general. The ability of a workforce that is capable of driving sustain results no matter where and when they perform their work, will make them fit for emerging business models and more agile ways of working.

Technology

Building up an effective teleworking strategy requires planning and resources. Embracing telework requires both, technological means and a human capital fit for making the best use of digital tools. The exponential and rapid adoption of teleworking strategies triggered by lockdowns during the pandemic forced many businesses to accelerate and adopt telework modalities facing abruptly many technological challenges. For example, a Randstad Singapore's survey, conducted in March 2020, found that only 40% of employers were fully technologically equipped to cope with teleworking.⁹

Moreover, the forced transition to telework demonstrated many businesses their technological unreadiness. Technological tools include not only the appropriate hardware and software, but also internet access and stable connections, that not everyone might have had before the world came into a lockdown. An Eurofund e-survey on Living, working and COVID-19 revealed that only 47% of teleworking employees surveyed were provided by their employer with the equipment needed to work from home. The survey reported that *"this is consistent with the fact that the transition to working from home was unplanned and ad hoc, based on using the employee's own IT equipment and pre-existing home connectivity"*.¹⁰

The question on employer's obligations to provide technological tools, including internet connection enabling telework is on the table for discussion. In some cases, it would depend on the voluntary nature of the working modality, whether it is deemed to be a benefit for the employer or a mandatory aspect of the contractual relationship, and in many cases will find an answer in contractual arrangements. Regulations in Chile, Mexico, Slovakia, Spain, Singapore and UAE, do contain specific provision on the employer's responsibility in this regard.

Some of these regulations are explicit on the employers' obligation to provide with computer equipment and some go even further providing for a duty of care and responsible use of the equipment by the worker. The use of personal equipment on the contrary, raises some issues, not

⁹ Randstad Singapore Survey, COVID-19 employer pulse survey report, March 2020, available at <https://www.randstad.com.sg/workforce-insights/workforce-trends/covid-19-employer-pulse-survey/>. The report found that only 40% of employers were fully equipped to cope with the outbreak.

¹⁰ Eurofound, *Living, working and COVID-19*, COVID-19 series (2020) available at https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20059en.pdf.

only in terms of the technical aspects that might restrict the capacity to perform according to the business needs, but on the aspect of data protection.

Data protection and the secure use of information outside the workplace is a major concern for business and should be handled with care. Unfit hardware and open internet connections may represent a threat to businesses and its clients. The employee teleworking should be knowledgeable of preventive measures and the duty to handle information and equipment storing sensitive and confidential information with due care.

Also, privacy represents important challenge for employers as telework can significantly increase the risk of a breach, of client personal data handled by the company. Surveillance on the workforce performance and the use of technological methods to monitor actions of teleworkers may also raise questions around the invasion of the employee's privacy. Also, the interference of communications and the presence of third parties at remote working places, or with access to personal computers where teleworks is being performed, can also represent a risk of breach of business duty to protect client's information.

While data protection rules and regulations would normally remain valid to every employment relationship, there are some jurisdictions that have included specific provisions in the relevant telework regulations. For example, the Polish Labour code expressly provides that it is up to the employer to determine the principles of protection for the data transferred to the teleworker and should provide training in this respect where needed. On the other hand, the teleworker must confirm in writing his or her understanding of the applicable data protection principles. Moreover, under Polish regulations the employee can only use devices provided by the employer if they can ensure the protection of confidential information, business secrets and personal data. Likewise, under Romanian regulations, the employer has the obligation to inform the employee in relation to data protection matters. In the Philippines, employers must assure the protection of data used by teleworkers and inform employees about their data protection duties.

Digital Divide

Despite the global accelerated transition towards a digital economy, the digital landscape remains unequal across the world and within less developed regions. An analysis from UNCTAD illustrates the fast pace at which the digital landscape has evolved in the recent years, and how different is the digital readiness in the context of the Covid-19 crisis compared to other crisis, like the 2008 financial crisis. Just to mention some figures, the number of internet users has surged from 1.6 billion to 4.1 billion in

2019 and the internet user penetration from 23% to 54%¹¹. This means that teleworking is not yet for everyone. However, the fast pace at which access is granted to more regions makes it an issue which we must not lose track of, even in countries or regions where accessibility is more limited. There is concern for the possibility of a new divide between those who can telework and those who cannot. In this regard, business have an important role to play on building up inclusiveness while embracing digital technologies and new employment strategies such as telework. A responsible approach will be to make our best efforts avoid discrimination of those workers who have not been able to work remotely.

Beyond the enormous efforts that governments shall make to secure access to internet everywhere, we must acknowledge that the digital divide is not only about the lack of access to internet but also the capacity of users/workers to make use of it to work remotely. Thus, on the one hand, governments must put more attention to existing and emerging digital divides to allow everyone to take advantage of digitalization. On the other hand, business shall contribute by providing the necessary skills to the workforce, promoting a learning culture and preventing discrimination among workers those workers that can telework and those who cannot.

According to ITU, between 2005 and 2019 the number of internet users grew on average by 10% every year.¹² In the same lines the OECD, reports that the share of individuals using the internet in G20 countries almost doubled on average between 2010 and 2019, with especially considerable increases seen in Saudi Arabia, Turkey, Brazil, Mexico, South Africa, Indonesia, and India - narrowing the gap among G20 economies. It is also the case for Latin America where according to CEPAL the Latin American digital ecosystem development index.¹³ Furthermore, the Caribbean presents a compound annual growth rate of 6.21% between 2004 and 2018 resulting to 67% of the population are internet users. According to a recent report from the IMF other regions like Sub-Saharan Africa struggle to advance on digitalization strategies and thus the use of telework, due to the region's less reliable internet connectivity and electricity supply.¹⁴ However, the report suggests that the gaps between the region and the rest of the world are narrowing fast. Internet penetration in Sub-Saharan Africa has grown tenfold since the early 2000s, compared with a threefold increase in the rest of the world.

¹¹ UNCTAD, The Covid-19 Crisis: Accentuating the Need to Bridge Digital Divides, available at: https://unctad.org/system/files/official-document/dtlinf2020d1_en.pdf

¹² ITU, Connect 2030 agenda, available at: <https://itu.foleon.com/itu/connect-2030-agenda/growth/>

¹³ CEPAL, Las Oportunidades de la Digitalización en América Latina frente al Covid-19, available at <https://www.cepal.org/es/publicaciones/45360-oportunidades-la-digitalizacion-america-latina-frente-al-covid-19>

¹⁴ IMF news, "Digitalizing Sub-Saharan Africa: Hopes and Hurdles", 15 June 2020, available at <https://www.imf.org/en/News/Articles/2020/06/15/na061520-digitalizing-sub-saharan-africa-hopes-and-hurdles>.

Moreover, the global agenda towards a fostering access to and increased use of telecommunications/ICT in support of the digital economy and society, has set ambitious goals, pointing at target of 65% of households having access to internet by 2033.¹⁵ Observing the trend towards a rapid penetration of internet and the integration of digital strategies, businesses have no choice but to be agile in their contribution to developing policy frameworks that foster a digital friendly business regulatory environment.

Occupational safety and health (OSH)

One of the most important health and safety questions arising in connection to remote work is the liability for health and safety issues, and worker's compensation if the worker is injured. Moreover, the control by the employers over the preventive and security measures taken in a working environment different from the workplace, represents some challenges to OSH compliance. Also, the restrictions for the health and safety authorities to access locations outside the workplace for safety inspections, makes it difficult to have full control over OSH aspects when remote working.

On the other hand, there could be some risks and factors that blur the lines between the responsibility of the employer, occupational risks, and compensation aspects, if an accident occurs or the health of the worker is compromised outside the company's premises.

Provisions on OSH matters related to remote work usually take OSH regulations for onsite working modalities as a starting point, and rarely deviate from these when referred in specific regulations. For example, in Colombia, teleworking laws expressly provide that the OSH regulations remain unchanged. Other countries however elaborate more on this matter and seek to establish mechanisms to enable more control and inspection of the working environment. For example, Romania's regulation provides rights to inspection. According to Romania's teleworking law, the employer has the right to regularly check the activity of the employee, while the labour authorities, as well as the trade union or the representatives of the employees have the right to verify the working conditions of teleworkers. In other cases, such as Poland, the employers' liability on OSH is limited to providing equipment or materials for teleworkers. Just a few countries provide specific OSH standards for employers to observe. For example, in the Netherlands, employers must ensure that their employees have an ergonomic chair and a desk at home and are responsible for the costs for them, as well as to ensure that there is enough artificial light at the place of telework. To secure such specific compliance, the Dutch regulation provides for a physical visit by the employer or a health and safety

¹⁵ ITU, Connect 2030agenda, available at: <https://itu.foleon.com/itu/connect-2030-agenda/growth/>

expert to assess whether the workplace complies with rules and obligations as set out in the legislation. Some other countries will be enacting OSH specific regulations for telework, like Mexico, where the Ministry of Labour will have to issue a Mexican Official Standard for the health and safety measures that should be implemented under this type of work, following the recent entry into force of its teleworking regulation.

Another important aspect of OSH that often associates with remote work is mental health. There are several studies that refer to mental health issues that are different from those that we normally face when working in the office. Some mental health aspects become more evident when teleworking. Loneliness, stress, irritability, worry, and guilt are among the few psychological impacts on teleworkers. Employers should carefully consider all these as they represent an enormous threat to the health and productivity of the workforce.

Acknowledging that employers around the globe will face a more extended use of remote work modalities, business should strive and make its best efforts to allow work being performed in a productive manner but also in a safe work environment, adapting their internal policies, processes, and practices in line with the new and existing regulations. Creating a positive and healthy working culture, and minimizing the risk of stress when teleworking has become crucial at times where many will keep on using remote work as a long-term practice.

Beyond any regulatory obligations, employers could, when possible, develop and implement wellbeing policies to mitigate health risks, such as flexible working hours and disconnection practices; guidance and training on communication and interpersonal skills; and promotion of work-life balance.

Cross border Mobility, Tax and Social Protection

Working from anywhere is one of the main advantages of remote work. This can in some cases become an incentive for workers to work from places that not necessarily close to the company's workplace. Moreover, it avoids relocation, long commutes and allows the workforce to take jobs that are far away from home. Moreover, remote work strategies and teleworking models allow workers to be based anywhere in the world, not only where the workplace is located. This creates challenges from a regulatory point of view when workers are commuting across national borders. Implications linked the applicability of social security legislation of more than one country may arise.¹⁶

¹⁶ ISSA, *Analysis Frontier workers, COVID-19 and telework: pragmatic social security responses in the European Union*, 18 November 2020, available at <https://ww1.issa.int/news/frontier-workers-covid-19-and-telework-pragmatic-social-security-responses-european-union>.

Indeed, when the worker and the employer are based in different countries, the application of labour and tax laws shall be considered, as laws vary across jurisdictions. Also, the use of technology to disguise workers location using virtual personal networks, represents a defy.

However, due to the special circumstances attached to the COVID-19 pandemic, various countries have taken exceptional measures. For example, the French Ministry of Europe and Foreign Affairs published on 19 March 2020 a communiqué on the situation of cross-border remote workers. The Ministry has established that remote work of cross-border workers does not have any consequences on the tax regime applicable to them in this situation of emergency.

Likewise, on 13 May 2020, Switzerland and France signed an agreement for cross-border workers who are now forced to work from home as a result of measures taken by both governments. Thus, cross-border teleworkers continue to benefit from the applicable tax regimes in the country of their usual place of work.

As a consequence, France renounces to its right to tax the teleworking days of cross-border workers during the period of confinement due to the COVID-19. In other words, a French resident cross-border teleworker continues to be only subject to the Swiss tax regime.¹⁷ Also, the Belgian Social Security Authorities have taken the position that days of teleworking in another member State or other changes in an employee's work pattern that are exclusively linked to COVID-19 measures and limited to the duration of the exceptional situation (currently until 30 June 2021) will not be taken into consideration to determine the applicable social security regime.¹⁸

An example of how telework is boosting mobility, is thrown from a recent survey from Upwork Inc. where evidence suggests that as many as 23 million Americans plan to relocate to a new city. The survey results, point to an increase of at least three to four times the normal migration rates.¹⁹

The OECD has issued some recommendations concerning the implications of the Covid-19 crisis on cross-border workers and other related cross-border matters that are of the most interest of business.²⁰ These recommendations draw attention to various tax issues, especially in connection with

¹⁷ Bonnard Lawson, "Switzerland – COVID-19: Swiss tax and legal measures and cross-border teleworking. Update on the current situation", 11 June 2020, available at <https://www.bonnard-lawson.com/switzerland-covid-19-swiss-tax-and-legal-measures-and-cross-border-teleworking-update-on-the-current-situation/>.

¹⁸ Ius Laboris, Immigration and Global Mobility Update, 4 December 2020, available at <https://iuslaboris.com/insights/immigration-and-global-mobility-update-17/>.

¹⁹ Alexandre Tanzi, "More Than 20 Million Americans to Relocate Amid Rise in Telework", Bloomberg, 29 October 2020, available at <https://www.bloomberg.com/news/articles/2020-10-29/more-than-20-million-americans-to-relocate-amid-rise-in-telework>.

²⁰ OECD, "OECD issues recommendations on implications of the COVID-19 crisis on cross-border workers and other related cross-border matters", 3 April 2020, available at <https://www.oecd-forum.org/posts/65032-oecd-issues-recommendations-on-implications-of-the-covid-19-crisis-on-cross-border-workers-and-other-related-cross-border-matters>.

cross border mobility. Aspects such as the residence of companies for tax purposes, working permits and social security restrictions should be looked at by employers and anticipate the end of any existing restrictions that could have been put in place due to the pandemic.

In countries like Greece, acknowledging the reality of work mobility thanks to technology have allowed stepping forward in the creation of policies fit for what they call “Digital Migrants”, which is used for foreigners or Greeks based abroad and who decide to move to Greece and work remotely for a company or clients in other countries via telework. Greece is offering tax incentives for these digital migrants.²¹

Bearing in mind the special circumstances and trends, we must acknowledge that exceptional measures cannot over last the pandemic and some solutions shall be taken. Business will be accountable again and smart solutions have to be found, both at the company level and at the level of bilateral cooperation among countries. Flexible and adaptable policies will prevent the disguise of cross border working relationships, tax evasion or informality.

Associated economic costs and benefits

Remote working has reduced the commuting time as well as the costs for the workforce associated to working from the office, such as transport, meals, clothes, etc. It also presents a wide range of benefits for employers, for example office space, energy, absenteeism and productivity. Even before the pandemic, some companies have implemented telecommuting policies to reap cost savings and economic benefits. For example, Sun Microsystems implemented a telecommuting policy in 2007, which eliminated 7700 physical office spaces saving the company more than \$255 million over four years and continues to save \$68 million for the company annually. The company has also 115 flex offices around the world to allow their workers to use if they need to work in a physical office.²²

In fact, nearly six out of ten employers identified significant economic benefits as well as other costs by allowing their workers to work remotely. For example, Alpine Access Remote Agents increased 30% sales than traditional agents the year before, as well as decreased customer complaints by 90%.²³ Furthermore, remote working reduces healthcare costs for the company, as workers who work remotely have reported have 25% lower stress levels and experience a better work-life balance. In

²¹ China.org.cn, “Greece to offer tax breaks to woo ‘digital migrants’”, 13 November 2020, available at http://www.china.org.cn/world/2020-11/13/content_76906407.htm.

²² Productive Leaders, “How Telecommuting Increases Business Profits”, undated, available at <https://productiveleaders.com/telecommuting-business-profits/>.

²³ Global Workplace Analytics, “Advantages of Agile Work Strategies for Companies”, undated, available at <https://globalworkplaceanalytics.com/resources/costs-benefits>.

addition, companies that operate virtually have also saved costs associated with business travel and hotel accommodation.²⁴

Also, it is estimated that the pandemic-induced shift to working from home yields to 62.4 million fewer commuting hours per workday. Cumulating these daily savings from mid-March to mid-September 2020, the aggregate time savings associated with the pandemic-induced shift to working from home is more than 9 billion hours.²⁵ Along with the economic benefits, the lack of a daily commute to and from work, may also assist in preserving a greater environment by reducing carbon emissions.²⁶

Nonetheless, while some companies are able to reap the benefits of implementing remote working to their business, remote working is not suitable for all sectors. For example, a study by Economic and Social Council (CES) calculated the impact of teleworking on the Luxembourg economy and it estimated that one day a week of telework reduces €350m annual income for the retail and hospitality sectors.²⁷ This amount is significant and will have great impact if telework policy prolongs for a long period. The report concludes that there is a need to find the right balance between the application of teleworking regime and the related budgetary and economic losses.

Whether costs associated to telework shall be covered by the employer or if these are transferred in full or partially to the worker, raises questions and shall be considered when implementing telework modalities. The considerations around the economic burdens can vary depending the nature of remote work, whether the working relationship has been agreed as such from the beginning, or if it provides as a benefit for the workforce; whether is mandated by the employer or agreed bilaterally. The principle of voluntariness shall play an important element to the equation.

It is in this context that policies and regulation, as well as working contracts should find a right balance where a win-win situation is found, where any economic constraint or additional cost for the workforce is prevented, and where these on the other hand do not represent a barrier for business. For example, a situation where remote work is commonly agreed or where the principle of voluntariness is evident, should find more easily an appropriate solution for the economic implications by means of internal policies, or contractual arrangements. An example could be the associated costs to the connectivity needs, and energy. Indeed, these two elements are evident costs associated to

²⁴ Productive Leaders, “*How Telecommuting Increases Business Profits*”, undated, available at <https://productiveleaders.com/telecommuting-business-profits/>.

²⁵ VOX EU, “*60 million fewer commuting hours per day: How Americans use time saved by working from home*”, 23 September 2020, available at <https://voxeu.org/article/how-americans-use-time-saved-working-home>.

²⁶ Lexology, “*South Africa: Life after lockdown: Flexible working is here to stay*”, available at <https://www.lexology.com/library/detail.aspx?g=feca1726-f08f-465a-810d-01d60287e4d4>.

²⁷ Delano, “*€350m: Estimated Cost of Teleworking*”, 16 September 2020, available at <https://delano.lu/d/detail/news/eu350m-estimated-cost-teleworking/211622>.

telework. Nonetheless, in some cases, these are costs that in voluntary teleworking (as an option and benefit for the worker) shall be borne by the worker, who shall in any case, can choose not to telework and rather use the energy and internet connection at the workplace. A different scenario is the one of unilateral and mandatory telework (mandated by the employer), where the worker has no option but to telework. It is worth highlighting that in the context of the health emergency situation there has been a blur differentiation on the costs burden, on the one hand because the confinements leading to telework has been mandated mostly by the government authorities and not by the employer, and on the other hand, everyone, employers and workers have had to share the burden and responsibility to keep the boat afloat and preserve companies and employment. This led in some cases to the use of any available means, even if coming from the worker, such as personal computers, home internet connection and working space.

However, beyond the pandemic, in order to make telework effective and provide both employers and workers with legal certainty about the principles ruling their employment relationship, there will be need for clear policies and a common understanding of what a remote work modality represents, whether it been a regular working relationship or an option and a benefit that the worker may or may not be willing to take.

Some jurisdictions have already anticipated the challenges around economic implications and have established rules for the allocation of costs associated to telework, for example in Mexico employers are responsible of providing, installing, and taking care of the maintenance of teleworking equipment, such as computer equipment, ergonomic chairs and printers. They are also responsible of the payment of telecommunication services and the proportional part of electricity. Despite the fact that in Mexico telework is only considered as such when at least 40% of the tasks are performed outside the company's premises, it remains unclear how to calculate the proportional part of electricity or internet connection, which has been criticised as representing a barrier to telework which also leads to legal uncertainty both for workers and employers. Other example is Poland where the employer is responsible of providing materials and logistical support required to work remotely; and the Netherlands, is responsible for the costs of making the workplace ergonomically sound and safe.

A more flexible approach is contained in Serbia's regulation where it is left to the employer to regulate aspects concerning the equipment and work tools to be used, its maintenance and whether there would be any compensation for the use personal equipment, or other related costs.

However, it is worth highlighting emerging regulations providing a right of the employee to request for telework, and for the employer to consider such request, and in some cases the need for the employer to justify the denial of such request. This is the case of Ireland, where the situation raises

also questions around the burden of costs associated to telework in the context of the granting of such request.

In any case, whether at the company level or by means of policy and regulation, it is convenient to provide certainty on the related costs associated to telework, so the parties can agree and find a fair and efficient balance between costs and benefits in a way to enable rather than restrict the use of telework.

Productivity

Productivity is one of the key aspects related to remote working for employers. Increased productivity associated to telework and external factors at home impacting productivity are leading the discussion around the policy needs and implications of this working modality. According to the World Economic Forum Future of Jobs Report 2020,²⁸ 78% of business leaders think that home-working will have some negative impact on productivity, with 22% expecting a strong negative impact and only 15% believing that it will have no impact or a positive impact on productivity. The report identifies three following reasons for this scepticism. First, the change to remote working is occurring during a period of additional stress caused by the risks associated with COVID-19. Second, workers with young children face additional pressure to look after their children due to closure of schools and nursery arrangements. Third, workers need to adapt to the remote-working policies to recreate a sense of community and a flow of effective communication using different technological tools. However, some of these challenges will no longer exist post-COVID as schools will reopen and the stress associated with the pandemic will disappear, allowing for the full potential and benefits of telework to be harnessed.

Other studies have confirmed the positive impact of telework on productivity beyond the pandemic. For example, a Stanford study involving a randomised control trial on 1 000 employees of Ctrip (a Chinese travel company), indicated that working from home during a nine-month period resulted in a 13% increase in performance. That is almost an extra day of output per week. It also showed a 50% decrease in employee resignation rates. In an Airtasker study, people reported that working from home helped them (i) to skirt office politics and distractions and (ii) to have improved concentration, attributing this to a change in scenery. In addition, Harvard Business Review found that ‘high trust organisations’ (i.e. companies which embraced flexible working arrangements) are 50% more

²⁸ WEF, *The Future of Jobs Report*, 20 October 2020, available at <https://www.weforum.org/reports/the-future-of-jobs-report-2020>.

productive. Also, a Deloitte survey found that Forty-three percent of professionals cite less stress and better mental health as the No. 1 benefit of work flexibility and better work-life integration as No.2. One in three professionals say work flexibility would increase their job satisfaction and morale, and almost 30 percent say it would increase their overall productivity or efficiency at work.²⁹ Furthermore, an Oxford University research showed that agile workers are 13% more productive, happier in their jobs and less likely to leave than office-bound colleagues.³⁰

Therefore, some studies show that effective implementation can increase productivity as well as provide employee's more freedom and flexibility. More importantly, teleworking allows business continuity, which is crucial for employers to ensure their business are sustainable and resilient.

However, employers might have legitimate concerns or hesitation with implementing teleworking policy in their business operations. As we have mentioned before, telework is not for everyone. Each profession and each sector's particularities may or may not lead to the potential benefits from telework. According to a recent Mckinsey analysis of 2000 tasks, 800 jobs and nine countries, more than half the workforce has little or no opportunity for remote work. The reasoning behind is in some cases the collaboration requirements of the job, or the use of specialized machinery at the company's premises.

Challenges, limits and opportunities

ILO studies estimate that “close to 18% of workers, work in teleworkable occupations, and live in countries with the infrastructure that would allow them to effectively perform their work from home”.³¹ Teleworkability figures widely range, from 30% of workers in Northern America and Western Europe to 6% in sub-Saharan Africa and 8% of South Asian workers. In Latin American and Eastern European estimates fall between at 23% and 18%, respectively.³²

In the same lines, the European Commission has reported that around 37% of the EU-27 are in occupations that can technically be carried out from home. The share of employees in teleworkable

²⁹ Deloitte 2020, Workplace flexibility survey, available at <https://www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/deloitte-survey-most-professionals-take-advantage-of-flexible-work-options.html>

³⁰ University of Oxford, “Happy workers are 13% more productive”, available at [Happy workers are 13% more productive | University of Oxford](#).

³¹ ILO Policy Brief, *Working from Home: Estimating the worldwide potential*, April 2020, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/briefingnote/wcms_743447.pdf.

³² *Id.*

occupations ranges between 35% and 41% in most EU countries.³³ The ILO analysis also shows that at least one in six occupations are teleworkable at the global level and just over one in four in advanced countries.

While teleworkability linked to occupations and the current state of internet access do still represent some limits for an equal and global access to the benefits of telework, it is most likely that States not willing to be left behind in the digital era, will be forced to invest in telecommunications. Connectivity will continue to grow. The nature of jobs for the future is changing and today's figures on teleworkable occupations will likely change in the short term. However, the readiness of regulatory frameworks to boost the use of digital strategies like telework and the capability of business to embrace telework will have to keep pace with modernization, so these do not become a barrier to close the digital gap.

However, the effects on economies and societies of digitalisation and the use of interconnected digital technologies and data, offer new opportunities across the globe and hold promises for enhanced productivity growth and improved well-being of all.³⁴ However, based on a European Working Conditions Survey (EXCS), Eurofunds' findings show that a higher percentage of men (54%) have a telework arrangement than women (46%).³⁵ In general, men are more likely to perform telework than women, however, women carry out more regular home-based telework than men. This suggests that country-specific gender roles and models of work and family life play a role in shaping telework³⁶. The EWCS also shows that telework arrangements are more common among the workforce that has caring responsibilities. "It is also common for these workers to be the main earners in the household, implying that such employees place a greater value on work and are thus more motivated to work when they are away from their employer's premises".³⁷

³³ European Commission, Science for Policy Briefs, *Who can telework today? The teleworkability of occupations in the EU*, available at https://ec.europa.eu/jrc/sites/jrcsh/files/policy_brief_-_who_can_telework_today_-_the_teleworkability_of_occupations_in_the_eu_final.pdf.

³⁴ IOE, *Position Paper: Harnessing female talent for the digital economy*, April 2020, available at <https://www.ioe-emp.org/index.php?elD=dumpFile&t=f&f=146996&token=e5427c1ae2fcc136692b0638e8a1b5ffde466981>.

³⁵ Eurofound, *Telework and ICT-based mobile work: Flexible working in the digital age*, New forms of employment series, 16 January 2020, available at <https://www.eurofound.europa.eu/publications/report/2020/telework-and-ict-based-mobile-work-flexible-working-in-the-digital-age>.

³⁶ ILO – Eurofound, *Working anytime, anywhere: The effects on the world of work* (2017), available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_544138.pdf.

³⁷ Eurofound, *Telework and ICT-based mobile work: Flexible working in the digital age*, New forms of employment series (2020), available at https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19032en.pdf.

Considering that workers possessing higher levels of skills are significantly more likely to be able to telework, and that around the world, women are outnumbering men in terms of participation in higher education and that they are more likely to have highly developed human skills, teleworking can offer new employment opportunities with the potential of having a greater positive impact on women.³⁸ The 2017/2018 UNESCO's Global Education Monitoring Report affirms this that as women become more educated than men, it is all the more wasteful not to use their human capital and knowledge to improve the economy's output, productivity and knowledge base.³⁹

The positive impact on inclusion has been acknowledged by some jurisdictions and used a tool to foster employability of people with family responsibilities for example, in Uruguay's draft legislation⁴⁰ teleworking is recognized as a necessary modality for the generation of employment and in particular for access to work of people with family responsibilities, people with disability or whom they depend on or those people caring for them.

In this context, adequate policies and regulations can also serve leveraging telework to hire in the formal sector, workers that have not had access to the benefits of formality because of their limitations to work at the business premises. Flexible and adaptable regulation allowing business hiring more women teleworking without it representing an excessive charge or creating new regulation, will also result in more inclusion and empowerment of female workforce.

IOE support

The prolonged social distance measures for the Covid-19 pandemic and the dynamic regulatory and policy developments around the globe, suggest that business will continue facing implications on the use of remote work. Moreover, business will face the need to adapt and engage in the policy making process at various levels. Special attention should be paid at the company level on digitalisation strategies and policy implications attached to the use of telework.

At the international level, longstanding debates around working time, the classification of workers, as well as diverse aspects of occupational safety and health, put more pressure on the international policy agenda for an item on telework. trade unions have been campaigning for the need to elaborate

³⁸ IOE, *Position Paper: Harnessing female talent for the digital economy*, April 2020, available at <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=146996&token=e5427c1ae2fcc136692b0638e8a1b5ffde466981>.

³⁹ Global Education Monitoring Report Team, *Accountability in education: meeting our commitments*, 2017/2018, available at [Accountability in education: meeting our commitments; Global education monitoring report, 2017/8 - UNESCO Digital Library](#).

⁴⁰ Commission of Labor Law and Social Security of the Senate, *Draft Law on Telework*, November 2020,. File 708 of 2020, available at: <https://legislativo.parlamento.gub.uy/temporales/R02484451179.pdf>

on a set of principles that safeguards labour rights and protections in the implementation of remote work and teleworking agreements. There is no doubt that debates will continue to appear on the international agenda and gain pace as the remote work and teleworking practices become more extensive.

The IOE as the largest global network of the private sector, shall continue delivering the voice of business in the policy debates at the ILO and other global forums. Moreover, the IOE can serve as a hub for knowledge sharing and best practices on the policy experiences at the national level. Keeping cognisant on the approach taken towards regulation in other jurisdictions, the IOE will serve our members through informing them policy decisions, positions to be taken in consultation processes and debates to the tailor regulation, internal policies and collective agreements. It will also help members to set their digital strategies in an effective and cost-effective manner.

Policy Recommendations

Whether developing policies and guidance internally at company level or more broadly at national level, it is important to take into account every possible implication of remote work modalities to clarify expectations and requirements, as well as identify costs and responsibilities. Moreover, it shall also seek preparedness for compliance aspects in the various fields outlined above (tax, OSH, agreement formalities and employee requests, among others). These are some key policy recommendations to consider:

Eligibility

- Policies and regulations should seek to allow business self-determination of positions and tasks where telework is possible and shall provide for reversibility of remote work modalities when business needs require.
- Internal policies should clearly identify eligible positions and prevent undue discrimination among the workforce.
- The right of a worker to request remote work/telework should not be based on the company's obligation to grant it. Management should always have the final say on the feasibility and pertinence of telework. Yet, policies can focus on the promotion of telework and the creation of enabling environments for business to harness the benefits of telework.

Working Time and Productivity

- Change mindsets towards working time. Productivity should be mission driven and measured based on deliverable outcomes rather than the number of working hours.

- Define the details of the working schedule that accommodates the workers' and company's needs in a written contractual agreement. These should make reference to working time limits, rest breaks and holidays. Regularly review and amend as necessary in line with government advice and measures.

Technology, Skills Demands, Digital Divide

- Identify the technological needs and companies' capability (including SMEs) to provide the workforce with the necessary tools to telework.
- Connectivity requirements and the associated costs shall be clearly agreed between the employer and the workforce.
- Promote skilling, peer-learning and training for using technological tools to facilitate remote working and team collaboration.
- Invest in necessary equipment and programs to protect confidential and client information and minimise the risks of cyberthreats.
- Business shall be mindful of data protection laws and regulations that may apply for the information handled by the workforce even outside the company's premises. This is especially relevant for financial institutions where specific rules may apply.
- Provide the workforce for specific rules on the use of personal equipment.
- Be mindful of workers privacy issues when monitoring their performance.
- Lobby for Governments to invest in digital infrastructures in cooperation with the private sector and to encourage incentivising companies.

Occupational Health and Safety

- Policies shall be mindful of the limitations for the employer to access the working space and the limited control over tools and working environment outside the company's premises.
- Policies should favour social dialogue and bilateral agreements to allow for flexibility and a better adaptation of remote work to the specific needs of the worker and the company.
- Assess and make clear the eligibility of each worker to work remotely, considering the availability of a safe work environment. Clear expectations and establish rules for adaptation of working spaces to comply with national OSH regulations.
- Transparency on the responsibilities and limitation in coverage for accidents occurred when outside the workplace is key to avoid unexpected claims and charges for both parties.
- Regularly check on workers' physical and mental health to protect their well-being and raise awareness of the employees' responsibility to take care of their own physical and mental well-being at home.

- A joint assessment and communication on the needs to perform work in a healthy and safety manner will serve as a preventive measure.
- Assess and agree on responsibilities and limits to provide ergonomic equipment for workers to avoid any unexpected health situation and claims.
- Promote mutual support and collaboration to prevent the feeling of isolation.
- Establish clear expectations and limits concerning working time and the right to disconnect.
- Make sure insurance policies are fit for telework schemes.

Cross border mobility, tax and social protection

- Regular tax and legal changes at the national and international levels demand employers to be kept informed and keep their policies up to date. Look at bilateral agreements and temporary exemptions available to your company.
- Avoid an unexpected shift of the primary right of taxation from the work country to the home country. Also look at permanent establishment rules that could trigger entity filings and tax obligations.
- Be mindful of regulations on the company's place of effective management when having key executives working abroad.
- Avoid new or dual tax residency implications when working in a country other than where the company is located.
- Policies shall avoid bureaucratic or difficult procedures concerning tax registration and declarations for teleworkers.
- Policies shall be mindful of the potential concealment of locations by means of the use of technology. Employers and workers shall clearly establish the place(s) where telework can be carried out. Company internal regulations shall contain disclaimers and protect the business against an unauthorized change of location.

Gender, diversity and inclusion

- Promote an anti-discrimination environment and tackle discrimination in pay among remote workers and other workers, including skilling opportunities and other labour rights.
- Assess the needs of workers with family responsibilities with the aim of finding solutions that accommodate the work life balance and avoid a negative impact on productivity.
- Harness the benefits of telework to include workers with disabilities among your workforce.

ANNEX: Regulation and standards

AFRICA

South Africa

Alert Level 4 Lockdown Regulations and a new set of Occupational Health and Safety Directions, both published on 29 April 2020, have presented employers with an opportunity to formalise flexible working arrangements. Among various measures, these regulations mandate employers to adopt ‘physical distancing’ measures, which include enabling employees to work from home or minimising the need for employees to be physically present at the workplace. In terms of the Occupational Health and Safety Directions, employers must *“as far as practicable, minimise the number of workers on at the workplace at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures in order to achieve social distancing.”*⁴¹

Kenya

The existing labour laws in Kenya do not incorporate the concept of telework. However, the Employment Act 2007 and the Employment (General) Rules 2014 specifies that the employment contract or letter of appointment should indicate the place and hours of work of an employee.⁴²

As a measure to contain the transmission of Covid-19, the ILO and the Government of Kenya recently introduced best practice manuals referred to as Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019, May 2020. Accordingly, the government advised employers to allow their employees to work from home (except those providing essential services) thus shifting the place of work of employees as indicated in signed employment contracts.⁴³

Nigeria

Nigeria has no legal framework on remote working. However, the emphasis on equality of treatment of remote workers and the need to achieve a work-life balance, amongst other salient provisions in the Frameworks could be used in devising a potent Remote Working Policy, particularly when the

⁴¹ Lexology, “South Africa: Life after lockdown: Flexible working is here to stay”, available at <https://www.lexology.com/library/detail.aspx?g=feca1726-f08f-465a-810d-01d60287e4d4>.

⁴² Employment Act, 2007, s.10(2)(f)(g) and Employment (General) Rules 2014, Second Schedule, r.6(e)(f), available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EmploymentAct_Cap226-No11of2007_01.pdf.

⁴³ Ratemo Tom Junior, “Evaluation of the demeaning face of COVID-19 on labour relations: a new challenge for Kenya’s burgeoning democracy”, Italian Labour Law e-Journal Issue 2, Vol. 13 (2020), available at <https://illej.unibo.it/article/view/11379>.

National Industrial Court may rely on the Frameworks as international best practices in line with Section 254(C) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the “Constitution”).⁴⁴

Employers have a duty to educate its employees on data privacy, the dangers of unauthorized access to confidential information and the need to comply with the Nigerian Data Protection Regulations (NDPR) 2019 as it relates to use and management of personal data.

An employer is obligated to provide a safe working environment for its employees. In the face of the coronavirus pandemic, while there may be no current case law on the applicability of this duty of an employer where an employee works remotely from his home (or any other place of his choosing, but not in the workplace or some other place incidental to the employee’s employment), it is conceivable that such employee’s home could be adjudged to be an extension of the workplace during the normal business hours of his employers. If that were to be the case, it therefore follows that the applicable statutory requirements on the safety of the workplace and the employer’s liability for any accident or injury occurring, could be expected to apply.

An employer could, thus, offer to undertake an assessment of the safety of the homes of all its employees, but this may be difficult to execute in reality and will necessarily require the consent of the employee, to prevent legal issues. However, even if such assessment were to be effectively executed, same may not necessarily guarantee an avoidance of future liabilities in this regard, as the instant scenario is quite novel in our jurisprudence.

The Employees Compensation Act (the “ECA”) provides for an open and fair system of guaranteed and adequate compensation for all employees or their dependents for any death, injury, disease or disability arising out of or in the course of employment.⁴⁵ The ECA provides that any employee, whether or not in a workplace, who suffers any disabling injury arising out of or in the course of employment, shall be entitled to payment of compensation in accordance with Part IV of the Act.⁴⁶ The ECA also provides for the compensation of an employee for mental stress, where a) arising from a sudden and unexpected traumatic even out of or in the course of employment; b) arises out of the nature of work; or c) arises out of employers’ decision to change the work or working conditions in such a way that unfairly exceeds the work ability and capacity of the employee.

⁴⁴ The Law Crest, “*Remote Working: Key Legal Considerations for HR Function*”, 1 June 2020, available at <https://www.thelawcrest.com/2020/06/01/remote-working-key-legal-considerations-for-hr-function/>.

⁴⁵ Nigeria, Employment Compensation Act 2010, available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=87608&p_lang=en.

⁴⁶ *Id.*, Part IV.

Section 11 of the ECA provides that an employee would be entitled to compensation if the injury to an employee occurs outside the normal workplace where the nature of the business extends beyond the usual workplace, or the nature of the employment is such that the employee is required to work both in and out of the workplace, or the employee has the authority or permission of the employer to work outside the normal workplace. This provision, thus, easily caters for an injury suffered by an employee in the course of working remotely. It is worthy of note that the ECA defines the “workplace” to include any premises or place where a person performs work or needs to be or is required to be in the course of employment.

AMERICAS

Argentina

On 14 August 2020, Argentina passed a Law on the Contractual status of telework. The purpose of the law is to establish the minimum legal requirements for the regulation of the Teleworking modality in those activities that, due to their nature and particular characteristics, allow it. The specific aspects will be established in the framework of collective bargaining. It defines telework as the performance of acts, execution of works or provision of services, whether carried out totally or partially at the domicile of the person who works, or in places other than the employer's establishment or establishments, through the use of information and communication technologies.

The law provides for a principle of equality among the workforce by establishing that teleworkers will enjoy the same rights and obligations as people who work under the face-to-face modality and their remuneration may not be less than what they received or would receive under the face-to-face modality. However, it leaves room for collective agreements to foresee a combination between in-person and teleworking benefits.

Working time must be previously agreed in writing in the employment contract in accordance with the legal and conventional limits in force. For this purpose, the law has taken an innovative solution by establishing that software for telework is expected to prevent connectivity outside working hours. Business using telework modality shall be registered with the Ministry of Labour and authorizing the software to be used, as well as informing the workers representatives. The right to disconnect is also covered by the regulation.

The law also provides for the principles of voluntariness and reversibility. When the permission to telework is reversed by the employer, he must grant the worker tasks in the establishment in which he had previously engaged him/her, or failing that, in the one closest to the dependent's domicile, in which the work can be performed.

The employer must provide the equipment -hardware and software-, the work tools and the support necessary for the performance of the tasks, and assume the costs of installation, maintenance and repair thereof, or compensation for the use of the worker own tools. Also, the teleworker will be entitled to compensation for high connectivity and / or consumption of services expenses he bears. Compensation will operate according to the guidelines established in collective agreement.

In connection with OSH, a list of occupational diseases linked to telework will be added to the regulation and accidents that occur in the place, day and on the occasion of teleworking, are presumed accidents in the terms of the applicable legislation (law 24.557).

The law contains a cross border workers provision establishing that in the case of transnational teleworking benefits, the law of the place of execution of the tasks or the law of the employer's domicile will be applied to the respective employment contract, whichever is more favourable for the worker.

In the case of hiring of foreign persons not resident in the country, prior authorization from the enforcement authority will be required. The collective agreements, according to the reality of each activity, must establish a maximum limit for these contracts.⁴⁷

Chile

On 26 March 2020, Chile enacted a new labour law regulating telework. Law No. 21.220⁴⁸ modifies the Chilean Labour Code by adding provisions for remote working and flexibilization of working methods. With this new law, employees and employers are free to agree on the time for working remotely or in the company premises; they may decide on how to distribute the working hours, with a limit of maximum working hours and a minimum 12 hours of rest. The agreement between employers and employees shall contain information on how the employee will be supervised and must be registered with the Labour Directorate.

The law grants employees a right to disconnect. Also, it requires employers to provide employees with the necessary technological equipment to work from home and to inform employees about health and safety issues. Furthermore, a specific provision obliges employers to inform in writing employees on the existing and newly established trade unions at the company level.

The specific OSH conditions to which teleworkers are subject will be regulated by a regulation issued by the Ministry of Labour and Social Welfare. The employer shall inform the worker of the health and

⁴⁷ Argentina Government, “*RÉGIMEN LEGAL DEL CONTRATO DE TELETRABAJO Ley 27555*”, available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/233626/20200814>.

⁴⁸ Chile Ley 21220 MODIFICA EL CÓDIGO DEL TRABAJO EN MATERIA DE TRABAJO A DISTANCIA, available at <https://www.bcn.cl/leychile/navegar?idNorma=1143741>

safety conditions that the job must comply with, having, in any case, to secure compliance with these conditions

Colombia

In Colombia telework is regulated by Law 1221 of 2008 and Decree 884 of 2012.⁴⁹

Law 1221 of 2008 establishes the recognition of telework in Colombia as a work modality, the framework for public policy to promote telework and a public policy on telework for the vulnerable population. It creates the National Network for the Promotion of Telework, in order to promote and disseminate this practice in the country, and to look after labour, union and social security guarantees for teleworkers at the same time.

Decree 884 of 2012 specifies the working conditions that govern telework in a dependency relationship, the relations between employers and teleworkers, the obligations for public and private entities, the labour risk managers and the Network for the Promotion of Teleworking. It also establishes the principles of voluntariness, equality and reversibility that apply to the model.

Resolution 2886 of 2012 defines the entities that are part of the Telework Promotion Network and their obligations.⁵⁰

Accordingly, telework is defined as a form of labour organization in the frame of a contractual relationship or a dependent labour relationship, consisting in the development of remunerated activities with the support of information technology tools and communication tools for the contact between the employer and the employee, without the need of physical presence in a specific working site.⁵¹

The teleworking agreement must respect the social security obligations provided in the Labour Code and must specially provide for the conditions of service, the technological means and the environment required and the way to execute it under time conditions and if possible, space; establish the days and times when the teleworker will carry out activities for the purposes of delimiting liability in the event of a work accident and avoiding non observance of the legal maximum working day; define the responsibilities regarding the custody of the work tools and set the procedure for the delivery by the teleworker at the time of the end of the telework modality; and the information technology security measures that the teleworker must observe.⁵²

⁴⁹ Ministerio Del Trabajo, Decreto Numero 0884, 30 April 2020, available at https://www.mintic.gov.co/portal/604/articles-3638_documento.pdf.

⁵⁰ Teletrabajo, Marco Juridico, available at <https://www.teletrabajo.gov.co/622/w3-article-8098.html>.

⁵¹ Colombia, Ley 1221 de 2008, article 2, available at <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=31431>.

⁵² *Id*, article 3.

Once engaged into a teleworking modality, the worker cannot demand to perform his activities at the workplace, unless expressly agreed by the parties.

The conditions on teleworking modalities for existing labour relationships must be agreed upon and attached to the working contract.⁵³

The Decree also provides for equal remuneration and treatment among the teleworkers and other workers, including skilling opportunities and other labour rights.⁵⁴

The obligations of the employer and the teleworker in occupational safety and professional risk prevention are those defined by current regulations. However, the employer must incorporate into the internal work regulations or by resolution, the special conditions for teleworking to operate in the private company or public entity.⁵⁵

Colombia has a very restrictive telework regulation with high economic and administrative costs. The application of the telework regulation has been minimum and that is why during the Covid -19 crisis the Government had to create a new legal regulation for “work from home – *trabajar desde casa*” – Circular 021/2020. Nowadays there are several law projects in our Congress to modify the telework regulation or trying to create new legal regulations for the remote work.⁵⁶

Ecuador

On 24 August 2016, Ecuador issued Regulations on Telework in the Private Sector by Ministerial Decree MDT-2016-0190 and amended on 30 January 2018 by Ministerial Decree MDT-2018-002A.

On 14 September 2020, the Ministry of Labour also issued a Ministerial Decree MDT-2020-181⁵⁷ with directives to regulate telework, aiming at the application of measures on different working mechanisms using information technologies.

The latter was triggered by the enactment of the Law on Humanitarian Support to Combat Health Crisis Derived from Covid-19, and in response to the primary duty of the State to guarantee stable, fair and decent work in its various forms.

Accordingly, in Ecuador, telework is defined as a form of labour organization, which consists of the performance of remunerated activities or provision of services using information and communication

⁵³ *Id*, article 3.

⁵⁴ *Id*, article 4.

⁵⁵ *Id*, article 8.

⁵⁶ See ANDI, Trabajar desde Casa: Posibilidades y desafíos, Julio de 2020, available at <http://www.andi.com.co/Uploads/Trabajar%20desde%20casa%20posibilidades%20y%20desaf%C3%ADos%20CESLA%20ANDI.pdf>.

⁵⁷ Ecuador, Ministro Del Trabajo, Decreto Ministerial MDT-2020-181, 14 September 2020, available at <https://www.trabajo.gob.ec/wp-content/uploads/2020/09/AM-MDT-2020-181-TELETRABAJO-14.09.2020-signed.pdf?x42051>.

technologies as a support for the contact between the worker and the employer, without requiring the physical presence of the worker at a specific job site.

The directives on telework establish various obligations for the employer. Among others, the employer must provide the equipment, work elements and inputs necessary for the development of telework.⁵⁸ The employer must respect the teleworker's right to disconnect, guarantee the time in which the worker will not be obliged to respond to communications, orders or other requirements.⁵⁹ The employers hiring under a teleworking modality must also report such relationship to the labour authority.⁶⁰

An important aspect of the Directives is the principle of reversibility, where an employee that has moved to a teleworking scheme, can return to an on-site working modality.⁶¹

México

On 9 December 2020, the Mexican Congress approved a decree amending Article 311 of the Federal Labour Law and adding a Chapter XII BIS on Teleworking.

The decree promotes teleworking as a form of labour organization, establishing rights and obligations for both employers and employees.

Among the relevant aspects, it defines telework as the provision of personal and subordinate services in a place other than the company or workplace, using primarily information and communication technologies, if more than 40% of these tasks are performed in the domicile selected by the worker.; or as provided in the working contract or companies' internal work regulations.

It also provides for teleworking being part of the collective agreements. Where non-existent, the law mandates its inclusion in the company's internal work regulations.

Employers are responsible of providing, installing, and taking care of the maintenance of teleworking equipment, including such as computer equipment, ergonomic chairs and printers, as well as the payment of telecommunication services and the proportional part of electricity.

Other provisions looking at data protection, the right to disconnect, skilling and social security will also be part of the new telework chapter of the Federal Labour Law.

On the workers' side, the decree establishes their duty to preserve the equipment they receive from the employer; reports on the agreed costs for the use of telecommunication services and electricity

⁵⁸ *Id.*, Art. 4.

⁵⁹ *Id.*, Art. 5.

⁶⁰ *Id.*, Art. 6.

⁶¹ *Id.*, Art. 9.

consumption; respects the provisions on health and safety; uses established operating systems to monitor activities; and complies with data protection policies.

The principle of voluntarism is an important element of the reform, by providing for the flexibility to switch from telework to onsite work and vice versa, with the exception of cases of *force majeure*.

The health and safety conditions of telework will be established by the Ministry of Labour and Social Security, through an Official Mexican Standard (NOM).⁶² The Ministry of Labour and Social Welfare will have 180 days to elaborate such a NOM, to regulate the special conditions concerning health and security of teleworking, such as ergonomic factors, psychosocial factors, and other work-related risks.⁶³

Panama

On September 16, 2020 Panama passed an Executive Decree No. 133, where the Teleworking Law is regulated, formalizing all the agreements reached in the Tripartite Dialogue Table for the Economy and Labor Development.

The Regulation provides for the voluntary nature of the Teleworking modality, and the worker's right to disconnect

The workplace is defined depending on whether telework is full time or part-time. Full-time: any location other than the employer's premises, including, but not limited to, the worker's home, where work is performed on behalf of the employer; and part-time: the workplace may also include the employer's premises, understanding that at some point work is performed outside the business premises.

Overtime will be governed by the limitations and other provisions contained in the Labor Code.

The employer must keep a record of the hours worked by the employee through ITC, and similar means that the employer determines, and that are verifiable by both parties. These records must be available to workers for consultation at all times.

The employer's instructions, for the performance of telework, may be issued by ITC or similar means, without prejudice to another modality, which provide certainty about the issuing authority, clarity of the instruction, date, and its direct relationship with the execution of the telework modality in development.

⁶² PWC, "Reforma en materia de teletrabajo", 11 December 2020, available at <https://www.pwc.com/mx/es/impuestos/novedades-fiscales/reforma-en-materia-de-teletrabajo.html>.

⁶³ Yllanes Ramos, *Labour Changes in Mexico during 2020*, 7 January 2021, Newsletter, 7 January 2021, not available online.

Professional risks include events occurring at telework locations, including the worker's home, when such events derive from the work performed on behalf of the employer. Work accidents related to on-call work will also be included. The Social Security Fund will be responsible for investigating and assessing the nature of the events, according to the regulations in force.

The law provides for reversibility of the agreed modality, both for the employer and the worker.

The employer is responsible of supplying the worker with the tools, instruments, materials, and software necessary to execute telework. Also, the employer must secure that the worker's connectivity through ITC and similar means to carry out work. In the event of failures in telecommunications services or electricity, the worker is obliged to notify the employer.

The installation of any software that violates the privacy of the worker or his family is prohibited.

The employer must cover expenses related to electricity and internet services, as well as the equipment, maintenance, repair, tools, training, and other costs inherent to the provision of the service in the teleworking modality.

In case of doubt in the interpretation of the provisions set forth in this Regulation, the principles and rules of the Labor Code will be applied.

Peru

On 5th June 2013, Peru enacted Law 30036^[1] on Telework. This law regulates telework as a working modality characterized by the use of information and telecommunications technologies (ICT), and promoting public policies to guarantee their development.^[2] This is a general regime that the Government has tried to foster, but that has been rarely used due to its strict regulation.

Teleworking can only be implemented when (i) the employees render services using computers, telecommunications and/or similar means, which are used to control and supervise them and (ii) the employees do not attend the employer's workplace to render services. Partial telework (whereby the employees attend the employer's workplace on some days) also exists.

The implementation of a teleworking scheme requires a written agreement with the employee and the equipment and tools necessary for the development of the work can be provided by (a) The employer: in this scenario, the conditions, the responsibilities of the teleworker and the procedure for the delivery of the work must be established. (b) The teleworker: the compensation for the costs, including the communication costs (phone, internet, etc.), must be assumed by the employer, as agreed by the parties or according to the market value.

Due to the COVID-19 pandemic, the Government has created a temporary system of “remote work” that will be in force until July 31, 2021 (unless it is extended beyond that date). Remote work can be implemented if the employees do not attend the employer’s workplace to render services, whether they use telecommunication means that allow the employer to supervise their work or not. In this case, the employer can implement remote work unilaterally, without the need to obtain the employee’s agreement.

Lastly, the employer must: (i) determine the means to be used, (ii) grant the facilities to access the computer system, where applicable, (iii) train the worker in the use of this system, where applicable and (iv) establish the provisions that will rule confidentiality and data protection while working from home. The employer is not responsible for providing tools or covering their cost if the employees provides their own. The parties may agree on the compensation of additional expenses incurred by the employees in the use of the means to perform remote work but the compensation is not automatically generated.

^[1] Peru, Ley que Regula el Teletrabajo (Ley No 30036), 5 June 2013, available at <https://busquedas.elperuano.pe/normaslegales/ley-que-regula-el-teletrabajo-ley-n-30036-946195-3/>.

^[2] *Id.*, Art. 1.

Uruguay

An initiative with a draft Regulation on Telework of 22 April 2020, further developed by an initiative presented to the senate in November 2020, are currently been discussed for final approval.⁶⁴

The proposals define telework as the provision of work, total or partial, through the use of information and communication technologies, outside the “physical field” provided by the employer.⁶⁵

This draft regulation is aimed at regulating subordinate labour relationships in the private sector.⁶⁶ They also define the concept of teleworker as any person who provides their work outside the physical

⁶⁴ Parlamento Del Uruguay, *Teletrabajo Promocion y regulacion*, available at https://parlamento.gub.uy/documentosyleyes/ficha-asunto/145860/ficha_completa,

⁶⁶ *Id.*, Art. 2.

space granted by the employer, through the use of information technologies and the communication. The teleworker and the employer must agree at the beginning or during the validity of the employment relationship the modality of telework, in the employment contract or document attached to it. Such agreement must be made in writing.

The teleworker and the employer must agree on the place where the work tasks will be performed, which may be at the teleworker's home or in any other place defined in the contract. If the provision of teleworking, by its nature, is capable of taking place in different places, it may be agreed that the teleworker can freely choose the location to perform his or her tasks, even in more than one location. Otherwise, the teleworker may require the employer to be the one who provides the place where telework is to be provided.

Reversibility of the telework modality has to be agreed between the worker and the employer in writing.

The proposals also cover working time, and monitoring are other aspects. In addition, provisions concerning workers individual and collective rights remain valid, as applicable.

A specific reference to professional risks and occupational diseases provides that applicable regulation remains in force.

Also, the proposals establish the right to disconnect, which is defined as the full exercise of the right of every worker to disconnect from digital devices and the use of technologies, in order to guarantee their rest time.

ASIA

Australia

In 2005, the Australian Telework Advisory Committee (ATAC) was established to provide advice to the Government on a range of issues relating to telework in Australia.⁶⁷ The ATAC defined telework to include work undertaken, either on a full-time, part-time or occasional basis, by an employee or self-employed person, which is performed away from the traditional office environment, including from home, and which is enabled by information communication technologies, such as mobile telephone or the internet.

⁶⁷ Australian Government, *Telework for Australian Employees and Businesses Maximising the economic and social benefits of flexible working practices*, 2006, available at https://telecommunities.files.wordpress.com/2012/01/atac_report1.pdf.

The Australian Fair Work Act 2009 provides the legal framework for working arrangements and conditions. In particular, article 65 provides that employee may request change in working arrangements and the request must be made in writing and setting out the details of the change and the reasons for the change. Article 144 provides that an employee and employer can agree to an individual flexibility arrangement to meet the genuine needs of the employer and employee and outlines the requirements for such flexibility term.⁶⁸

While workers are working from home or somewhere other than their usual workplace, the Work Health and Safety Laws⁶⁹ still applies. In particular, the employers still maintain their duties to ensure the health and safety of their workers and to minimise any risk at the workers' home. This requires providing guidance on what is safe home office environment, allowing workers to borrow any necessary workstation equipment from home, require workers to familiarise themselves and comply with good ergonomic practices and maintain regular communication with workers.⁷⁰ The workers also have responsibilities to take care of their own health and safety, follow the workplaces' remote working policies and procedures.

Cambodia

In Cambodia, there is no right for an employee to work remotely. This falls under the power of control, direction and supervision of employer. Article 71 of the Cambodian Labour Law provides that an employer has two options: i) to ask employees to work from home or ii) suspend the contract without salary payment.⁷¹

In the situation where public transport is closed and employee cannot get to work to perform their duties, it may be considered as an event causing suspension of employment contract. In this case, where the main obligations of the parties are suspended, the employer is not required to pay the salary unless otherwise specified in the individual employment contract, collective bargaining agreement, internal company rules or employee's manual or mutual arrangement between employer and employees.

⁶⁸ Australia, Fair Work Act 2009, article 144, available at <https://www.legislation.gov.au/Details/C2018C00512>.

⁶⁹ Australia, Model WHS Laws 2011, available at <https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws>.

⁷⁰ Safe Work Australia, "Working From Home", 12 June 2020, available at <https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/industry-information/office/working-home#heading--1--tab-toc-what-must-i-do-when-workers-are-working-from-home?>.

⁷¹ Cambodia, Cambodian Labour Law 1997, available at https://sogi.sithi.org/temp.php?url=media_view2.php&mid=121.

India

On 5 November 2020, the Government of India announced simplified guidelines for Business Process Outsourcing (BPO) and IT Enabled Services (ITES) players to reduce the compliance burden for the industry and facilitate 'Work from Home' and 'Work from Anywhere'.⁷²

The new rules for 'Other Service Providers' (OSPs) would create a friendly regime for 'Work from Home' and 'Work from Anywhere' while removing several reporting and other obligations for such companies.

OSPs are entities providing applications services, IT enabled services or any kind of outsourcing services using telecom resources. The term refers to BPOs, KPOs (Knowledge Process Outsourcing), ITES, call centres, amongst others.

The new regulations aims to boost flexibility for these companies to adopt 'Work from Home' and 'Work from Anywhere' policies, a development especially relevant at a time when COVID-19 has forced IT/BPO firms to enable employees to work from home.

The new rules also do away with registration requirement for OSPs, while the BPO industry engaged in data related work has been taken out of the ambit of the said regulations. The requirement such as deposit of bank guarantees, requirement for static IPs, frequent reporting obligations, publication of network diagram, and penal provisions have also been removed.

Furthermore, realising that remote work is here to stay, the Government has decided to make it a part of efficient work culture in companies. The Union labour ministry has for the first time incorporated the 'work from home' option in establishments, as part of its draft model standing order for the service sector.⁷³

Standing orders are basically an employment contract that spell out the rules of conduct for employees in industrial establishments that have over 300 workers. It is mandatory for companies to have a standing order that is approved by the state or central government. The draft code states that *"Subject to conditions of appointment or agreement between employer and workers, employer may allow a worker to work from home for such period or periods as may be determined by employer."* This will apply to all those who are working in the industrial establishments covered under the Occupational Safety, Health and Working Conditions Code, 2020.

⁷² Outlook, "Govt eases guidelines for ITES sector, new normal facilitate 'Work from Home'" 5 November 2020, available at <https://www.outlookindia.com/newsscroll/govt-eases-guidelines-for-ites-sector-new-norms-to-facilitate-work-from-home/1970901>.

⁷³ Moushumi Das Gupta, "Work form home here to stay, labour ministry adds it in standing for service sector" (The Print, 1 January 2021), available at <https://theprint.in/india/governance/work-from-home-here-to-stay-labour-ministry-adds-it-in-standing-order-for-services-sector/577872/>.

This is also the first time that the labour ministry has brought out standing orders for the service sector under the new Industrial Relations Code. Before the new labour codes were approved by Parliament in September 2020, there was one standing order across sectors.

The standing order also provides for flexibility to employees within the weekly working hour limit of 48 hours, which has been fixed under the labour code.

Philippines

On 20 December 2018, the Philippines issued the Republic Act No. 11165 (Telecommuting Act).⁷⁴ Telecommuting is defined as work arrangements that allow private-sector employees to work from an alternative workplace using telecommunications and computer technologies.

Under the Telecommuting Act, an employer may put in place a telecommuting arrangement based on mutual agreement with the employees. The terms and conditions of such an arrangement may not be less than the minimum labour standards set by law. The Telecommuting Act provides for equal treatment between employees who telecommute and those employees working on the employer's premises.

Telecommuting workers must have the same training opportunities and be subject to the same appraisal procedures as workers in comparable roles located at the employer's workplace.

Employers must take measure to keep telecommuting employees from becoming isolated from the rest of the working community.

Employers must assure the protection of data used by telecommuting employees as part of their jobs inform employees about their data-protection duties.

Singapore

On 9 May 2020, the Singapore's tripartite partners, comprising the Ministry of Manpower ('MOM'), the National Trades Union Congress ('NTUC') and the Singapore National Employers Federation ('SNEF') issued an advisory on "Requirements for safe management measures (SMMs) at the workplace".⁷⁵ Based on the Advisory, Work-from-home is the default mode of working. However,

⁷⁴ Congress of the Philippines, *An Act Institutionalising Telecommuting as an Alternative Work Arrangement for Employees in the Private Sector*, Republic Act No. 11165, available at <https://www.officialgazette.gov.ph/downloads/2018/12dec/20181220-RA-11165-RRD.pdf>.

⁷⁵ Ministry of Manpower, *"Requirements for Safe Management Measures at the workplace"*, updated on 22 October 2020, available at <https://www.mom.gov.sg/covid-19/requirements-for-safe-management-measures>.

from 28 September 2020, employees who are able to work from home may return to the workplace to better support work and business operations.

As the COVID-19 situation is evolving, the advisory would be updated where necessary, with the last update on 22 Oct 2020. For the latest information, please visit www.mom.gov.sg

Where employers fail to adhere to the SMMs, they may be fined and/or be ordered to cease on-site operations.⁷⁶

Beyond the emergency measures mandating telework in the context of Covid-19, the Ministry of Manpower has provided some guidelines on the adoption of teleworking modalities managed by Tripartite Standard Flexible Work Arrangements (FWA). FWAs refer to work arrangements where employers and employees agree to a variation from the usual work arrangement. For example, flexibility can be applied to working time, work location, including telecommuting, working from home and working from smart work centres.⁷⁷

Thailand

In Thailand, there is no statutory law allowing the right to telework. “Home Office” is up to the employer’s discretion.⁷⁸ In this case, section 75 of the Labour Protection Act concerning the suspension of work does not apply and wages must be paid in full. However, employers may enter into agreements with employees to cut working hours and wages.

Under Thai labour law rights and obligations of employees working from home remain unchanged. Consequently, duties from employers remain unchanged for teleworking practices.

However, it is worth noting that changes to company policies and procedures affecting employment terms and conditions must be notified and communicated in accordance with the requirements of the applicable labour laws. Moreover, any reduction in working hours or salary and other monetary entitlements will continue to constitute a change in working conditions requiring employee’s consent.

There is no statutory requirement to reimburse electricity, internet and other expenses incurred by employees working from home. Employers should check their employment terms to determine if there is a contractual obligation to meet such costs.

⁷⁶ <https://www.straitstimes.com/singapore/jobs/almost-140-firms-told-to-stop-operations-after-serious-breaches-of-covid-19-measures>

⁷⁷ Ministry of Manpower. Tripartite Advisory on Flexible Work Arrangements. Singapore 2014, available at <http://snf.org.sg/wp-content/uploads/2016/10/tripartite-advisory-on-fwas.pdf>

⁷⁸ Watson Farley & Williams, “Covid-19 and Thailand (Part 2) – Key Employment Law Issues to Consider”, 1 April 2020, available at <https://www.wfw.com/articles/covid-19-and-thailand-part-2-key-employment-law-issues-to-consider/>.

“During the lock-down, both Employers & Employees seem to adopt Telework effectively, although difficulties on the part of Employees were visible due to inadequate of appropriate office settings at their residences, family disturbances including young children cares, but benefits clearly outweigh including time & cost savings from no commuting, better work-life-balance, etc. However, after ending the 1st Lockdown, some Employers required Employees to return to office and some Employees willingly wanted to go back to office. On benefits of the national scale, during Lock-down, we can observe much less traffic and better air quality, in particular, PM 2.5 during the winter months.

In-Post Covid-19, the Government should ensure Telework to continue for White-Collar Workers to reap those benefits. Incentives for business should be in place including:

1. Tax benefits for business that have certain percentage of Employees commit to Telework
2. Tax benefits & low interest rate for Home Improvement to accommodate Home Office
3. National Policy to promote Telework as part of Digital Transformation
4. Study on National Benefits from Telework

United Arab Emirates

On 31 October 2017, UAE adopted the Ministerial Order No. 787/2017 regulating Teleworking⁷⁹ (the "Resolution"). It defines teleworking, as the concept of using information and communication technology (ICT) to enable an employee to work away from the regular place of work.

The Resolution aims at creating job opportunities for UAE citizens looking for work in remote areas by encouraging employers to offer teleworking employment options; and to provide for flexible work options for UAE citizens (particularly female nationals), to enhance family relationships by improving the balance between work and family.

Under the Resolution, UAE nationals will have the right to request that their employer to consider facilitating teleworking. The employee must have completed at least six months of service in the company if employed on a full-time basis, or at least one year if employed on a part-time basis. Employers must respond to an application for teleworking within 20 working days and must state the reasons for rejection.

Employers must clearly specify which roles may be suitable for teleworking and must provide all necessary tools and electronic equipment to telework.

⁷⁹ United Arab Emirates, Ministerial Order No. 787 Regulating Teleworking, 31 October 2017, available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=107191&p_lang=en.

Upon approval of an employee's application for teleworking, an agreement setting out terms and conditions should be entered between the employer and employee. It should include i) a breakdown of the hours to be worked remotely and those to be worked at the employer's premises; ii) the remote locations from which the employee will be permitted to perform their role; and iii) any wages, allowances and leave provided in excess of the minimum rights detailed in the UAE Labour Law.

The teleworking agreement should be appended to the employee's contract of employment.

EUROPE

EU

On June 22 2020, the European Social Partners signed a Framework Agreement on Digitalisation. Such agreement aims, among others, to raise awareness and improve understanding of employers, workers and their representatives of the opportunities and challenges in the world of work resulting from the digital transformation by Outlining a joint dynamic circular process, which takes into account the different roles and responsibilities of the different actors and can be tailored to different national, sectoral and/ or enterprise situations, industrial relations systems, jobs and different digital technologies/tools; and highlighting concrete approaches to tackle topics such as skills, work organisation and working conditions.⁸⁰

This Autonomous Agreement has been concluded by the European cross-sectoral social partners and applies to the whole of the EU/EEA.

This agreement is relevant to telework as it acknowledges that the introduction of digital devices/tools in workplaces can provide many new opportunities and possibilities to organise work in a flexible way to the benefit of employers and workers. At the same time, it recognises that it may create risks and challenges around the delineation of work and of personal time both during and beyond working time. Accordingly, it presents a common approach to certain topics touching upon telework, such as safety and health, where it is observed that it is the employer's duty to secure these in every aspect related to the work and avoid possible negative effects on workers' health and safety and on the functioning of the enterprise.

It refers to a culture where employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority. Measures to be considered include:

⁸⁰ Business Europe 2020. European social partners framework agreement on digitalization, available at <https://www.busesseurope.eu/publications/european-social-partners-framework-agreement-digitalisation>

- *Training and awareness raising measures;*
- *Respect of working time rules and teleworking and mobile work rules;*
- *Appropriate measures to ensure compliance;*
- *Providing guidance and information for employers and workers on how to respect working time rules and teleworking and mobile work rules including on how to use digital tools, e.g. emails, including the risks of being overly connected particularly for health and safety;*
- *Being clear about the policies and/or the agreed rules on the use of digital tools for private purposes during working time;*
- *Commitment from management to create a culture that avoids out of hours contact;*
- *Work organisation and workload, including the number of staff, are key aspects which need to be identified and evaluated jointly;*
- *Achievement of organisational objectives should not require out of hours connection. With full respect for working time legislation and working time provisions in collective agreements and contractual arrangements, for any additional out of hours contacting of workers by employers, the worker is not obliged to be contactable;*
- *And in respect of the bullet point above, appropriate compensation for any extra time worked, and;*
- *Alert and support procedures in a no-blame culture to find solutions and to guard against detriment for workers for not being contactable;*
- *Regular exchanges between managers and workers and/or their representatives on the workload and work processes;*
- *Alert and support procedures;*
- *Prevention of isolation at work.*

Also, at the European level, a recent resolution adopted by the EU Parliament on 21st January 2021, contains a recommendation to the Commission on the right to disconnect.⁸¹

⁸¹ European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0021_EN.html

There, the Parliament “Points out that telework has been instrumental in helping to safeguard some employment and business during the COVID-19 crisis, but reiterates that, because of the combination of long working hours and higher demands it can also pose higher risks to workers with a negative impact on the quality of their working time and their work-life balance, as well as their physical and mental health; highlights the fact that particular difficulties arise when work is not tied to a specific place of work, when connectivity to work is constant and when work spills into family and private life” and “Stresses that workers’ right to disconnect is vital to protecting their physical and mental health and well-being and to protecting them from psychological risks; reiterates the importance and benefits of implementing psychosocial risk assessments at private and public company level and reiterates the importance of promoting mental health and preventing mental disorder at the workplace, creating better conditions for both employees and employers; recognises that committees on health and safety established by the social partners can play a positive role in ensuring more frequent and accurate risk assessments”.

The resolution “calls on the Member States to establish precise and sufficient mechanisms to ensure a minimum standard of protection in accordance with Union law and the enforcement of their right to disconnect for all workers”; “stresses the importance of supporting individual training aiming to improve IT skills for all workers, in particular for persons with disabilities and more senior colleagues, in order to ensure good and efficient performance of their work”; and “calls on the Commission to include the right to disconnect in its New Occupational Safety and Health Strategy, and to explicitly develop new psychosocial measures and actions within the framework of Occupational Safety and Health” among other relevant aspect that have an impact on telework as a working modality entailing the use of digital tools.

Belgium

In March 2017, Belgium enacted the Workable and Flexible Work Act to regulate teleworking, which enables ‘occasional’ teleworking in case of *force majeure*. However, when it comes to non-occasional telework, it is regulated by means of a National Collective Agreement no. 85.⁸² According to this agreement, structural teleworking has to be agreed by means of a written annex to the employment

⁸² Belgium, Convention collective de travail n° 85 du 9 novembre 2005 concernant le télétravail, modifiée par la convention collective de travail n° 85 bis du 27 février 2008, available at <http://www.cnt-nar.be/CCT-COORD/cct-085.pdf>.

contract, so it becomes part of the regular working conditions. Furthermore, this collective agreement provides that employers have to bear some of the costs of teleworking.⁸³

Since the beginning of the Covid-19 pandemic, almost all governments of the world adopted an obligation or recommendation to telework, whenever the nature of the task allows it.

This obliged enterprises to quickly adapt their organisation of work and human resources practices.

In Belgium, telework is compulsory as per the various Ministerial Decrees adopted since March 2020 but it lacked a proper implementation framework.

On 26 January 2021 employers' and workers' organisations within the National Work Council ("*Conseil National du Travail*") signed a collective agreement (CA [N. 149](#)) providing the missing legislative framework to telework practices introduced after the abovementioned Ministerial Decrees in response to Covid-19 crisis. The agreement has a duration of one year, until the end of 2021.

This collective agreement excludes from its scope of application enterprises having already implemented a telework regime before 1st January 2021 (in line with Law of 5 March 2017 and Collective agreement N. 85 of 9 November 2005).

Since CA N.149 is a framework agreement, it leaves room to conclude company level collective agreements or company-employee individual agreements that set rules in line with the company's specificities.

This framework agreement contains provisions on working conditions as well as on occupational health and safety for employees working from remote. It requires employers and employees to conclude agreements on:

- The provision of working tools, such as a laptop, and technical assistance;
- Contribution for expenses incurred with working tools pertain to the employees;
- Contribution for internet connection costs;
- Working time and workload setting;
- Working supervision;
- Facilities to maintain the communication between workers' representatives and employees
- Well-being at work.

⁸³ European Labour Law Journal, *Covid-19 and labour law in Belgium* 6 July 2020, available at <https://journals.sagepub.com/doi/full/10.1177/2031952520934554>.

Federation of Belgian Enterprises in Belgium (Fédération des Entreprises de Belgique – FEB) is *“delighted that the social partners have reached an agreement after difficult negotiations. This framework must contribute to the best possible conditions of "compulsory" teleworking, so that it is beneficial to both parties. Indeed, it tries to optimize as much as possible the obligation to telework in order to enhance the performance and productivity of employees and to support their well-being. With this aim, it is essential to conclude specific agreements. It should also be borne in mind that the main lever of enthusiasm and productivity of (tele) workers is and remains confidence. Not an infantile and naive confidence, but a confidence which rests on good agreements and a clear framework”*.

France

On 26 November 2020, social partners in France concluded a national interprofessional agreement on telework, which provides a framework clarifying the rules and modalities of remote working. It has received support from 4 trade unions (CFDT, FO, CFE CGC, CFTC). The decision-making bodies of the CFDT, FO and CFTC have already formally announced their signature. It is therefore, with the signature of MEDEF, the CPME and U2P, (apart from the CGT) the agreement will almost reach unanimous approval.

Prior to this agreement, telework was regulated by the national interprofessional agreement of 2005 and articles L1222-9 and the Labour Code, as amended by Ordinance No. 2017-1387.

The agreement concluded act as a tool to help social dialogue, and support negotiation at the company level, and, where applicable, the professional branch to set up telework while reconciling the social and economic performance of the company.

It identifies the inherent issues in the implementation of teleworking, brings readability of the legal and contractual framework in force, and proposes a number of levers that can be mobilized at company level, or even in the professional sector, to a successful implementation of telework.

The agreement is structured around seven fundamental points regarding the implementation of telework, in any situation, in the company: 1) Telework in the company; 2) Telework implementation; 3) Telework organization; 4) Support for employees and managers; 5) Preservation of the working relationship with the employee; 6) Local social dialogue continuity; 7) Telework implementation in exceptional circumstances (such as the Covid crisis).

The text encourages social dialogue at the company and sectoral levels and in professional branches, in line with the social and economic situations of the company, to determine matters such as the equipment and tools to be used when working remotely; the working time including the right to

disconnect; and workload assessment; telework related expenses; health and safety rules when working remotely; the access to training. The agreement distinguishes also between telework and remote working in time of crisis. In such situation, it contains measures to ensure business continuity, social dialogue and continuous exchange of information with employees, as well as providing at the employees' disposal the necessary work equipment.

This agreement provides real progress for companies as it provides clear restatement of the employer's power to organize, and more specifically to identify which activities can be "teleworked": the scope of those activities may be the subject of discussions with employees and their representatives, but it is above all up to the employer to identify them, depending on the characteristics and constraints of the company. Furthermore, it clarifies the modalities for switching to "forced" teleworking, subject to a unilateral decision by the employer, in the event of exceptional circumstances: the social and economic committee, where it exists, can be consulted after the decision to use generalized teleworking. It also adopts a pragmatic approach to the employer's responsibility for employee health and safety in case of teleworking. It does not allow the manager to avoid his or her legal obligations, but to simply take into account the fact that he or she does not fully control the work environment of the teleworking employee (and particularly when this takes place at the employee's home).

Germany

In Germany, telework requires either an individual agreement between employer and employee or a company agreement with the works council, which has a co-determination right when home office is introduced. Thus, teleworking is regulated by works agreements in private sector and staff agreements in the public sector. Where telework takes place, the requirements of employee protection in principle remain unchanged.

However, as a consequence of the Covid-19 pandemic Federal Labour Minister announced major reform on employment regulation, including the 'Mobile Working Act' which regulates remote work.

The draft regulation currently provides for a duty of consideration for the employer with the aim of concluding an agreement on mobile working at the request of the employee. If this is not possible, the employer must justify his refusal.

Ireland

On 15 January 2020, the Irish government published its “Making Remote Work – National Remote Working Strategy”⁸⁴, which provides an indicative roadmap and welcome guidance for both employers and employees on the future of remote working in Ireland. The Government intends to give all Irish employees the right to request to be allowed to work remotely. It also appears that employees will have the right to seek the intervention of the Workplace Relations Commission if an employer refuses without good reason.

The Government has also announced that it intends to take action in relation to the “Right to Disconnect” from work. It is intended that a Code of Practice will be introduced on this issue. A Code of Practice is not law, but it can be relied upon in the Workplace Relations Commission.

The government intends to introduce legislation in the third quarter of 2021.⁸⁵

Italy

In order to increase competitiveness and facilitate work-life balance, Law no. 81/2017 introduced “remote working”, defined by law as “*a way to perform the employment contract*”.

Remote working is freely agreed by the two parties and presupposes: i) the absence of rigid working time or working place limitations, in compliance with the maximum daily and weekly working time; ii) the likely use of technological devices and tools; iii) the performance of the working activity both inside and outside the employer’s premises.

Remote workers have the statutory right to an economic and regulatory treatment not lower than the one applied to workers who perform the same duties exclusively within the company’s premises.

In the context of the Covid-19 pandemic, in order to prevent the spread of the virus and to ensure distancing of people, who are confined to their homes, remote working has proved to be a solution to reconcile the limitations due to the lockdown with the need to ensure business continuity.

⁸⁴McCann FitzGerald “*Making Remote Work – National Remote Working Strategy*”, available at https://www.lexology.com/library/detail.aspx?g=c39751eb-11e4-406e-809f-729a90f4c0bb&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-01-19&utm_term=.

⁸⁵Philip Lee, “*National Remote Work Strategy – Implications for employers*”, 15 January 2021, available at https://www.lexology.com/library/detail.aspx?g=f4cbd796-fd8f-45e8-9b7f-f45b1149de20&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-01-19&utm_term=.

Law Decree No. 6/2020 introduced a special type of “remote working” specifically addressed to workers located in a “red zone” and therefore confined to their homes. After that, the Decree of the President of the Council of Ministers dated 1 March 2020 extended this type of remote working in the whole country for the whole duration of the emergency period. Further Decrees have been enacted after this one to extend the remote working applied in the emergency period (presently expiring on April 30, 2021).

Notably, in a merely preventive perspective, the Italian Legislator establishes that companies can introduce this kind of remote working for their employees even in the absence of the individual agreement that is required by Law No. 81/2017. This measure has been strongly recommended by the Legislator both in the private and in public sectors (Article 87, par. 1, Law Decree No. 18/2020).

On March 14, 2020, Confindustria, with the most representative social partners at national level, signed the “Shared Protocol for the regulation of measures to combat and contain the spread of the Covid-19 virus in the workplace”, which content was supplemented on April 24, 2020. Through a Decree of the President of the Council of Ministers, the Government has consequently set, for all companies entitled to operate, the implementation of the measures established by the Protocol as a condition for business continuity.

The Protocol provided a framework with general safety guidelines for the operating companies. It regulated different situations and matters, including logistical aspects, such as access to buildings, organisation of work to avoid contact among employees and with external people, personal hygiene precautions, meetings and trainings, and medical control of employees.

It should be noted that the remote working experience during the lockdown and the emergency period cannot be considered as the ordinary form of remote working.

Ordinary remote working (according to Law no. 81/2017) is, in fact, characterized by the substantial freedom of the employee to plan the timing and places of his/her work performance, as well as by the fact that the activity must be evaluated on the basis of the achievement of performances/objectives, agreed with the employer, and not simply by making the worker available during office hours or by requiring 8 working hours/day.

According to a report from the Italian National Institute of Statistics, 90% of large enterprises and 73% of medium-sized enterprises have introduced or extended the possibility for their employees to engage in remote working during the emergency period.

Netherlands

In the Netherlands, the Flexible Work Act (*Wet flexibel werken*) makes it possible for employees of companies with more than 10 employees employed for at least six months to request their employer to change, increase, or decrease in their working hours, as well as the ability to work from another location. The employer is free to refuse such a request but does have a 'duty to consider' and must substantiate the refusal in writing.

The employer is responsible for the workplace at home, which includes the design of the workstation, the working method and providing tools. The employer must ensure that the employee has an ergonomic chair and a desk at home and is responsible for their costs, as well as ensure that there is enough artificial light at the workplace. Since the employer is responsible for the workplace at home, there should be an onsite visit by the employer or a health and safety expert to assess whether the workplace complies with rules and obligations as set out in the legislation. If this is not feasible, it is also possible to ask the employee to send photos and videos of the workplace at home. The employer is responsible for the costs of making the workplace ergonomically sound and safe. Rules on monitoring employees should also be laid down in a teleworking policy.⁸⁶

Norway

Norway's applicable regulation is laid down in the Working Environment Act of 2002 (WEA). There, provisions referring to work performed at the home of the employee lead to the possibility for the Ministry of Labour to issue regulations through ministerial decrees. The WEA also provides for the right to flexible working hours "*if this may be arranged without major inconvenience to the undertaking*". However, there is no generally recognised definition of telework in the legal framework in Norway.

It has more been in the context of collective agreements that rules for telework have been stipulated. Major social partner confederations in Norwegian have agreed on guidelines for telework published in February 2006. The definition of telework set out in these guidelines is practically the same as in the EU-level framework agreement. They define telework is a form of organising and/or performing work with the following characteristics: use of information technology; the work is carried out in the context of an employment contract/relationship; the work could be performed at the employer's premises; and the work is carried out away from those premises on a regular basis.⁸⁷

⁸⁶ L&A advocaten, "*Working from home: legal obligations under Dutch law & practical guidelines*", available at <https://www.lexology.com/library/detail.aspx?g=ef70cfd5-d165-4c2c-90df-8cfaf631f8fa>.

⁸⁷ Eurofound, "*Telework in Norway*", 27 January 2008, available at <https://www.eurofound.europa.eu/de/publications/article/2008/telework-in-norway>.

Poland

In August 2007, the Polish Labour Code was amended in order to introduce telework into the Polish legal framework for the first time. The Code provides for a chapter on 'Employment in the form of telework'. Article 67/5 defines telework as *"Work [that] can be performed away from the premises of an employer on a regular basis using means of electronic communications [...]"*.⁸⁸

Under the Polish Labour Code, the employer is responsible for OHS conditions, as well as for providing the employee with all the necessary equipment, unless the employee has agreed to use their own equipment in exchange for a cash equivalent, and technical support. The employer also bears the costs of maintaining and operating the equipment. The employer determines the principles of protection for the data transferred to the teleworker and if necessary, carries out training in this area. The employee must confirm in writing that they have become familiar with the data protection principles.

Also, Poland recently introduced the concept of "remote work" under the Act of 2 March 2020 on Combating COVID-19, and further developed it on 20 May 2020 by the "Anti-Crisis Shield 4.0" bill. Remote work is introduced in the form of an ordinary unilateral official order on the part of the employer, without the need to amend the employment contract or obtain the employee's consent.⁸⁹ Pursuant to the bill, the employer will be able to tell an employee to switch to remote working if i) the employee has the skills, technical capabilities and space at home to perform such work, and ii) the type of works performed enable the worker to do so.

The employer must provide the means of work (eg. computer, hardware, software), materials and logistical support required to work remotely. Workers may use devices not provided by the employer when working remotely, only if they can ensure the protection of confidential information, business secrets and personal data.

The employer may require the employee to keep records of his/her activities in writing or electronically. The bill also allows the employer the right to withdraw the order to work remotely at any time.⁹⁰

⁸⁸ Eurofound, "Telework in Poland", 20 December 2007, available at <https://www.eurofound.europa.eu/publications/article/2007/telework-in-poland>.

⁸⁹ Clifford Chance, "Polish Special Act concerning the Coronavirus Employment Issues", available at <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/04/covid-employment-eng.pdf>.

⁹⁰ Dentons, "Anti-crisis shield 4.0 – important changes for employers in Poland", 22 May 2020, available at <https://www.dentons.com/en/insights/alerts/2020/may/22/poland-employment-anticrisis-shield-4-0>.

Romania

On 28 February 2018, the Romanian Parliament adopted a new piece of legislation regulating the telework.

The Telework Law defines telework as a form of organization of the work where the employee regularly (at least one day per month) and voluntarily exercises his/her duties in a different place other than the one organized by the employer using communication and information technology.

Telework can be performed in any place agreed by the parties and not limited to the domicile of the employee and is only applicable in those domains where the work can be performed through communication and information technology.

Individual employment agreements of the employees performing telework will have to reflect the requirements of the Telework Law. These shall include specific clauses such as: (i) the period in which the employee teleworks; (ii) the place where telework is going to be performed; (iii) the timekeeping scheme; (iv) the schedule for the employer's inspection as well as the way the inspection is going to be performed; (v) responsibilities of the parties, including in relation to labour health and safety; (vi) the measures taken by the employer in order to avoid the isolation of the employee; (vii) the obligation of the employer to transport the materials used by the employee; (viii) the obligation of the employer to inform the employee in relation to data protection matters; and (ix) conditions in which the employer covers the costs related to the telework.

Also, extra hours can be agreed between the employer and full-time teleworkers, but the acceptance should be in writing.

The Telework Law also establishes certain specific obligations of the employer and the employee in relation to OSH. Moreover, it grants inspection rights, where the employer, the labour authorities and the worker representatives are entitled to regularly check the activity of the employee, and to verify the working conditions of the teleworker.

The Telework Law also provides for the application of fines should the employer fails to comply with the obligations laid down in the provisions.

Serbia

On 18 January 2021, the Serbian Ministry of Labour published the Guide for Safe and Healthy Work from Home.⁹¹ The Guide defines work from home as work which involves the use of information and communication technologies enabling remote work. It also suggests that where telework is to be used on an exceptional basis, it requires the conclusion of an agreement by the worker and the employer, by means of an annex to the employment contract, amending the terms of work.

However, it is worth noting that the Serbian Labour act also provides the basis for an ordinary agreement on occasional work from home. Moreover, Article 50 of the Serbian Labour Act allows for the possibility of an agreement between the employer and the worker to work a certain number of hours from home. While the employer must seek the consent of the employee in this regard, the agreement between the employer and the employee on remote work does not necessarily have to be in the form of an amendment to the employment agreement.

Article 42 is about establishing employment relationship for performing work outside the employer's premises, in the form of teleworking and working from home. It provides for mandatory elements of such employment contracts and stipulates that the basic salary cannot be determined in a smaller amount than the salary of an employee who works on the same jobs but in the premises of the employer. These employment contracts are also subject to provisions on schedule of working hours, overtime, redistribution of working hours, holidays and leave, etc. unless otherwise provided by a general act or employment contract.

Furthermore, Article 44 of the Labor Law states that the employer can contract jobs outside its premises that are not dangerous or harmful to the health of the employee and other persons and do not endanger the environment.

Thus, it is for the employer to regulate the period during which the employee will work remotely; how the employee will be supervised; aspects concerning the equipment and work tools to be used, its maintenance and whether there would be any compensation for the use of personal equipment, or other related costs.⁹²

Slovakia

On 4 April 2021, an amendment to the Slovakian Labour Code (Act No. 311/2001 Coll.) was partially triggered by the Covid-19 pandemic and entering into force on 1 March 2021, including rules on remote work, among other provisions.

⁹¹ Serbia, ВОДИЧ ЗА БЕЗБЕДАН И ЗДРАВ РАД РАД ОД КУЋЕ, 2021, available at <https://www.minrzs.gov.rs/sites/default/files/2021-01/%D0%92%D0%BE%D0%B4%D0%B8%D1%87%20%D0%B1%D0%B5%D0%B7%D0%B1%D0%B5%D0%B4%D0%B0%D0%BD%20%D1%80%D0%B0%D0%B4%20%D0%BE%D0%B4%20%D0%BA%D1%83%D1%9B%D0%B5.pdf>

⁹² Marija Gligorevic, "How to introduce remote work during COVID-19 pandemic?", 3 July 2020, available at <https://bdkadvokati.com/how-to-introduce-remote-work-during-covid-19-pandemic/>.

The Code establishes the rights and obligations of the employee and the employer, and requires mutual agreement, as well as some ordinary planning for this modality of work (as opposed to an exceptional basis) and working time organisation. The new provisions of the Code oblige the employers to reimburse the employee for increased costs related to remote work such as expenses for material and tools. Any issues related to internet connectivity or technical equipment that negatively impact the work performance shall be immediately communicated to the employer.

The Code introduces also the right to disconnect during the weekly rest and at the end of the workday, unless overtime has been ordered or agreed, as well as during holidays and public holidays.

Spain

On 22 September 2020, Spain adopted a new legislation on remote working through Royal Decree-Law 28/2020. The legislation requires employers and employees to sign an agreement for remote working when this is the working in any place agreed for more than 30% of the week within a period of three months. The employer is also obliged to pay or compensate the expenses the employee may have to face for equipment and tools needed to perform his work. Articles 11 and 12 provide that further details may be foreseen by collective agreements. Health and safety is also a priority to be taken care of by the employers during remote working, especially relating to psychosocial, ergonomic and organizational factors.

Remote working is voluntary for the worker and the employer and may be changed during the course of the employment contract, upon signature of a specific agreement. The Decree-Law refers to these elements as well as the principle of reversibility as key considerations of individual agreements on remote work.

It introduces the right to disconnect, which provides that *“the business duty to guarantee disconnection entails a limitation of the use of technological means of business and work communication during rest periods, as well as respect for the maximum duration of the working day and any limits and precautions in terms of working hours provided for in the regulation or agreement applicable.”*

The company, after hearing the legal representation of the workers, will develop an internal policy aimed at workers, including those who occupy managerial positions, in which they will define the modalities of exercise of the right to disconnection and training actions and to sensitize staff on a reasonable use of technological tools to avoid the risk of computer fatigue”.

Article 22 is also relevant as it refers to the employers' supervision, by stating that *“the company may adopt the measures it deems most appropriate of surveillance and control to verify compliance by the worker with the work obligations and duties, including the use of telematic means, by having due consideration to their dignity and taking into account, where appropriate, the real capacity of workers with disabilities”*.⁹³

The Decree strengthens collective bargaining and individual agreements, where the parties can agree on: the mechanisms and criteria for reversibility and preferences for it; the provision and maintenance of means to telework, equipment and tools; the compensation of expenses linked to the development of distance work; flexibility in working hours and the time recording system.

Other aspects such as the terms of personal use of the computer equipment made available by the company, as well as measures to guarantee the effective exercise of the right to disconnection are also among the aspects that agreements can cover.

⁹³ IOE-WEC, October 2020 Spain adopted a new legislation on remote working available at: <https://ioewec.newsletter.ioe-emp.org/industrial-relations-and-labour-law-october-2020/news/article/spain-adopted-a-new-legislation-on-remote-working>