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Spain Regulates Remote Work

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Employers will need to formalize remote work arrangements in writing, adhering to the specific requirements of the new Royal Decree-Law.

On 23 September 2020, the Official Spanish Gazette published the text of the Royal Decree-Law 28/2020, of 22 September, on remote work (the Royal Decree-Law). The main provisions of the Royal Decree-Law regarding remote work are summarized below.

Definitions

The Royal Decree-Law sets out the following definitions:

- **“Distance work”** means a form of work arrangement or activity in which work is carried out at the worker's home or at a place chosen by the worker, during all or part of the working day, on a regular basis.
- **“Teleworking”** means remote work carried out solely or mostly through computer and telecommunications systems.
- **“Onsite work”** means work carried out in the workplace or at a location determined by the company.

Scope of application

The Royal Decree-Law regulates employment relationships that are regularly carried out remotely. Remote work is understood to be regular when it takes place, in a reference period of three months, at least 30% of the working day, or the equivalent proportional percentage depending on the duration of the contract.

Limitations of remote work

In the case of training and apprenticeship contracts, and employment contracts with minors, the remote work agreement must guarantee at least 50% of work activity be onsite or face-to-face.

Equal treatment and non-discrimination

Workers in remote work arrangements:

- Will have the same rights as if they had provided services at the company's workplace, except for those rights inherent in carrying out work in person
- Must not suffer prejudice in any of their working conditions, including remuneration, job stability, working time, training, and professional promotion
- Must not suffer prejudice or changes to agreed work conditions, particularly working time or remuneration, caused by any difficulties, technical or otherwise, which may arise in a teleworking situation through no fault of the worker

Companies must avoid any direct or indirect discrimination, particularly on the basis of sex, against workers providing remote services and to take this group into account when evaluating equality measures and plans, as well as when designing and implementing measures against sexual harassment, harassment on the basis of sex, harassment for discriminatory reasons, and harassment at work.

Voluntary distance working

Remote work must be voluntary for the worker and the employer and requires the execution of a written agreement.

The decision to move to remote work from an onsite arrangement will be reversible for the company and the worker. This reversibility may be exercised under the terms established in the collective bargaining agreement or, failing that, under the terms established in the remote work agreement.

A worker's refusal to work remotely, the exercise of reversibility to onsite work, and work performance difficulties that exclusively arise from the change from onsite to remote work, will not be grounds for termination of the employment relationship or substantial change in working conditions.

Formal obligations

Remote work agreement must be in writing and all the amendments must be reflected in such an agreement prior to its implementation. Failure to formalize the remote work agreement in the terms and with the legal and regulatory requirements is classified as a serious offence and can be sanctioned with a fine of between €626 and €6,250.

Within 10 days from an agreement's execution, the company must provide the worker's legal representatives with a copy of all the remote working agreements, except data which, could affect the personal privacy of the employees. The copy must be sent to the public employment service.

Remote work agreement

Without prejudice to the provisions of collective agreements, the following will be the minimum mandatory content of the remote working agreement:

- Inventory of the means, equipment, and tools required for remote work, as well as their useful life or maximum period for renewal

- List of expenses workers may incur while working remotely, as well as a way of quantifying the reimbursements that the company will pay and the time and manner in which this is to be done, which will correspond, if it exists, to the provision contained in the applicable collective agreement
- Working hours of the worker and, if applicable, rules of availability
- Percentage and distribution of onsite work and remote work, where applicable
- Workplace to which the remote worker is assigned and where, if applicable, he or she will carry out part of the onsite working day
- Remote work location chosen by the worker
- Notice periods for the exercise of reversibility, if applicable
- Means used by the employer to control remote work
- Procedure to be followed in the event of technical difficulties preventing the normal completion of distance work
- Instructions issued by the company, with the participation of the legal representation of the workers, on data protection, specifically applicable to distance work
- Instructions issued by the company, after informing the legal representation of the workers, on information security, specifically applicable to distance work
- Duration of the distance working agreement

Amendments to the distance working agreement and prioritization

Amendments to the conditions established in the remote working agreement must be agreed in writing and notified to the worker's legal representatives.

People who work remotely full-time from the beginning of their employment relationship will have priority for jobs that are carried out totally or partially in-person. To this end, the company must inform such remote workers and the legal and trade union representatives of vacant jobs that are available onsite.

Collective agreements or arrangements may set out the mechanisms and criteria by which the person carrying out onsite work may switch to remote work or vice versa, as well as preferences linked to certain circumstances and other issues related to remote working.

Rights for remote workers

- **Right to training:** Companies must ensure that workers who work remotely are given the necessary proper training (both when the distance working agreement is formalized and when there are changes to the means or technologies used) and take necessary measures to ensure their effective participation in training activities equivalent to those of people working onsite.
- **Right to professional promotion:** People who work remotely must have the right to professional promotion in the same terms as in-person workers, and the company must inform remote workers,

expressly and in writing, of any promotion opportunities that may arise, whether for onsite or distance-based positions.

- **Right to adequate provision and maintenance of the means, equipment, and tools** (and assistance, if necessary) for their work activity, in accordance with the inventory included in the distance work agreement and with the terms set out, when appropriate, in the applicable collective agreement or arrangement.
- **Right to payment and reimbursement of expenses:** remote working expenses must be paid for or reimbursed by the company, and may not involve the assumption by the workers of work-related expenses.
- **Right to flexible time:** in accordance with the terms of the agreement and of collective bargaining, respecting mandatory availability times and regulations on working and rest time, the remote worker may make the established working hours more flexible.
- **Right to adequate time recording:** the time recording system should accurately reflect the time spent by the remote worker on the job, without prejudice to flexible working hours, and should include, inter alia, the start and end of the working day.
- **Application of preventive regulations in distance work:** people who work remotely are entitled to adequate protection in terms of health and safety at work.
- **Right to privacy and data protection:**
 - The use of telecommunications tools and work performance controls implemented by automatic devices guarantee the right to privacy and data protection.
 - The company may not demand the installation of programs or applications on devices owned by the worker, nor the use of these devices in the course of remote work.
 - Companies must establish criteria for the use of digital devices, respecting in all cases the minimum standards of privacy protection. Worker representatives must be involved in the development of such criteria.
 - Collective agreements or arrangements may specify the terms within which workers may, for personal reasons, make use of the computer equipment made available to them by the company for remote work, taking into account the social uses of such equipment and the particularities of distance work.
- **The right to digital disconnection**
 - People who work remotely have the right to disconnect outside of working hours under the terms established in article 88 of Organic Law 3/2018, of 5 December.
 - The company, after hearing from the workers' legal representatives, will draw up an internal policy defining the methods for exercising the right to disconnection and the training and awareness-raising actions of the staff on a reasonable use of technology that avoids the risk of computer fatigue.

- Collective agreements or arrangements will establish the means and measures to guarantee the effective exercise of the right to disconnection.
- **Collective rights of people working remotely**
 - Remote workers will have the right to exercise their collective rights with the same content and scope as other workers in the work centre to which they are attached.
 - The company must provide the workers' legal representatives with the necessary tools to do their work, including access to communications and email addresses for use in the company and the implementation of a virtual bulletin board, when compatible with their form of distance work.
 - Employers must ensure that there are no obstacles to communication between a distance worker and their representatives, as well as with other workers.
 - Employers must ensure that remote workers can effectively participate in activities organized or convened by their legal representatives or by other workers in defence of their employment interests, in particular, their effective in-person exercise of the right to vote on the election of legal representatives.

Data protection and information security

Workers, in the course of remote working, must comply with the instructions established by the company within the framework of data protection legislation, with the participation of the legal representation of the workers.

Workers must comply with the instructions on information security specifically laid down by the employer, after informing their legal representative, in the field of telework.

Conditions and instructions for use and conservation of computer equipment or tools

Workers must comply with the company's conditions and instructions for the proper use and conservation of computer equipment or tools within the terms established in the collective bargaining agreement, when applicable.

Powers of corporate control

The company may adopt the measures it deems most appropriate to verify compliance by the worker with his or her work obligations and duties, including the use of telecommunications, taking into account the consideration due to his or her dignity and taking into account, where appropriate, the capacity of workers with disabilities.

Transitional rules applicable to remote work relationships in force

The Royal Decree-Law will fully apply to existing labour relations regulated by collective agreements or arrangements on conditions for the provision of remote services from the moment these cease to be in force. If such agreements or arrangements do not provide for a term of duration, this regulation will be fully applicable after one year from its publication in the Official State Gazette (*BOE*), unless the parties signing these expressly agree to a longer term, which may be a maximum of three years.

Under no circumstances may the application of the Royal Decree-Law result in the compensation, absorption, or disappearance of any rights or more beneficial conditions enjoyed by persons who previously worked remotely, which will be reflected in the remote working agreement.

The remote working agreement must be formalized within a period of three months from the date on which the Royal Decree-Law becomes applicable to the specific employment relationship. Within the same period of time, adaptations or modifications must be made to the remote working agreements of an individual nature in force on the date of publication of the Royal Decree-Law, which do not derive from collective agreements or arrangements.

Distance work as a health containment measure derived from COVID-19

For remote work implemented due to article 5 of the Royal Decree — law 8/2020, of March 17, or as a result of the health containment measures derived from COVID-19, and as long as these are maintained, ordinary labour regulations will continue to apply.

In all cases, companies must provide the means, equipment, tools, and consumables required for remote work, as well as any necessary maintenance.

Where appropriate, collective bargaining will establish the form of reimbursement for expenses incurred by workers in this form of remote working, if they exist and have not already been compensated.

Entry into force

The Royal Decree-Law will come into force 20 days after its publication in the Official Spanish Gazette (BOE), with the exception of certain additional, transitory, and final provisions that regulate additional aspects of distance work.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

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