

Telework in Romania now more flexible

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Working from outside the headquarters of the employer has become more and more popular in the past years. During the pandemic-related lockdowns, it was even mandatory.

The regulations for such telework had been rather inflexible until the recent adoption of the emergency regulation ("EO") 36/2021.

Definition

Telework is regulated by law no. 81/2018. It is defined as a type of work organization, according to which the employees fulfill their work-related tasks regularly and voluntarily in a place other than the workplace organized by the employer, by means of information and telecommunication technology.

Important changes

- **Frequency of telework**

According to the previous legislation, telework was the case in which the employee worked at least one day a month in a place other than the workplace organized by the employer. This was cancelled by EO 36; regularity is still a condition in this regard.

- **Place of activity**

The law provided also that the parties had to agree explicitly upon the place in which telework was supposed to be performed, which was cancelled as well.

The regulations providing an obligation to instruct the employees regarding work safety when changing the telework place have been amended accordingly. The current legal situation allows, in principle, for "work-from-anywhere".

Contract content

Telework is based on the agreement between the parties and must be regulated expressly in the employment contract. In case it is introduced after the conclusion of the employment contract, an addendum to the existing employment contract will be required.

The most important content items of the contract:

- the period of time or the days in which the teleworker works at the workplace organized by the employer;
- the times and also the method of verifying the activity of the teleworker by the employer (this happens mostly through information and telecommunication means and only based on rules stipulated in the employment or collective agreements, respectively work regulations);
- time recording by the teleworker;
- the obligations of the parties with regard to telework places, especially regarding safety and health at the work place;
- the obligation of the employer to inform the teleworker regarding the applicable data protection provisions stipulated by the law, the collective agreement and/or work regulations;

- measures for preventing the isolation of the teleworker and making gatherings with colleagues possible;
- conditions in which the employer bears the costs related to telework.

Obligations of the employer

The employer has in particular obligations with regard to the technological means available to him. He must:

- provide the information and telecommunication means,
 - install, verify and maintain the necessary work equipment,
- unless the parties meet a different agreement;
- ensure that the teleworker receives sufficient and proper work safety instructions upon employment or upon introduction of new work equipment or work procedures, in particular about VDU work.

Obligations of teleworker

A new provision has been introduced, which provides that the teleworker must observe and guarantee the confidentiality of the information and documents used during telework. This obligation is included also in the Labor Code; if this obligation is not observed, damages can be claimed according to the applicable law (although this is often rather difficult in practice).

The employer must set forth in practice the information to which the employee has access and is confidential; this problem has to be handled specifically. Despite the legal obligation, the confidentiality terms have to be agreed with each teleworker (for instance included in the employment contract) and, as the case may be, adapted to each individual case.

Conclusion

One may expect that telework will be more and more present in the future because it represents a flexible and advantageous option to organize work for both the employer and the employee. To what extent this applies for all employers, companies and employees will have to be assessed in each individual case; this depends on the organization of the employer and the circumstances of the employee.

The previous telework law proved itself to be too strict, mostly because it required the express establishment of the telework place. With the current change brought by EO 36/2021, the legal situation has improved consistently.

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