



Covid-19: Teleworking can persist, but it is no longer mandatory

Teleworking is not mandatory anymore, with some exceptions established by law, but there is an "invitation" from the legislator to keep it, under the terms of the Labor Code.

Under the plan to survey the containment measures associated with the COVID-19 pandemic, the Government approved new measures, among which a new teleworking and work organization regime.

Contrary to the exceptional measures adopted during the state of emergency, where teleworking was made mandatory, it ceases to be compulsory from June 1st, excluding some exceptional cases.

The new rules are as follows:

- (i) Teleworking can be adopted in accordance with the Labor Code (e.g. by means of a written agreement between the parties);
- (ii) Teleworking regime remains mandatory when, regardless of the employment relationship and whenever the functions in question allow it, the employee specifically requests it in the following cases:
 - a) If the employee is protected by the exceptional immunodeprived and chronically ill legal regime, provided that such situation is certified by a physician;
 - b) If the employee is disabled or has a degree of incapacity of 60% or more;
 - c) If the employee has a dependent child under the age of 12, or, regardless of age, with a disability or chronic illness, who attends an educational establishment or social equipment to support early childhood or disability, who remains closed by legal or administrative authority determination, considering that the measure only applies to one of the parents, regardless of the number of dependent children or dependents, outside periods of school breaks;
 - d) If there is an impossibility of physical spaces and work organization to comply with the guidelines of the Health State Agency (*Direção Geral de Saúde*) and the Labor State Agency (*Autoridade para as Condições de Trabalho*), to the strict extent necessary for their fulfilment (e.g. physical distance between employees).

Contacts

Guilherme Dray
gdray@macedovitorino.com

Joana Fuzeta da Ponte
jfuzetadaponte@macedovitorino.com

Whenever teleworking is not adopted, specific work organization measures may be implemented:

- a) The adoption of service schedules for employee rotation between the teleworking regime and the usual workplace, which may be daily or weekly; and
- b) Adoption of differentiated entry and exit times, as well as breaks and meals.

The new measures may be applied only if the maximum limits for the normal working period and the right to daily and weekly rest provided for by law or applicable collective agreements are ensured.

The new working time arrangements may be applied by the employer under his power of direction, provided that the applicable legal procedure is respected.

The legal procedure determines that workers and their representative organizations must be consulted and given 7 days' notice (or 3 days in the case of a microenterprise) before the new work organization is implemented (article 217, Labor Code).

In a nutshell: teleworking can remain, under the general rules of the Labor Code, but is no longer compulsory, as it was during the state of emergency, at the peak of the Covid-19 pandemic.

© Macedo Vitorino & Associados

This information is provided for general purposes only and does not constitute professional advice