

COVID-19: NEW LABOR MEASURES

From December 1 the recommendation for telecommuting is resumed; from January 2 to January 9 telecommuting is mandatory whenever the worker's duties allow it.

Following the declaration of state of calamity in the entire Portuguese continental territory until March 20, 2022, a new law ([Resolution of the Council of Ministers](#)) was published establishing exceptional and temporary measures, applicable to the entire continental territory, to contain the COVID-19 pandemic.

Here are the main measures with labor impact that come into effect as of December 1:

(A) Remote Working

Telework is again recommended whenever the worker's duties allow it, maintaining in force the rules regarding schedule mismatch for in-person work situations.

Teleworking is still compulsory, without the need for a written agreement between the employer and the employee, in the following situations:

- (i) The worker, upon medical certification, is covered by the exceptional regime of protection for people with immunosuppression conditions, pursuant to article 25-A of Decree-Law no. 10-A/2020, of March 13, as amended;
- (ii) The employee has a disability, with a degree of incapacity equal to or greater than 60%;
- (iii) The employee has a dependent child or other people dependent on them, regardless of age, with a disability or chronic illness, who, according to the guidelines of the health authority, is a patient at risk and is unable to attend classroom or group teaching and training activities.

Between January 2 and January 9, 2022, it is mandatory to telework, if possible, depending on the worker's type of work, and if the employee has the adequate conditions to perform them. The obligation applies to all municipalities in mainland Portugal, with extension, with the necessary adaptations, to the Direct and Indirect Administration of the Portuguese State and the recommendation of its application to other public entities. In these situations, there is no need for a written agreement.

Exceptionally, the employer may refuse to implement remote working. In such situations, they must communicate their decision to the employee in writing and in a reasoned manner.

The employer can only refuse to implement telework in the event of: (i) Incompatibility between the employee's duties and remote work; (ii) Lack of adequate technical conditions for the implementation of remote working.

If the Employer refuses to implement telework, the employee may, in the three subsequent working days, ask ACT to verify the requirements set out in the written justification submitted by the employer.

CONTACTS

GUILHERME DRAY

GDRAY@MACEDOVITORINO.COM

JOANA FUZETA DA PONTE

JFUZETADAPONTE@MACEDOVITORINO.COM

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

ACT submits its decision within five working days, considering the following factors: (i) the duties for which the worker was hired; (ii) Previous performance of the duties remotely; (iii) Previous performance of the activity through other means of providing remote work.

The employee may refuse to telecommute, if he/ she considers that he/ she does not have the adequate conditions to perform their duties remotely, namely technical or housing conditions. The employee must inform the employer in writing, stating the reasons for his/ her impediment.

Teleworkers have the same rights and duties as other employees under the terms of the Labor Code or applicable Collective Regulatory Labor Instrument (IRCT).

The worker is also entitled to the necessary work equipment for the provision of telework. Even so, when such availability is not possible, with the consent of the worker, his/ her duties can be performed remotely through the worker's personal equipment. In these situations, the employer is responsible for programming and adapting the equipment.

(B) Diagnostic tests

Workers at healthcare facilities, educational, vocational training and higher education institutions, therapeutic communities and social integration communities, temporary shelter centers and emergency accommodation centers may be tested for SARS-CoV-2. Tests may also be carried out on other workers to be defined by the Portuguese Health Authority (DGS).

The employer is prohibited from recording or storing test results, including proof of testing, associated with the person's identity, except with the person's express consent.

In situations where the test results make access to the workplace impossible, absence is considered justified.

(C) Body temperature measuring

Workers may be subjected to body temperature measurement; no physical contact is allowed.

Temperature measurement must be performed through non-invasive means, at the access control to the workplace. Recording body temperature linked to the worker's identity is not allowed, unless expressly authorized.

Access to the workplace may be prevented whenever the worker: (i) refuses to take body temperature; (ii) has a result above normal body temperature (a temperature of 38°C or more).

In cases in which the result of the measurement determines that it is impossible for an employee to access the respective workplace, the absence is considered justified.

A new [Decree-Law](#) that extends the deadline for several exceptional measures was also published:

- Exceptional and transitional work organization legal framework (Decree-Law 79-A/2020, as amended) until March 31, 2022, regardless of the possibility of extension after consultation with social partners; and
- Extraordinary income support for workers (Law 75-B/2020, of December 31, in its current wording) created to compensate losses caused by the pandemic, until the last day of February 2022.