

New legal framework for working from home

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Introduction

Key points

Comment

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In the wake of the COVID-19 pandemic, the government commissioned the so-called 'social partners' (ie, the Chamber of Commerce representing employers and labour unions acting on behalf of employees) to negotiate and present a bill on working from home that Parliament can pass into law as the new standard on the matter.

The draft bill:

- offers no surprises (but some tax advantages);
- aims to retain the legal flexibility for both sides of an agreement on remote work; and
- essentially consolidates only a set of statutory default rules that already govern remote work.

The new framework will cover various issues – from contractual provisions and co-determination by works councils to recommendations on occupational safety – and can be summarised as follows.

Key points

Working from home will still require a written agreement between employer and employee and, therefore, can be introduced only on mutual consent. Employees cannot unilaterally invoke a right to remote work and employers cannot direct an employee to work from home. Only in rare circumstances can employees' fiduciary duties and employers' duties of care justify a unilateral decision (eg, in the case of a mandatory quarantine of an employer's workplace, where the particular circumstances allow staff to continue their work from home).

Where staff are represented by an elected works council, the Labour Relations Act will be amended to include a new statutory authorisation to enter into a plant agreement establishing the conditions for remote work.

The legal framework on working time and rest times also applies when employees are working from home. Thus, remote employees must still maintain a report on their working time.

The labour inspectorate has no right to control compliance with work protection legislation where home offices are concerned and must not inspect private dwellings or residences. Consequently, employers will have to instruct employees on the requirements for proper workplace organisation. The government will issue guidelines to this effect.

Accidents at home will be covered under the statutory accident insurance and will be deemed a work accident for insurance coverage purposes.

Employers must provide employees with 'digital' work equipment (ie, a computer, a laptop, a mobile phone and data links) or adequately reimburse employees if they must use their own devices.

Reimbursement for additional expenses incurred by employees when they work from home is capped at €300 per year for tax purposes. Reimbursement of expenses above this amount is deemed an additional income and will thus be fully taxable and subject to national insurance contributions.

Employees' acquisition of ergonomic office equipment will be tax deductible up to €300 per year.

Working-from-home agreements can be terminated for cause by both parties observing a one-month notice period.

Comment

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The draft bill will likely be passed into law soon, introducing a set of rules that is long overdue, although one that mostly mirrors the legal status quo.

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