

September 2020

Labour Law Department

**MAIN ASPECTS OF REMOTE WORKING REGULATED BY ROYAL DECREE-LAW
28/2020, OF 22 SEPTEMBER**

On 13 October, **Royal Decree-Law 28/2020, of 22 September, on remote working ("RD-L 28/2020")**, regulating the conditions of remote working will come into effect. The main aspects of remote working regulated by RD-L 28/2020 are those briefly set out below:

Teleworking

Firstly, the definitions of the RD-L clarify that the concept of teleworking is a subtype of remote working, given that it is "*remote working carried out exclusively or mainly through the use of IT media or systems*". For the RD-L to apply, remote/teleworking shall have the following three highlighted characteristics:

- (i) **Regular**, remote working relationships should be provided on a regular basis, i.e., that is **at least 30% of the working day** must be remote (from home or elsewhere chosen by the working person), within a minimum period of 3 months;
- (ii) **Voluntary**, in respect of **both parties**, the working person and the employer; and,
- (iii) **Reversible**, the decision to work remotely shall be reversible for the business and the worker, as defined in the **collective agreement** (as are many aspects of the RD-L) for exercising reversibility.

Remote Working Agreement (*Acuerdo de Trabajo a Distancia, "ATD"*)

It must be **formalised in writing**; it could be part of the initial contract or drawn up later (and a copy will be given to the workers' legal representatives and to the employment office).

The **minimum content** of the ATD has been set, as follows:

- Inventory of media, equipment and tools to undertake the work, consumables and furniture, and the maximum period for their renewal.
- A list of the expenses that the worker may have due to the fact that they are providing remote services, as well as the method used to quantify the compensation to be paid by the business and the time and form in which it will

be made, which will correspond, if applicable, to the forecast contained in the collective agreement or applicable agreement.

- Worker working time and availability rules.
- Percentage and distribution, where appropriate, of remote and physical presence work.
- The workplace to which the remote worker will be attached.
- Remote workplace selected by the worker to carry out their work.
- Duration of notice periods in which reversibility situations, if any, will be implemented.
- Measures taken by the business to control the activity.
- Procedure to be followed should technical difficulties arise.
- Specifically applicable instructions regarding data protection and information security, with the participation of the workers' representatives.
- Duration of the agreement to provide services remotely.

The conditions set out in the ATD may be **amended** by agreement between the business and the worker, formalised in writing prior to being applied (the workers' legal representatives shall also be made aware of this).

Workers' rights

This regulation emphasises that a **failure of the worker to adjust to remote working** may not be a cause of termination or substantial amendment of the terms of the employment contract.

Workers performing remote work shall be guaranteed a number of rights:

- Workers will receive the **training** necessary to properly carry out their activity.
- Workers will be entitled to **professional promotion**.
- Workers will be entitled to **be allocated** all the appropriate means, equipment, and tools necessary for carrying out the work activity, as well as to the **maintenance** of the latter.
- Any **expenses** related to carrying out the work activity will be paid for by the company. Collective agreements can determine these expenses and the form in which they are paid or credited.

- Workers will be set a **flexible schedule** in which to provide the services.
- The **time recording** system will reflect the time spent on the work activity by the person carrying out the work remotely.
- **Safety and health protection** taking into account the risks of remote working and assessing them at the location where the remote work is to be carried out.
- Right to **privacy** and **digital disconnection**.
- With the same scope and content as the people at the workplace to which they are affiliated, they retain their rights of a **collective nature**.

Control and business organisation

The **business** may **take the monitoring and controlling measures it deems appropriate** in order to verify that the worker is properly carrying out their duties. These measures must **respect the dignity, privacy, and data protection** of the worker.

The worker must comply with the instructions set in terms of data protection and information security, as well as with the instructions for using and storing IT equipment or tools.

Procedure for claims regarding access, reversal, and amendment

Should the business disagree with the worker's proposal regarding access, reversal and amendment of remote working, the worker may bring a **claim** before the Labour Court within a period of **20 business days** from the date of the business's communiqué. This procedure shall be urgent.

The court may request from the Labour and Social Security Inspection a report on the worker's proposal and the communiqué in which the company sets out its disagreement.

Remote working during Covid-19

Remote working during Covid-19 **has been excluded from RD-L 28/2020, ordinary labour regulations** being applicable to the latter.

At all events, businesses shall **provide workers with the means**, equipment, tools, and consumables that are necessary for carrying out their work activity and will be responsible for the maintenance thereof.

Where appropriate, **compensation for expenses** derived from remote working - which have not been paid for - **will be in accordance with the collective agreement**.