

WORK FROM HOME-CHALLENGES IN THE PERIOD OF GLOBAL PANDEMIC

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Abstract

Labor Laws regulate that the employee and the employer can conclude an employment contract by doing work at home. The global pandemic imposed new questions and challenges for the realization of this agreement with the lack of extensive experience from previous years, with the exception of certain sectors and activities.

After several months of working from home, the companies lack an assessment of the real weight in performing work tasks from home, as well as taking measures to protect the mental and physical health of workers. In this regard, necessary changes or adoption of new laws that would regulate in detail the rights and obligations of workers and employers to perform the work process from home is needed. Some countries like Chile adopted new laws on working from home. This article will analyze the legal changes that should regulate the issue of measuring employee productivity, mechanisms for maintaining motivation, real opportunities to do work from home, protection from domestic violence, data protection, protection of physical and mental health of workers and other important questions that arise as a result of the global pandemic.

Key words: work from home, global pandemic, future challenges, workers, employers, protection, productivity

The experience of the European Union with the so-called teleworking and working from home

European Union (EU) Member States have adopted various forms of non-standard employment contracts. For example, the Danish law, governing part-time contracts, provides the same rights as full-time employees for part-time workers as well, working in the same position. In the Netherlands, the flexibility of the security legislation, which entered into force in January 1999, allowed the social partner's sector to negotiate the various aspects of the law regarding the working method and the sector they represent. In Cyprus, a tripartite agreement was reached in the tourism sector, which covered the waiters and cooks, mostly employed on a part-time basis. This agreement created a system of legal protection against the illegal and unjustified dismissal of this type of workers.

EU has adopted several important directives:

- Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991
- Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 156, 21.6.1990
- Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989

The EU directives are transposed into the national law of all the Member States of the Union. With the protection of such type of workers, the EU directives state that part-time contracts should be related to a specific job, and as soon as the specific task is completed, such contracts should generally be determined. The main goal of the EU directives on non-standard forms of work is to implement the principle of non-

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discrimination and equal treatment of workers. Italy is a member state that has adopted a legislation that covers all non-standard forms of work in an explicit manner, even the atypical forms of work.

As a result of the negotiations at the European level, on 16th July 2002 the European Framework Agreement on telework was adopted with the support of the social partners. This framework regulates questions for the employment and working conditions, health and safety at work, providing traineeship and ensuring collective rights for this type of workers. Member States at that time agreed to transpose this framework agreement into their domestic law by 2005 without a directive being adopted. Article 2 of the European Framework Agreement for the Telework in 2002 defines teleworking as:

“A special form of organizing and performing working responsibilities by using the means of information technology within the employment contract, where the work that can be performed by the employee is performed outside of the premises of work on a regular basis.”

This definition, regulated by the framework, is applied in nine countries - Belgium, Finland, France, Germany, Greece, Italy, Norway, Spain and the United Kingdom, while in other countries it is precisely defined by their national legislation, and we can include here : Poland and Slovenia. The Czech Republic, according to its national legislation, regulates teleworking as a work which is not performed all the time at the employee’s premises, but the difference with the framework is that in the legislation the information technology is not mentioned. In Lithuania, teleworking is covered by the general provisions regulating the work from home. The application of teleworking is growing in all member states of the European Union. This form of work is relatively new but competitive with the traditional form of work due to the fact that the application of new technologies is involved in such type of work, including the internet, information systems that can be used from home and other telecommunications systems. This type of work over the years has become more efficient.

In 2000, the total percentage of employees involved in this model of work was about 5.3% in the "older" fifteen EU member states and 4.2% in the candidate countries. In 2005, the percentage was increased with 7% for the whole twenty-seven EU member states. On the question that was made regarding which working sectors are suitable for such type of work, the response was that the largest number of workers are coming from the sector of real estate, financial mediation, and education. According to the statistics, almost 15% of the workers are regularly involved in this type of work when it comes to these sectors, at least a quarter of the entire workers. Most often, when it comes to which workers are involved in this type of work, it is the highly skilled workforce that is involved mostly. In Belgium, for example, what is something that can be observed, is that most of the workers are male and involved in the IT sector. The representation of women in this field is lower because not many women work in this sector. Of course this type of work has challenges as well, where these workers raise the issue of data protection, as well as the application of measures for safety and protection at work. The European Framework Agreement for the Teleworking Contracts tries to solve these problems, but because it is not a mandatory directive, member states have different legal solutions.

The European Framework Agreement for Telework is focusing on several significant aspects:

- Voluntary nature of the Teleworking contracts, which is described as a voluntary work for the employee and the employer. The Teleworking contracts can be part of the basic job description of the employee or it can be concluded as a voluntary engagement. In both cases, the employer provides to the employee relevant written information in accordance with Directive 91/533 / EEC ;
- Conditions of employment. It is important to notice that employees which work from home have the same rights as employees working in the premises. These rights are guaranteed by the applicable law and collective agreements. In order to take into account the peculiarities of this form of work, specific employment contracts may be required;
- Data protection. The employer is responsible for taking appropriate measures on ensuring the protection of personal data, which is used and processed by the employee for professional purposes. The employer shall inform the employee in particular of any restrictions on the use of those datas and providing sanctions in the event of non-compliance.;
- Privacy. The employer must respect the employee's privacy. If any kind of monitoring system is set up, it should be in proportion with its real purpose and it must be introduced in accordance with Directive

90/270 / EEC

- Equipment. As a general rule, the employer is responsible for providing, installing and maintaining the necessary equipments for regular work, unless the employee uses his/her own equipment. The employer is responsible, in accordance with the national law and collective agreements, for the costs of losing or damaging of the equipments and misusing of the personal data by the employee working from home.;
- Health and safety. The employer is responsible for protecting the health and ensuring safety at work of the employee in accordance with the Directive 89/391/EEC , national legislation and collective agreements. In order to verify if the health and safety provisions are applied, the employer, workers' supervisors and / or relevant authorities must have access to the telecommunications site, within the framework of national legislation and collective agreements. If the telework employee works at home, such access is subject to prior notice and mentioned in his / her contract. The telework employee has the right to request inspection anytime.;
- Working Organization. Within the current legislation, collective agreements and company rules, the telework employee manages the organization of his / her working hours. The workload and standards of the telework employee are equivalent to the responsibilities of the employees, working in the employer's premises.

Employment contract regarding of work at home in the Republic of North Macedonia

The Labor Law regulates that the employee and the employer can conclude an employment contract by doing work at home. What makes the difference between working from home and the traditional work at the employer's premises, is that in the prior the performance of the work is done at home, and provides a different location from the traditional work where it shall be done at the employer's premises (for example mobile operation).

Attached is the Article 50 of the Law on Labor Relations, which regulates the employment contract by doing work from home.

Labor Law

Contract of employment for performing the work at home

Article 50

- (1) Performance of the work at home, is the type of work which the employee performs it in his/her home or in the other premises depending on his/her own choice, and it differs from the other type of work that is performed on the business premises of the employer.
- (2) With the contract of employment for performing the work at home, the employer and the employee can make an agreement, where the employee can perform his/her work that belongs to the field of activity of the employer or which is necessary for raising the efficiency of the work at home.
- (3) The employer is obliged to submit the contract of employment for performing the work at home to the labor inspector within three days from the day of the conclusion of the contract .
- (4) The rights, obligations, and conditions that depend on the nature of the work at home, shall be regulated between the employer and the employee with the contract of employment.
- (5) The employee has the right to get a regular salary for the work at home. The amount of the salary is determined by the employer and the employee in the contract of employment.
- (6) The employer is obliged to provide safe conditions for the employee regarding the work at home.

In practice, this agreement is much more common and it gives to the employee itself greater opportunities when it concludes it. In Article 50, paragraph 1, performing of the work at home is considered a work that the employee performs in his/her home or in premises of his/her choice, but such type of work is performed outside the business premises of the employer. In paragraph 2 of this Article, with the contract of employment for performing the work at home, the employee shall perform his/her work which belongs to the field of activity of the employer or which is necessary for raising the efficiency of the work, either at home or outside the employer's premises. In addition, those premises do not always have to be in the

employee's home, but may be premises that the employee has rent it. There are certain professions that can include the performance of the working tasks from home, such as: developers, translators, proofreaders, accountants, financial auditors, etc.

Performing the work from home has several advantages. The most significant ones are:

- Financial savings, which refers to the costs that employees have such as: travel costs, parking costs, food at work, clothing costs, and the like. Also, it causes less stress due to the fact that the employees don't need to rush in order to get to work, especially in big cities and when the workplace is away from home. This form of work provides proximity to home and the opportunity to take care of their children.
- Flexibility in the use of working hours, as well as arrangement of the working environment, that brings maximum productivity and realization of the workplace.
- Causing to the employee less distraction, where in a traditional type of work often colleagues know how to distract, as well as to make frequent unnecessary meetings and thus by completing the working tasks from home it provides greater productivity to the employee.
- The time spent going to work and coming back home, can be used for sport activity or other physical activities, as well as for balancing the private and professional life.

Negative aspects of working from home are mainly related to the lack of socialization and isolation of the employee who performs the work. Working from home requires a great self-discipline on the part of the worker as he is subject to distractions from children, family members, relatives, etc. and most of the times it should be made clear that the worker actually works from home. Through working from home, the employee can be expected not to be updated with the daily developments in the company and thus it causes a lack of possibility for career advancement. In the Macedonian legislation, in Article 50, paragraph 3, the employer has obligation toward the labor inspector to submit the contract of employment for performing the work at home no later than within three days from the day of the conclusion of the contract. It is very important in the contract of employment for performing the work at home to regulate the rights, obligations and conditions depending on the nature of the work at home. The obligation of the employer to supervise or control the work of the employee is also important, given the fact that the work is done from home. Thus, the main elements of the contract of employment for performing the work at home are: the duration of working hours, the type of work, the way of organizing the work, the conditions of performing the work, the way of performing the supervision by the employer, use and compensation of the employee's funds for the needs of the work at home, the amount of salary and the method of payment, reimbursement of other work-related expenses, as well as other rights and obligations arising from the contract.

The employer has also the obligation to ensure the protection of the employee that performs the work from home by providing safe working conditions, which are regulated also in the contract. Article 51 of the Law regulates the cases when the work from home is prohibited, and that can happen if the work from home is harmful to the employees, or to the working environment where the work is performed. In the Republic of North Macedonia, this type of contracts regarding the work from home mostly are concluded with foreign companies than with the domestic ones, by taking into consideration that this form of work is still atypical, but considering the dynamic development that the world has made via globalization, where the internet communication is at a large usage, this form of work will be more prominent in the future because it offers enough advantages for the employees. According to a global study related to the work of enterprises, performed by the University of Mercer in 2020, only 22% of enterprises were ready to work from distance during the pandemic of COVID-19. In continuation, the study revealed that only 44% of enterprises had made an assessment related to the working places, with the purpose of creating a flexible working environment according to the needs of the employees. Such assessments can help the enterprises to create a flexible workplace and thus it balances the needs of the enterprise and that of the employees.

Working from home in conditions of the global pandemic

According to the International Labor Organization (ILO), about 68% of the world's total workforce, including 81% of employers, currently live in countries where closing their workplace is recommended or ordered. Employers should consider an alternative plan regarding the continuation of the work and the

tasks that cannot be performed outside of the workplace or for the employees who are limited in performing the work at home or health and safety problems that can prevent the employees from working at home. In accordance with the provisions of domestic laws, regulations, governmental decisions, or domestic policies, employers may advise workers to take unused or new paid leave, part-time leave or any other form of leave which may be used in specific situations, in consultation with the employees concerned. In this particular aspect, despite the fact that a large part of the Macedonian companies are adjusted to the system of working from home, in accordance with the guidelines of the Ministry of Health, there is a lack of assessment regarding the efficacy in performing the working tasks from home, as well as a lack of measures that need to be taken in order to protect the mental and physical health of workers. Also, there are no assessments and guidelines for the protection of employees and prevention of domestic violence in the performance of working tasks from home, as well as for the spatial possibilities and conditions, balancing the professional life with the private one. There are reports coming from several countries, stipulating that the domestic violence and abuse during COVID-19 restrictions have dramatically increased. Usually, the work from home is carried out on a voluntary basis, often accompanied by a signed agreement between employers and employees which sets out the conditions, and the duty of the employers is to reimburse the funds needed for the employees regarding the work at home. First of all, the necessary means for the work at home are: internet connection, computer, telecommunication networks used by the employer, etc. In cases when the work process was transformed due to the global pandemic and the employment contracts didn't changed in most of the companies, the costs within the contract will always be borne by the workers. In this situation, there was no additional employment contracts on performing any work from home, but only instructions and recommendations that were being given to the workers and thus the work process was transformed with the help of the means of telecommunication. When we refer to this case, the question arises whether the employee must respect the employer's decision to do the work from home or no? According to the recommendations of the World Health Organization and the International Labor Organization, the worker is obliged to follow the instructions of the employer and to cooperate in reducing the spread of the virus, but despite the fact that the working process can be performed from home, it is necessary to review certain policies and regulate those working processes properly in order to raise the efficiency in working from home. If we take the educational process as an example, teaching in higher education institutions, from the traditional face-to-face teaching has been transferred to an online model via online platforms, but the question arises as to how much the teaching staff and university curricula correspond to this way of educational process. It is important to emphasize that the workload of the professors, as well as the learning materials, shall undergo certain modifications as a way to increase the efficiency in this new way of teaching, and as well to improve the degree of concentration among the teachers and students. I think that more attention should be paid to these issues in the future, especially if the trend of working from home continues. It also raises the question of the necessary change of legal solutions or the adoption of new laws that would regulate in detail the rights and obligations of employers and employees on performing the work from home. This type of work mostly is regulated by labor law, but in March 2020 Chile passed a new law that regulates specifically teleworking, providing legal certainty to both employers and employees by establishing their rights and responsibilities, for example, the employers' responsibilities include providing, maintaining, and repairing teleworking equipment. There were also appropriate changes in the Law on Education and Distance Learning. In addition to the obligations of the employers and the employees, according to the Law on Labor Relations, there are certain obligations that remain in effect by the same legal provisions that remained unchanged prior to and during the global pandemic. In addition, the most important provisions of the Labor Law regarding the obligations of the parties for performing the work at home are Article 30 and Article 32. Of course, another key question refers to the productivity of the worker and who is the responsible person that will measure such productivity. In this situation I think that Macedonian companies should find appropriate mechanisms for measuring productivity depending on the sector and the activity they perform. Certain activities can be more measurable than others, such as sales, online customer service and even the educational process. In this regard, maintaining the morale of workers is especially important, taking the fact that working from home is imposed in accordance with the global pandemic. Of course, the key role is played by the managers

and boards of directors who should contribute through questionnaires and other methods in solving those problems, especially in terms of motivation and maintaining regular contact with employees in order to overcome the problems that Covid 19 pandemic has brought. Employers need to understand the limiting conditions when they are working from home such as : less space, more time with family members, more distraction, no separate work space, no stable internet connection, lack of proper means like computer and mobile equipment and similar. This can endanger the health of workers both physically and mentally. Managers need to encourage employees to be physically active while they are working from home and to make a balance between their professional and private lives. It is certainly important that by reducing the workload of the employees in the interest of general health and motivation, there will be no loss and of course, the efficiency in such type of work will be increased.

Conclusions

Working from home is considered as the performance of the working tasks from home or other premises of the employee, and the difference from the traditional type of work is that it can cover different locations outside the employer's premises. Doing work from home has several advantages. The most significant advantages of this form of work are: Financial savings, which refers to the costs that employees have such as travel costs, parking costs, food at work, cost of clothes, flexibility in the organization of working hours but there are also disadvantages such as: the lack of physical communication and socialization with other employees in the company which can lead do lack of motivation on a long term basis. The global pandemic imposed new questions and challenges for the implementation of this agreement with no experience from previous years, with the exception of certain sectors and activities. Those challenges are lack of assessments regarding the working tasks from home, as well as the lack of measures for protection of the mental and physical health of the workers. In this aspect, it is important to make necessary changes of legal solutions or adoption of new laws that would restore the rights and obligations of the employers and employees for performing the work from home. The employment contract for working from home is regulated under the national labor laws of the countries, but in March 2020 Chile brought a new law that regulated the work from distance as *lex specialis*. These legal changes should regulate the issue of measuring employee productivity, increasing mechanisms for motivating the employees, providing real opportunities to do work from home, protection from domestic violence, protection of personal data, protection of physical and mental health of workers and other important issues so that the working world will not face similar difficulties in future time.

References

- Alan C. (2002) *European Labor Law and Social Policy: Cases and Materials*, Kluwer Law International, The Hague, London, New York, 2002
- Barnard C. (2006) *EC Employment Law*, Oxford, Oxford University Press, 2006
- Barnard C. (2007) *The Substantive Law of the EU: The Four Freedoms*, 2Rev Ed., Oxford University Press
- Blainpain R. (2003) *European Labor Law*, Kluwer Law International
- Broberg M. Holst Christensen N. (2007) *Free Movement in the European Union: Cases, Commentaries and Questions*, Djoef Publishing
- Craig P., Craig de Burca (2003) *EU Law, Cases and Materials*, Oxford, Oxford University Press

Ellis E. (2005) EU Anti Discrimination Law, Oxford, Oxford University Press

Gibson D. H (2001) Immigration Policy and the Labor Market: The German Experience and Lessons for Europe (Immigration Policy and the Labor Market), Palgrave Macmillan

Hairbronner K, (2000) Immigration and Asylum Law and Policy of the European union, Springer

Hartly C.T. (2003) The Foundation of European Community Law, Oxford, Oxford University Press

Hailbronner K., Higgins I. (2004) Migration and Asylum Law and Policy in the European Union, FIDE 2004 National Reports, Cambridge University Press

Review Republic of Macedonia on the road to NATO and EU-actuality and perspectives, FON University, Skopje, 2007

Steve Peers (2006) EU Immigration and Asylum Law, Text and Community, Martinius Nijhoff, 2006
Papademetrou D. Europe and Its immigrants in the 21 century. A new Deal of Continuing Dialog of the Deaf, Migration Policy Institute

Peers S. (2008) EU Justice and Home Affairs Law, Oxford University Press

Shaw J. (2000) Social law and policy in an evolving European Union, Oxford, Hart Publishing

Weiss F. Wooldridge (2007) Free Movement of Persons Within the European Community (European Monographs), Kluwer Law International

White R. (2005) Workers, Establishment, and Services in the European Union (Oxford European Community Law Library, Oxford University Press, USA, 2005

ADDITIONAL LITERATURE

<http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/flexible-forms-of-work-very-atypical-contractual-arrangements>

Report on teleworking in European Union, European Foundation for the Improvement of Working and Living Conditions, website: www.eurofound.europa.eu , p.7

Council Directive 91/533 / EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship , OJ L 288, 18.10.1991, p. 32–35
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ac10131> , accessed on 16.11.2020

<http://www.bayt.com/en/career-article-1601/>

A Handbook for Employers to Work From Home in Response to the COVID-19 Pandemic , Business Association of Macedonia and the International Labor Organization, 2020

ILO (International Labor Organization), ILO Monitor: COVID-19 and the Working World. Third Edition - Updated Estimates and Analyzes ", April 29, 2020.

A Handbook for Employers to Work From Home in Response to the COVID-19 Pandemic , Business Association of Macedonia and the International Labor Organization, 2020

<https://www.glasprotivnasilstvo.org.mk/20-11-2020-pandemijata-ne-smee-da-bide-prichina-za-politsisko-nepostapuvane-pri-nasilstvo-vrz-zheni/?fbclid=IwAR0UTLbmJm55>