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NEWS 7/2015

News No.7/2015

Legal aspects of telecommuting

Put simply, telecommuting (or working from a “home office”) is a flexible form of employment. Employees organise their working hours as necessity and opportunity allow. Thus employees can either work exclusively away from the office - at home or some other place of their choosing - or can combine telework with work on premises assigned by the employer. Telecommuting is only marginally regulated in the Labour Code. The same rules apply to homeworkers as to other employees. However, there are certain exceptions:-

- a) Rules regarding working time patterns, downtimes and work interruptions due to adverse weather conditions do not apply to homeworkers.
- b) Homeworkers are not entitled to wage or salary or compensatory time (i.e. time off in lieu) for overtime or to compensatory time, wage replacement or allowances for time worked on public holidays unless otherwise provided by statute or unless wage replacement is provided for an employee's wedding or moving house.
- c) Homeworkers are not entitled to wage or salary replacement in the case of other major personal impediments to work.

Compared to a “common” employment relationship, the place of work is defined differently in the case of telecommuting. It should be stated in the employment contract that the employee shall perform the work agreed at home or some other suitable premises. It is also appropriate to lay down in the employment contract that the employer shall determine a specific place where the employee shall perform work on particular days unless telework covers the entire determined working hours.

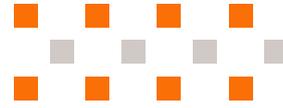
The employer's obligation to pay social security insurance and health insurance contributions remain the same as for a normal employee. Homeworkers are entitled to the same allowances in cases of incapacity for work.

Ensuring health and safety at work for homeworkers

a) Employer's obligations

The employer is obliged to provide appropriate working conditions and ensure health and safety at work (hereinafter referred to as “HSW”). As part of HSW, the employer is obliged to inform the homeworker sufficiently and appropriately about the risks related to telecommuting (such as the harmfulness of night work) as well as regarding measures to protect against those risks (such as technology which prevents working at night) that apply to their work and workplace. The employer is obliged to ensure training for homeworkers in the field of HSW legislation, both as induction training at the beginning of the employment and ongoing training in the case of a change in the place of work. The employer ensures the provision of occupational health services, personal protective equipment, work clothes and boots, disinfectants, etc., where necessary. The employer is obliged to clarify, in the presence of the employee, witnesses or trade unions, where applicable, the causes and circumstances of any occupational injury. The employer keeps records of such injuries.

In order to avoid possible responsibility for an occupational injury incurred by the employee when working at home, the employer has to take particular care to ensure that HSW training actually occurs and has to issue precise internal rules and guidelines relating to the performance of the employee's work in which it shall be expressly stated what the employee shall and shall not do during working hours. For example, it is appropriate to lay down in the internal rules that the employees may only stay in spaces used for work (such as an office with a computer and a desk) and to record all work breaks as and when they start, preferably by means of electronic registration. It is possible to prohibit the homeworker from carrying out certain activities that, if performed at home, may cause an occupational injury.



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b) Employee's obligations

The Employee is entitled and obliged to participate in creating a safe and healthy working environment, in particular by applying the measures adopted by the employer as well as by personal participation in dealing with HSW issues. Thus the employee is obliged to undergo preventive medical examinations, follow set procedures when performing work, use only the set working equipment and personal protective equipment and to avoid conduct which is not allowed or explicitly prohibited.

The employee is obliged to notify the line manager immediately of any occupational injury, if physically capable of so doing.

Recommended provisions

We recommend that the employer and the employee agree upon ensuring compliance with HSW. This includes, in particular:

- Regulation of working hours
- Registration of time spent working
- Taking safety breaks
- Arrangements for the use of machinery, devices and tools
- Arrangements concerning the employer's access to the workplace in order to check safety risks and identify the causes of accidents.

Since telecommuting is only marginally regulated in the Labour Code, there is no precise definition of the rights and obligations of the employer and the employee. It can be assumed that this issue shall be regulated by an amendment to the law – which has recently been the subject of discussions between trade unions and the Ministry of Labour and Social Affairs – or by the development of case law which, however, cannot be expected in the foreseeable future.

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