



Working from home in selected Countries

Legal June 2020

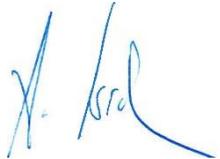


During Covid-19 working from home has become the involuntary standard workplace for many. Many employers and employees alike have come to appreciate certain advantages of working remotely, as it turned out that some global teams have been just as productive as under usual circumstances.

As many countries start lifting the Covid-restrictions employers will need to decide how to move forward to meet the needs of business and employees alike. One of the most obvious questions without any doubt is if working from home, going forward, shall indeed be the new standard and if so, what implications and legal risks employers are taking.

In the following you will find an overview of answers to such and further questions on working from home throughout 34 countries.

The specialists of the KPMG Global Legal Services Network will be happy to support you in all matters relating to the design, introduction and maintenance of state-of-the-art national as well as international working from home policies.



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Home Office - Information

Australia	Guatemala	Sweden
Austria	Hong Kong	Switzerland
Belarus	Hungary	United Kingdom
Belgium	Iceland	Uruguay
Bulgaria	Ireland	
Canada	Italy	
Chile	Lithuania	
Croatia	Mexico	
Czech Republic	Norway	
Dominican Republic	Peru	
Estonia	Poland	
Finland	Romania	
France	Serbia	
Germany	Slovenia	
Greece	Spain	





Home Office in Australia

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

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Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

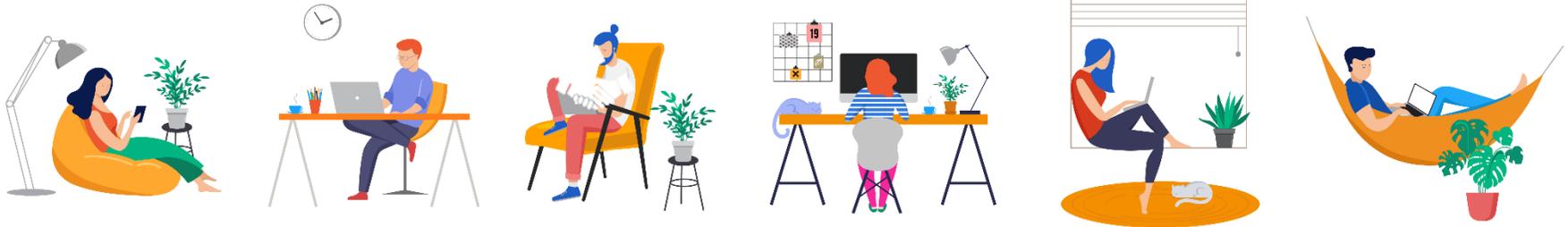
- Simple**
- Moderate
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

A high level, some of the key legal requirements regarding working from home are set out below:

- Under legislation operative until 27 September 2020 as a result of COVID-19 (**COVID-19 Legislation**), certain eligible employers can direct an employee to perform duties at a different location (e.g. from home), amongst other things, if the employee's home is suitable to perform the duties and safe having regard to the spread of COVID-19.
- In some States, there are specific health directives due to COVID-19. For example, in New South Wales, employers must allow employees to work from home where it is reasonably practicable to do so. This will change as COVID-19 related restrictions ease.
- Employers must ensure the health and safety of their employees, even if they are working from home, so far as reasonably practicable.
- Employers must have workers compensation insurance.



Employee consent

Not required Required **It depends**

Form of consent:

Generally speaking, employers and employees can agree for an employee to work from home without any formal written requirements. However, certain industrial instruments may require written agreement.

What are the consequences if an employee does not agree with the home office:

Under the COVID-19 Legislation, employees cannot refuse to work from home, unless an eligible employer's direction to do so does not comply with the legislative requirements.

For employers who are not eligible under the COVID-19 legislation, requiring an employee to work from home without consent may amount to a breach of the employment contract or an applicable industrial instrument.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required Required **It depends**

Broadly, there is no requirement for the involvement of any trade unions or employee representatives with respect to working from home arrangements.

However, certain industrial agreements may require that trade unions or employee representatives be consulted in relation to any changes to working from home arrangements.

Home Office - Legal Risks & Limitations



Legal risks

Set out below is a high level summary of the legal risks for breaching the mandatory legal requirements set out on the previous page:

- For employers that are eligible under the COVID-19 legislation, a direction to an employee to work from home that does not comply with the relevant requirements will not be enforceable. For employers that are not eligible under the COVID-19 legislation, requiring an employee to work from home without consent may amount to a breach of the employment contract or an applicable industrial instrument.
- As noted previously, some States have issued specific health directives due to COVID-19. In New South Wales, for example, if an employer does not allow an employee to work from home where it is reasonably practicable to do so, an employer may be liable to pay a fine of \$55,000 per contravention, plus an additional \$27,500 for each day the offence continues.
- If an employer does not ensure the health and safety of their employees whilst working from home so far as reasonably practicable, any penalties that may be imposed will depend on the State or Territory of Australia in which the breach occurred. However, broadly, employers can face fines up to \$3,000,000 and officers of companies can face fines up to \$300,000 and/or five years' imprisonment.
- If an employer does not take out workers compensation insurance to cover employees, any penalties that may be imposed will vary between States and Territories in Australia as different workers compensation legislation applies. In New South Wales, for example, employers can face a maximum penalty \$55,000 and/or imprisonment for 6 months for failing to take out workers compensation insurance.



Legal limitations

There are no general restrictions on how many employees can work from home, or any types of employees that are excluded from being able to work from home.

However, there may be certain requirements in relation to work locations contained in various industrial instruments (e.g. enterprise agreements or modern awards) that cover specific occupations or industries. Employment contracts may also restrict an employee's ability to work from home, however, generally these can be amended by consent of the parties to give effect to the arrangements sought to be put in place.

Home Office - Duties & Rights



Employee duties and rights

- Under the applicable work health and safety legislation, employees are required to take reasonable care for their own health and safety whilst working from home. An employer may also require employees to undertake additional duties whilst working from home in their working from home policy.



Employer duties and rights

Under the COVID-19 legislation, certain eligible employers are entitled to direct an employee to work from home if:

- when the direction was given, the employer qualified for the 'JobKeeper' scheme (a government subsidy of \$1,500 per fortnight provided to employers significantly impacted by COVID-19 to assist in paying employees);
- the employee's home is suitable for the employee's duties; and
- the performance of the employee's duties at their home safe, having regard to (without limitation) the nature and spread of COVID-19.

Under the applicable work health and safety legislation, employers have a duty to ensure the health and safety of their employees, even if they are working from home, so far as reasonably practicable.

In certain circumstances, an employer must ensure that an employees' hours of work and starting and finishing times are properly recorded, so that it is clear when any entitlement to overtime pay arises. This is particularly relevant for employees working from home.

Home Office - Compensation & Expenses



Compensation requirement

Is there a need to adjust the salary?

Yes

No

However, there may be industrial instruments (e.g. modern awards or enterprise agreements), or contracts of employment that may provide specific exceptions to the above.

The Fair Work Act 2009 (Cth) also contains certain restrictions relating to making deductions to an employee's remuneration. For example, a deduction to an employee's remuneration is only authorised if it is principally for the employee's benefit.

Expenses

Is there a need to adjust expenses regulation?

Yes

No

However, there may be industrial instruments (e.g. modern awards or enterprise agreements), or contracts of employment that may provide specific exceptions to the above.

Which of the following elements must typically be compensated?

Internet

Electricity

Equipment for home office

Rental costs

Other:

None of the above is required to be reimbursed or compensated to employees. Employees are entitled to claim back working from home related expenses up to a certain amount as part of their tax return each year from the Australian Tax Office.

Examples

- a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?

If an employee is working from home, they are entitled to the same remuneration as if they had worked at their usual place of work. Employees are not entitled to any additional compensation for working from home. However, they may be industrial instruments (e.g. modern awards or enterprise agreements), or contracts of employment that may provide specific exceptions to the above.

- b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?

No, employees are not entitled to any additional compensation for working from home, as outlined above. However, there may be industrial instruments (e.g. modern awards or enterprise agreements), or contracts of employment that may provide specific exceptions to the above.

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- Not legally required but common practice
- X Other: Whilst a working from home policy is not specifically required by the legislation, the stringent obligations imposed on employers under the applicable work health and safety legislation to ensure the health and safety of its employees effectively mandates that such a policy is implemented.**



Mandatory policy elements

There are no specific requirements for what should be included in a working from home policy, however, the best practice policy elements on this page should be taken into consideration.



Customary policy elements ("best practice")

- It is best practice for a working from home policy to include, for example, details of how to best implement an ergonomic working from home office by reference to applicable Australian standards (e.g. in relation to desk height, chair height, distance from monitor etc.)
- A working from policy should also outline the work health and safety obligations imposed on employees that work from home (e.g. employees must take reasonable care for their own health and safety).

Home Office - Social Security & Tax



Domestic



Social security (domestic)

There are no impacts on an employer's obligations with respect to superannuation or workers compensation that arise from employees working from home.



Tax (domestic)

Under Australian law, 'fringe benefits tax' (**FBT**) is paid by employers on certain benefits they provide to their employees, or their employees' family or other associates. However, the FBT rules allow for benefits to be provided by employers to employees for 'immediate relief' in the form of 'emergency assistance'.

In this respect, employers can reimburse costs or provide gift cards/vouchers free of FBT if they meet the criteria for the following exemptions and concessions:

- minor benefit rule: up to \$299 (GST inclusive) value can be provided to employees as a minor benefit on an infrequent basis;
- for expenses exceeding \$299, the 'otherwise deductible' rule' can apply to reduce FBT to \$nil where the employee would have been entitled to a 'once-off' income tax deduction had they incurred the expense themselves. This could apply to home office expenses such as internet or telephone costs. It would not apply for depreciable assets e.g. office furniture and computer monitors; and
- for expenses exceeding \$299, they might also be exempt as a 'work-related item' which includes 'portable electronic devices' – e.g. laptops, mobile phones, portable printers, iPads.

Additionally, employees should be aware that they are entitled to claim back working from home related expenses up to a certain amount as part of their tax return each year from the Australian Tax Office.

Home Office - Social Security & Tax



International



Social security (international)

For superannuation obligations, employers may be able to obtain an exemption if the employee's usual country of residence has a 'totalisation agreement' with Australia regarding social security. However, we recommend that specific superannuation advice be sought in relation to this issue.



Tax (international)

Where, for example, a non-resident employee who usually works overseas but instead performs that same employment in Australia as a result of COVID-19 for a short term period (three months or less), the employment income will not be taxable in Australia.

For remote working arrangements that last longer than three months, the Australian Tax Office has advised that all the facts and circumstances of the employee will need to be examined to determine if the employment has a connection to Australia, in order to assess whether the employment income is taxable.

There may also be implications in relation to payroll tax, however, KPMG is in the process of working with the various State Revenue authorities to determine the allocation of payroll tax in relation to displaced workers providing services in jurisdictions outside their usual work location.

We recommend seeking specific tax advice in relation these issues.

Home Office - Data Protection



Data Protection

There is no data protection regime that must be implemented for employees working from home. The ability for an employer to protect its data by, for example, conducting intermittent monitoring or recording of communications is typically set out in the employment contract.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if, for example, it is reasonably practicable for an employee to work from home in New South Wales. However, the current health directives in New South Wales will change as COVID-19 related restrictions are lifted.**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if the employer is eligible under the COVID-19 Legislation. Otherwise, any unilateral direction to work from home may breach the employment contract. An employee may be required to comply with a lawful and reasonable direction to work from home in certain circumstances.**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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Home Office in Austria

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Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

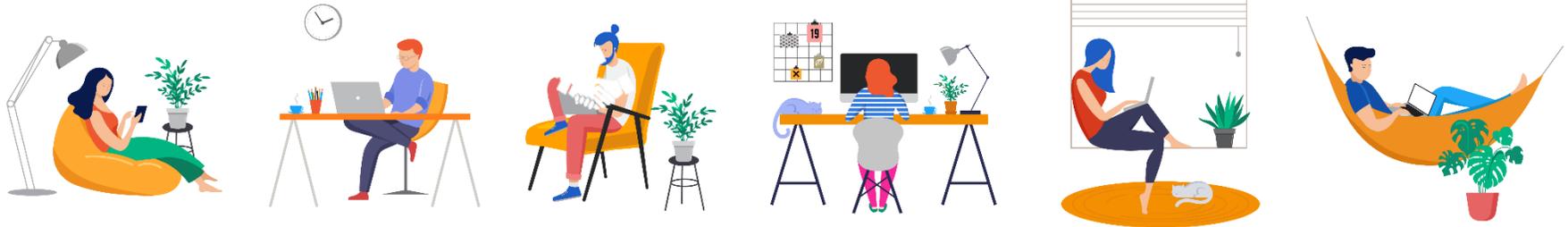
- Simple**
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Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Employees' consent in case the employment contract does not contain a clause providing for the employer's right order home office.
- Collective Bargaining Agreements may contain additional requirements such as written agreements, reimbursement of costs etc.
- Data protection laws need to be observed when implementing home office.



Employee consent

Not required Required **X It depends**

Form of consent:

The form of the required consent depends on (i) the employment contract and (ii) the applicable Collective Bargaining Agreement.

What are the consequences if an employee does not agree with the home office:

In case the employment contract does not provide for the possibility to order home office, without the employee's consent, home office can't be implemented and the employee is allowed to work at the location defined in the employment contract.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required Required **X It depends**

- **In case the applicable Collective Bargaining Agreement provides for requirements regarding home office, the works council may have participation rights. This depends on the Collective Bargaining Agreement.**
- **Specific topics which also have a key role regarding home office (e.g. working time, the use of company devices such as mobile phones, laptops etc.) are subject to a so called "enforceable" works agreement. This means that in case the company and the works council do not find an agreement, both parties may enforce a works agreement at the arbitration body.**

Home Office - Legal Risks & Limitations



Legal risks

- Litigation concerning reimbursement of costs
- Non-compliance with working time regulations
- Data protection



Legal limitations

- Generally, the same limitations as for working at the employer's premises apply.
- However, Collective Bargaining Agreements may contain special limitations regarding home office.

Home Office - Duties & Rights



Employee duties and rights

- There are generally no specific employee duties which go beyond regular duties.
- However, the applicable Collective Bargaining Agreement may provide for special regulations.
- Furthermore, data protection laws may lead to additional duties on both the employee's and the employer's side.



Employer duties and rights

- There are generally no specific employer duties which go beyond regular duties.
- However, the applicable Collective Bargaining Agreement may provide for special regulations.
- Furthermore, data protection laws may lead to additional duties on both the employee's and the employer's side.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>If yes, please replace this text by giving a short explanation.</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input checked="" type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>The employee is entitled to receive his contractually agreed salary as well as – generally – reimbursement for his costs arising from setting up the home office. However, unless the Collective Bargaining Agreement does not provide for the employer’s obligation to reimburse costs of the home office, the parties may agree otherwise.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>Please see above.</p>

Home Office - Policy



Policy Requirement

- Legally required
- X Not legally required**
- Not legally required but common practice
- Other:



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

- n/a, however, Collective Bargaining Agreements may provide for minimum items.



Customary policy elements ("best practice")

- Reimbursement of costs
- Home office equipment
- Working time records
- Restrictions on accumulating overtime hours
- Availability via phone or other communication tools when working from home

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Under Austrian social security law, in principle, working in Austria means being under the Austrian social security system.

For a person who otherwise does not fall under the Austrian social security system (due to Reg 883/2004 or international social security agreements, see the international slide).

Relevant changes in domestic social security law:

- For the time of the Covid-19 crisis (limited until 31.12.2020, accidents in the home office qualify as “working accidents” for purposes of accident insurance.)



Tax (domestic)

See slide “international”.

Employer:

Working in the home office might cause wage withholding tax obligations for the foreign employer, since under certain circumstances foreign employers are obliged to withhold wage taxes for employees with unlimited tax liability in Austria (even if there is no PE in Austria).

Employee:

For the employees, the home office per se is usually not deductible (home offices are only deductible under very narrow circumstances (they have to be the centre of the total operative and business activities of the employee – maybe there will be some legal changes in this respect for the CoVid19-period, up to now, there are not).
(Expenses e.g. for use of internet, phone cost, if evidence of the business use is provided are deductible).

Home Office - Social Security & Tax



International



Social security (international)

The European Commission has already published, how to cope in cases of CoVID19-induced changes of the state competent for social security.

At this stage, since this info is rather vague, we would recommend applying for an exemption according to Art 16 Reg 883/2004 in such a case.

The same holds true for bilateral Social Security Agreements in the case of third states.



Tax (international)

- PE risk
- Risk of taxation of employment income in home office state (due to working days there)

Home Office - Data Protection



Data Protection

Employees shall consider the same level of diligence related to data protection and data security while being in home office as for activities carried out in the employer's office. Employer shall therefore provide the employees with appropriate technical equipment such as laptops well equipped with firewalls, virus and password protection and, ideally, VPN.

Employees are obliged to keep all business information (about the employer, his customers or business partners), which has been entrusted or disclosed to him, secret. They are not allowed to disclose these information to third parties (including family members, members of the same household). Information that the employer or his customers or his business partners may have an interest in being kept confidential, include in particular the following:

- personal data,
- business secrets (including technical data and information),
- work results of the employee or other employees or business partners,
- intellectual property rights and know-how,
- the internal tax, economic and corporate law relationships of the employer and the employees,
- economic relationships of the employees and the shareholders of the employer or
- that a certain person is a client or business partner of the employer.

To keep information secret, the employee is in particular obliged to apply the following measures while working in home office:

- printouts may not be left out open,
- third parties are not allowed to view the screen of the computer and/or company-related documents,
- the screen saver of the computer has to be activated when leaving the workplace at home,
- the laptop provided by the employer may not be used by other family members and
- private USB sticks or hard disks shall not be used for data backup.

If there are corresponding regulations in a home office policy of the company, these should be recalled.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if a corresponding clause was agreed on in the employment contract. Furthermore, special rules apply to risk group within the Covid-19 special regulations**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if a corresponding clause was agreed on in the employment contract**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if ...

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Home Office in Belarus

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Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?	<input type="checkbox"/> (Very) popular <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Unpopular
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Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Possibly / not clear yet <input type="checkbox"/> No
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Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

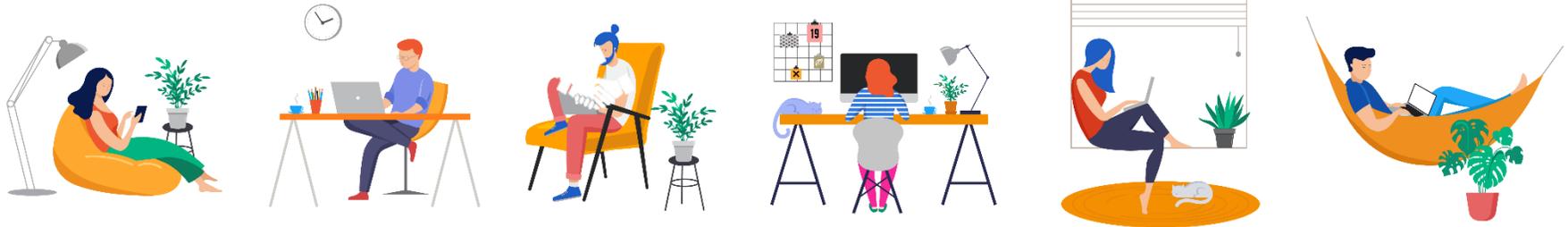
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Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce a home office going forward
- Medium impact**
- No particular impact
- Other:

Home Office - Legal Requirements



 **Mandatory legal requirements**

- Mutual agreement
- The reference to distant work (home office) in a labor contract
- Rights and obligations of the parties (including labor protection requirements, conditions of exchange of documents between an Employer and an Employee, expenses (if any), conditions and terms of their payment, reporting)

 **Employee consent**

Not required Required **X It depends**

- Form of consent: in written (the reference to distant work in a labor contract)
- Employer is entitled to set distance work without an Employee consent based on justified production or economic reasons. In this case he should notify an employee one month in advance. In the event of refusal of such changes an employee can be fired after a month of the notification had been received. The employer should pay severance in the amount of two-week average earnings

 **Involvement of third parties**
(authorities, trade unions, employee representations etc.)

X Not required Required It depends

Home Office - Legal Risks & Limitations



Legal risks

- The distant work from abroad can be recognized as contradicting the principles of Belarusian labor legislation as indicated in legal limitation herein
- When all employees are working remotely (at home), there is a risk that office rent and maintenance costs will be treated as not economically justified and thus it may lead to additional tax risk



Legal limitations

Under the opinion of the Belarussian authorities the distant work for a company's director (CEO) as well as the distant work from abroad with respect to all Employees contradict the principles of Belarusian labor legislation. At the same time, the restriction is not clearly stated in the legislation. There is a lack of any practical cases of the violations identification.

Home Office - Duties & Rights



Employee duties and rights

- To use only equipment and facilities provided or recommended by the Employer if it is clearly stated in the labor contract
- To comply with the conditions of exchange of documents between an Employer and an Employee
- To comply with the labor protection requirements during working with Employer's equipment
- To contact with an Employer according to the agreements that have been reached
- To report on his/her activities to an Employer as stipulated



Employer duties and rights

- To comply with the documents exchange procedures
- To send hard copies of the documents by registered mail if the Employee's signature is needed
- To inform Employee on the labor protection requirements to work with Employer's equipment

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office*</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other</p> <p>* There is opportunity to envisage in a labor contract compensation for almost any expenses</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No, he isn't.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No, he isn't.</p> <p>An Employer has the right to instruct to work from home unilaterally only in specified circumstances (see p. 4).</p>

Home Office - Policy



Policy Requirement

Legally required

X Not legally required

Not legally required but common practice

Other: ...



Mandatory policy elements

The following are the minimum items to be indicated in a home office Policy:

- Terms of documents exchange between an Employer and an Employee
- Expenses, conditions and terms of payment
- The terms of providing and using equipment and other means
- The specifics, types and frequency of working contacts and communication
- Working hours and breaks schedule
- The terms of leave's providing



Customary policy elements ("best practice")

- Terms of documents exchange between an Employer and an Employee
- Expenses, conditions and terms of payment
- The terms of providing and using equipment and other means
- The specifics, types and frequency of working contacts and communication
- Working hours and breaks schedule
- The order of leave's providing
- Labor protection requirements to work with Employer's equipment

Home Office - Social Security & Tax



Domestic



Social security (domestic)

The are no special aspects related to social security

An Employer shall inform an Employee on labor protection requirements when working with equipment and facilities recommended or provided by him/her. When the labor contract does not provide for such Employer's obligations, injures can be treated as a domestic accident. The allowance in this situation should be paid by the Social Protection Fund and not by an insurance organization.



Tax (domestic)

The are no special aspects related to taxation

When all employees are working remotely (at home), there is a risk that the office rent and maintenance costs will be treated as not economically justified and thus non tax-deductible for profits tax purposes

Home Office - Social Security & Tax



International



Social security (international)

The are no special aspects related to social security



Tax (international)

The are no special aspects related to taxation

Home Office - Data Protection



Data Protection

There are no special requirements related to a home office in legislation for data protection process. The general requirements to confidentiality has to be met by the Employee (for example, an access to Employee's confidential work files should be restricted for cohabitants).

The Employer shall develop additional requirements and terms to confidentiality for home office to minimize any risks of disclosure the confidential information.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- An Employee has the right to request home office but it is a subject to approval by the Employer**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if there are justified production or economic reasons (see p. 4)**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes
- No
- There are no restrictions, but it can be recognized that such work doesn't meet the principles of Belarusian labor legislation (see p. 5)**

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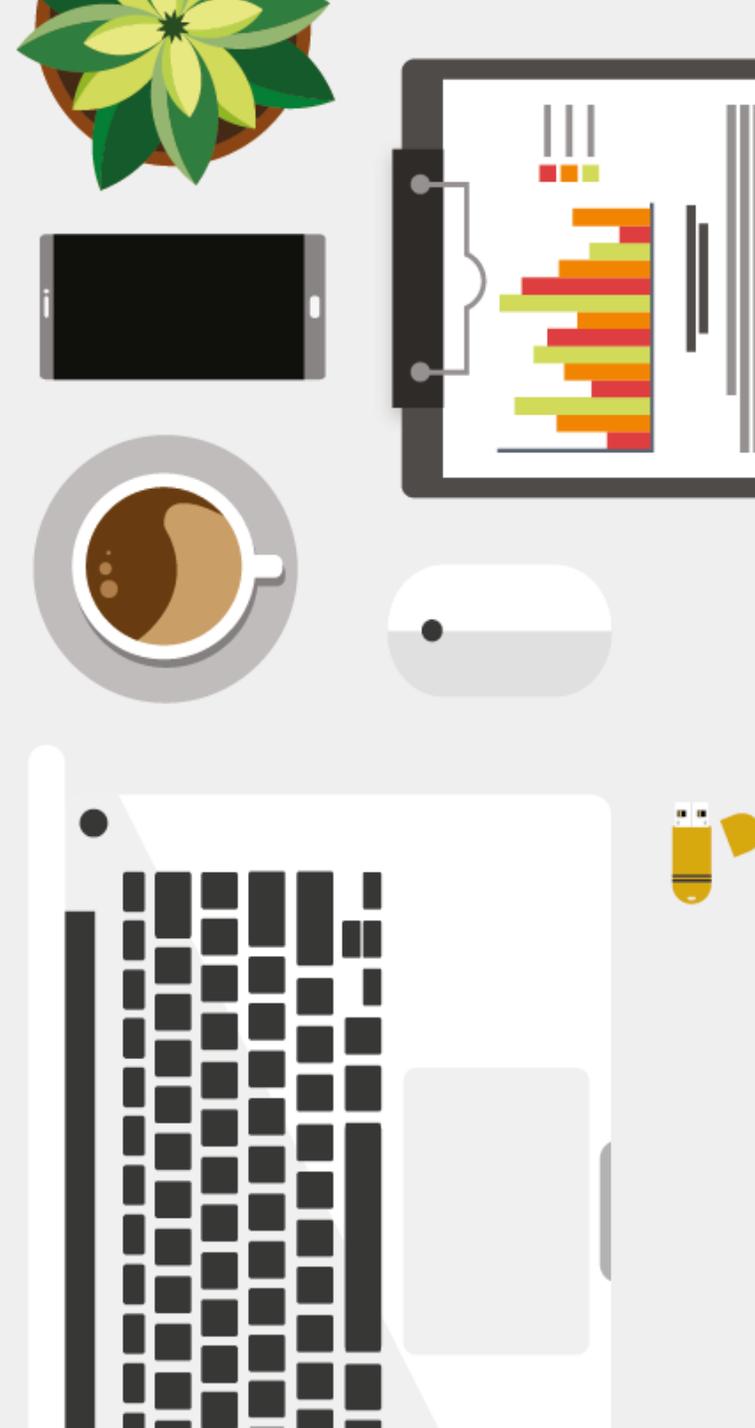
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Home Office in Belgium

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular**
- Moderate
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

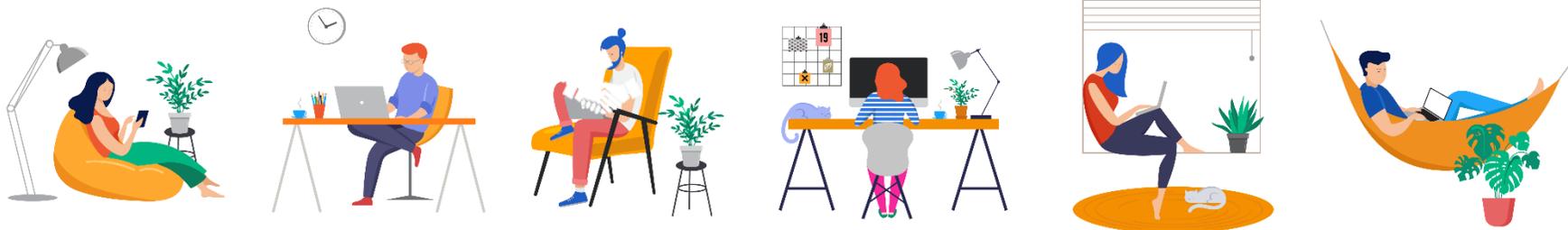
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Contract in writing (employment contract or addendum to the employment contract)
- At the latest when the home office work starts
- Mandatory provisions must be included : they vary according to the form of home office work chosen, i.e. :
 - Homeworking (governed by articles 119.1 until 119.12 of the Belgian act of 3 July 1978 regarding employment contracts) : mandatory provisions foreseen in article 119.4, 2° of the Act.
 - Structural telework – which is a form of homeworking requiring the use of information technology (governed by the collective bargaining agreement n°85 - "CBA 85") : mandatory provisions foreseen in articles 6 §2 and 6 §2bis of CBA 85.



Employee consent

- Not required **X Required** It depends

Form of consent:

Both for homeworking and structural telework, both employer and employee must give their consent by concluding a contract in writing (employment contract or addendum).

Consequences if an employee does not agree with the home office:

- Homeworking: not possible without consent.
- Structural telework: not possible without consent. Moreover, in default of agreement in writing, teleworker is entitled to work in the premises of the employer (article 6 §3 CBA 85 expressly states that).



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required **X It depends**

- Only to implement structural telework : information and consultation of the employee representatives (i.e. works councils or, in the absence thereof, trade union delegation, or, in the absence thereof, committee for prevention and protection at work) – Applicable for undertakings employing at least 50 employees on average (art. 1§1 CBA 39), possibly less insofar trade union delegates are present in the company.

Home Office - Legal Risks & Limitations



Legal risks

Homeworking:

- In accordance with Article 119.4 §2 of the Employment Contracts Act, the employment contract must contain a number of stipulations. If the employment contract does not contain these stipulations, the homeworker can terminate the employment contract, at any time, without the observance of a notice period or a severance payment.
- The employment contract or a CBA must provide the modalities of reimbursement of the costs incurred by the execution of the homeworking. Otherwise, a lump-sum equal to 10% of the gross remuneration is due by the employer on top of the normal remuneration.
- Rules regarding working time, Sunday rest, and night work are not applicable to the homeworker.

Structural telework:

- In accordance with article 6 §2 and § 2bis CBA 85, the employment contract must contain a number of stipulations. If the employment contract does not contain these stipulations, no sanction is foreseen. However, if there is no written agreement that regulates structural telework, the teleworker is also entitled to perform his work in the premises of the employer.
- Rules regarding working time, Sunday rest and night work are not applicable to the teleworker.



Legal limitations

Homeworking:

- No legal limitation (homeworking is, in principle, possible for both blue-collar and white-collar employees).

Structural telework:

- Structural telework is possible for all employees (and employers) that fall within the scope of application of CBA 85 (i.e. almost all employers of the private sector).
- Exception : structural telework is not possible for mobile employees (sales representative, home care nurses, etc).

Home Office - Duties & Rights



Employee duties and rights

Homeworking:

- The homeworker can submit a written application to his employer to obtain employment within the company. The homeworker must be given priority if the vacant job within the company is the same as the one he performs from home.
- Homeworkers are bound by the same legal conditions as regular employees regarding working time.

Structural telework:

- The teleworker enjoys the same rights in terms of working conditions as comparable employees working at the company location. However, collective and/or individual agreements may provide for conditions of employment that take account of the specific characteristics of telework.
- Within the framework of the working time applicable within the undertaking, teleworkers are free to organize their own work. They do not fall within the scope of working time regulations and are not entitled to overtime payments and/or compensatory rest.
- The teleworker has the same collective rights as the employees working at the employer's premises. They have the right to communicate with the employee representatives and vice versa.



Employer duties and rights

Homeworking:

- The employer must provide the employee with the materials and tools necessary for carrying out the work at home
- The employer must pay the salary in the agreed manner, at the agreed time and place.

Structural telework:

- The employer must provide, install and maintain the equipment required for telework. Costs of connections and communications linked to the telework are borne by the employer (an agreement must be found beforehand regarding the reimbursement of those costs).
- The employer shall inform the teleworker about the company policy on safety and health at work. In order to be able to check whether the safety and health policy is being correctly applied, the competent internal prevention service must be granted access to the teleworker's workplace.
- The employer must take measures to prevent the teleworker from becoming isolated. He must give the teleworker the opportunity to meet colleagues regularly and gain access to information about the company (in this respect, employer can occasionally recall a teleworker within the undertaking).

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office (only for telework as equipment must be provided by the employer in case of homeworking)</p> <p><input type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> Other : communication, warming, expenses linked to the loss or degradation of equipment, depreciation of equipment, etc</p> <p>→ Homeworking : arrangement to be made in employment contract (otherwise 10% of the gross salary - or more on the basis of receipts).</p> <p>→ Structural telework : reimbursement on the basis of receipts or lump sum accepted by the social security authorities : (i) 20€ net per month for the use of pc, (ii) 20€ net per month for the internet connection, and (iii) either an amount net equal to 10% of the gross remuneration linked to the telework or a monthly net lump sum of 129,48€.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>Prior to the start any form of home office work (homeworking or telework), the employer and the employee make arrangements regarding any reimbursement by the employer of the costs associated with occasional telework.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>In principle, telework is only possible in mutual consent. The employee is entitled to the reimbursement of the costs related to the use of personal equipment and costs related to the use of connections and communications (phone, internet, etc). Repayment of other costs related to home work can be agreed upon (cf column expenses). No additional compensation must be paid, but can be agreed upon.</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- Not legally required but common practice**
- Other:



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A – establishing a telework policy is not legally required.

The employees do need to be informed about certain minimum items (via the employment contract (or addendum to the employment contract) or, possibly, a telework policy. In this case the following minimum items must be included:

- the frequency of teleworking
- periods of availability and resources
- the times at which the teleworker can call on technical support
- the methods of payment or reimbursement of costs (if any)
- the conditions for a return to the company location: the duration of the telework itself
- the place(s) chosen by the teleworker to carry out his work



Customary policy elements ("best practice")

Apart from the mandatory minimum items which need to be included in either the home office policy or an employment agreement (addendum), the following elements are often included in the written documents:

- the description of the work to be carried out within the framework of telework ;
- the department of the company to which it is attached;
- the identification of his direct superior or other persons to whom he may address questions from professional or personal nature ;
- the reporting arrangements.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

- Reimbursements of costs related to home office work are exempted from social security contributions (considered as costs proper to the employer).
- Protection of the health and safety on the work place, even when working from home (e.g. in order to be able to check whether the safety and health policy is being correctly applied, the competent internal prevention service must be granted access to the teleworker's workplace).
- Telework : accidents occurring at the chosen telework location and during working hours are deemed to be occupational accidents (and thus fall within the scope of the occupational accidents insurance).



Tax (domestic)

- Reimbursements of costs related to home office work are exempted from taxes (considered as costs proper to the employer).

Home Office - Social Security & Tax



International



Social security (international)

- EU Regulation 883/04 applicable to a cross-border employment situation in the European Economic Area or Switzerland (a person shall be subject to the social security legislation of a single EU Member State only, i.e. the legislation of the Member State where an employed or self-employed activity is pursued). Exceptions hereto are the temporary assignment and the multi-state employment. An employee who is working in a cross-border situation and is performing 25% of his working time or is earning 25% of his employment income in his/her country of residence will be subject to the social security legislation of the country of residence only. If less than 25% is performed in the country of residence, the member state of the country where the employer is established is competent.
- In case of a cross-border employment outside of the European Economic Area or Switzerland, it should be analyzed whether a bilateral treaty on international social security applies.
- The EU Regulation 883/04 and most bilateral treaties foresee the totalization of insurance periods and the safeguarding of benefits of the states' social security systems (e.g. pension, health care, etc.) when working or having worked in a cross-border employment situation.
- The private work accidents insurance should be assessed in the framework of the international employment situation, in order to assure that this applies in the country of work.



Tax (international)

- Regular home office work carried out in Belgium for an employer not domiciled in Belgium could lead to a taxable permanent establishment risk for corporate income tax purposes in Belgium and possibly the obligation to apply withholding tax to the employee's salary.
- From the perspective of the employee, the personal income tax situation may change.

Home Office - Data Protection



Data Protection

GDPR

- GDPR directive applies to employers as well as to employees regardless of whether employees are employed at home, teleworking or at the employer's site.

Provisions regarding data protection are foreseen for structural telework :

- The employer must take the necessary measures to ensure the protection of data used and processed by the teleworker for professional purposes.
- The employer shall inform the teleworker on the legislation and data protection rules in force within the undertaking. In particular, he shall inform about the restrictions on the use of IT equipment or facilities and the sanctions in the event of non-compliance.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...



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Home Office in Bulgaria

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Home office work may be assigned under two options:
 - **Option 1** – by virtue of an internal order of the employer. This option may be applied during a state of emergency or epidemic emergency situation (currently until 14 June 2020).
 - **Option 2** – by virtue of an annex to the employment contract of the affected employee. This option may be applied without a deadline.

Employee consent

- Not required Required **X It depends**

Form of consent:

Employee consent is required under Option 2 only. The consent is given by signing an annex to the employment contract.

What are the consequences if an employee does not agree with the home office:

In case of lack of consent under Option 2 home office work may not be assigned. The lack of consent may not result in any negative consequences for the employee.

Involvement of third parties (authorities, trade unions, employee representations etc.)

- Not required Required **X It depends**

- Under Option 2 prior to assigning home office and if the home office work represents significant change of the work organization, the employer should perform a procedure for informing and consulting the employees' representatives.
- The above requirement is applicable in case the total number of employees in the company is no less than 50 or in case of separate company units with at least 20 employees.

Home Office - Legal Risks & Limitations



Legal risks

- All legal documents and procedures must be in place, otherwise the labour authorities may impose sanctions
- Ensuring that the employees observe the mandatory inter-daily and inter-weekly rest periods /they do not work overtime/
- Ensuring that the work place meets the requirements for provision of health and safety working conditions



Legal limitations

- As to date assigning home office work without the employees' consent may be performed only for the period until 14 June 2020

Home Office - Duties & Rights



Employee duties and rights

- Employees may organize the distribution of their working hours and may determine the inter-weekly and inter-daily rest periods
- Employees should report their working hours on a monthly basis by using a reporting form approved by the employer (unless otherwise agreed by the parties or prescribed in the employer's home office policy)
- Employees are responsible for the proper use and storage of the home office work equipment
- Employees should notify the employer immediately, in case of damage or malfunction of the home office equipment.
- Employees may request an inspection of their home by the labor authorities
- During their working hours employees may not refuse access to their home by the employer without giving grounds for refusal.



Employer duties and rights

- Employers are entitled to visit the employees' home by giving prior notice to the employees and with their consent
- Employers are responsible for ensuring health and safety working conditions in the employees' home and to familiarize the employees with all applicable requirements in this regard.
- Hardware, software and means of communication provided at the employer's expense.
- The terms for provision, use and maintenance of the equipment should be prescribed in the annex to the EC or in the employer's order.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> Other: costs for maintenance and consumables related to the home office equipment</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>The employer is not entitled to compensation.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>The employer is not entitled to compensation.</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required <input type="checkbox"/> Not legally required <input type="checkbox"/> Not legally required but common practice X Other: not legally required but it is recommendable. 	<p>There is no minimum requirement, please refer to the "Customary policy elements"</p>	<p>Usually the home office policy includes the main rights and obligations of the parties listed above, in terms of:</p> <ul style="list-style-type: none"> - H&S procedures - Equipment - Working hours and rests - Overtime restrictions - Reporting obligations - Data privacy rules - Other

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Any accident which the employee has suffered at home in the course of or in connection with the performance of his/her duties may be treated as an labour accident for which the employer may be held liable.

In case the employee is a Bulgarian national, lives in Bulgaria and works for an employer established in Bulgaria there are no specific considerations in terms of social security and health insurance.



Tax (domestic)

In case the employee is a Bulgarian national, lives in Bulgaria and works for an employer established in Bulgaria there are no specific considerations in terms of taxation.

Home Office - Social Security & Tax



International



Social security (international)

Any accident which an employee has suffered at home in the course of or in connection with the performance of his/her duties may be treated as an labour accident for which the employer may be held liable.

Performing home office work in Bulgaria by an employee who is a foreign national and works for an employer established outside of Bulgaria may have different social security and health insurance effects – e.g. the employee may become subject to social security and health insurance in Bulgaria, the employer may be obligated to register as an insurer in Bulgaria. The specific effects may vary and should be determined on a case-by-case basis.



Tax (international)

Performing home office work in Bulgaria by an employee working for an employer established outside of the country may have different implications in terms of taxation.

In some cases depending on the nature of the work performed by the employee such scenario may trigger a PE risk for the employer. Another risk to consider is that the employee's income may become taxable in Bulgaria which may lead to double taxation of that income.

Home Office - Data Protection



Data Protection

The employer is obligated to implement the necessary measures to ensure protection of all company data as well as the personal data of the employees.

Such measures may include, but not be limited to: providing a secure VPN connection, imposing restrictions on disclosure of the data by the employees, imposing of obligation for the employees to safeguard all devices containing company or personal data (laptops, USB flash drives, company mobile phones, etc.) and prevent their access by third parties.

The employees are obligated to abide by all data protection measures implemented by the employer.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only for the period of a state of emergency or an epidemic emergency situation (currently until 14 June 2020)**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...



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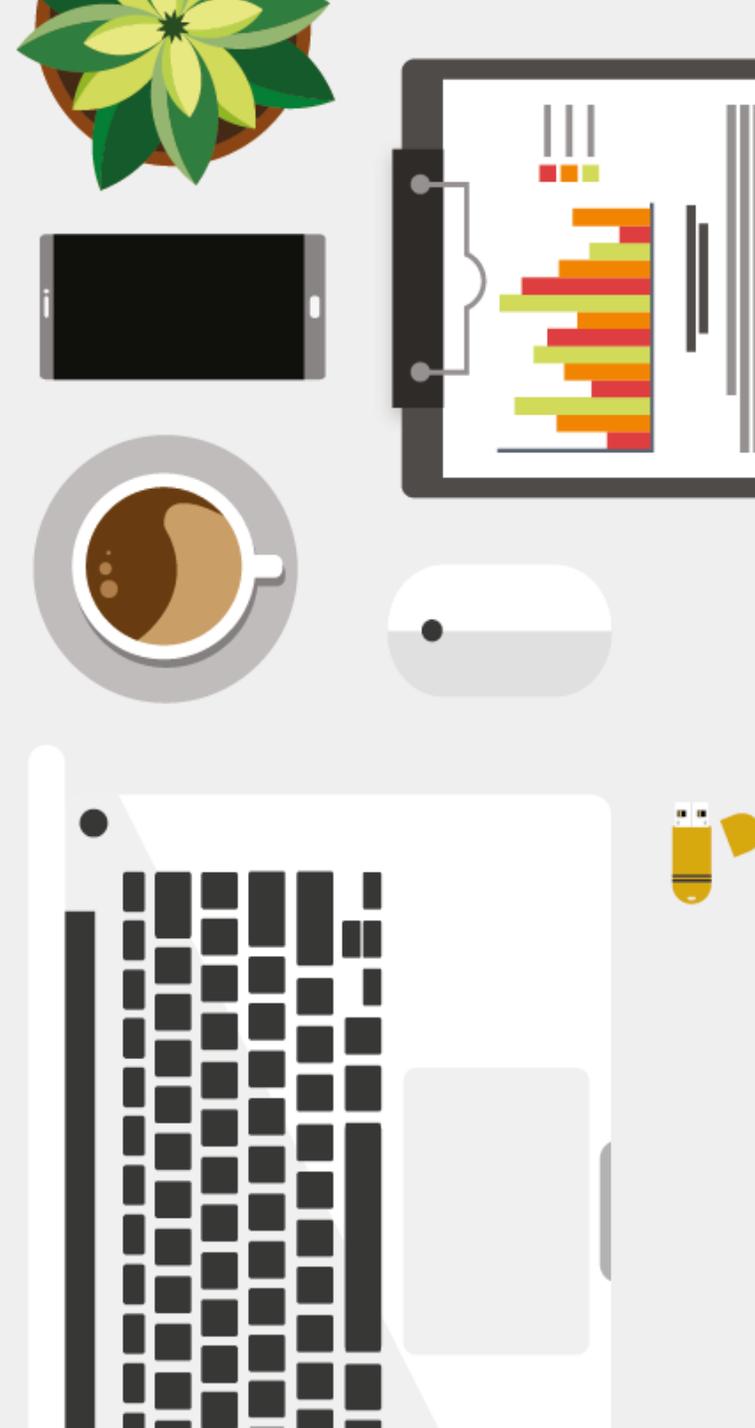
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Home Office in Canada

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Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other

Home Office - Legal Requirements



 **Mandatory legal requirements**

Compliance with:

- Occupational health and safety legislation and employer obligations to minimize and address workplace risks
- Human rights and accommodation laws and the requirement for employers to accommodate, to the point of undue hardship, employees who experience protected grounds
- Privacy and data protection laws, and ensuring that personal or confidential information collected, used or disclosed from home is done so with the requisite consent and is adequately secured

 **Employee consent**

Not required Required **X It depends**

- Written consent is not mandatory but is recommended
- For short periods of time, written notice of remote work expectations is likely sufficient
- More permanent remote working requirements may be considered a material change in the employment contract and so risks constructive dismissal claims. Employers should therefore consider amending employment agreements so that employees acknowledge and agree to remote working expectations
- If an employee refuses to comply with reasonable remote work requirements, the employer may implement progressive discipline

 **Involvement of third parties**
(authorities, trade unions, employee representations etc.)

Not required Required **X It depends**

- Where a union agreement exists, the terms will have to be carefully reviewed and negotiations may be required
- Insurance companies may have their own list of requirements in order to maintain coverage for employees working from home. Any specific requirements imposed by provincial workplace insurance bodies are also to be considered
- Occupational health and safety committees may need to be engaged to review risks and mitigation of home offices
- Occupational health and safety laws, and human rights legislation, may require the engagement of third party experts – for example, ergonomists

Home Office - Legal Risks & Limitations



Legal risks

- Difficulty tracking employees hours of work, break periods, vacation days and overtime hours (among other things) for the purpose of minimum employment standards legislation compliance
- Challenges in ensuring that the home office complies with occupation health and safety laws and does not impose particular risk to employee safety and wellbeing
- Difficulty ensuring that employees maintain legislative and policy-driven data privacy and protection schemes
- Home offices may pose occupational health and safety violations that are difficult to control
- “Workplace” injuries and provincial workplace benefit insurance coverage



Legal limitations

- Employment standards legislation does not specify any maximum work from home hours. However, usual restrictions around hours of work and rest periods apply

Home Office - Duties & Rights



Employee duties and rights

- Right to a safe workplace
- Duty to report unsafe workplace conditions to employer
- Rights under employment standards legislation with respect to hours of work, periods of rest, overtime etc.
- Right to accommodation of grounds protected under human rights legislation, including to ensure – to the point of undue hardship – that accommodations provided to the employee at the office are also provide at home
- Right to certain tax breaks for home offices



Employer duties and rights

- Right to impose health and safety restrictions to ensure the health and safety of all workers, which can include the requirement for remote work
- Right to discipline employees for failing to comply with reasonably imposed health and safety restrictions
- Duty to identify and eliminate workplace health and risks
- Duty to accommodate employees protected under human rights legislation, including within a home office

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No</p> <p>a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required <input type="checkbox"/> Not legally required <input checked="" type="checkbox"/> Not legally required but common practice 	<p>The following are the minimum items to be covered by a home office Policy:</p> <p>N/A</p>	<ul style="list-style-type: none"> - Core hours of work and how hours will be tracked/managed - Breaks - Overtime - Performance Monitoring and Management - Discipline - Vacation - Leaves - Reinstatement to the office location - Privacy requirements - Data storage - Available workplace accommodations for employees protected under human rights legislation

Home Office - Social Security & Tax



Domestic



CPP and EI

Canada Pension Plan contributions are required to be deducted from an individual's remuneration if the individual is employed in Canada, aged between age 17 and 71, and receiving pensionable earnings. The employer is responsible for withholding and remitting the individual portion and a matching employer portion to the CRA, or to the MRQ in regards to QPP contributions.

If an individual is self-employed or is an independent contractor, they will be required to make these deductions personally

The maximum employer and employee contributions to the CPP for 2019 are each CAD2,749. Individuals residing in Québec contribute to the Québec Pension Plan (QPP) instead of the CPP program. The maximum employer and employee contributions to the QPP for 2019 are each CAD2,991.

Employment Insurance is a federal payroll tax required to be deducted from an individual's remuneration if the individual is employed in Canada and is receiving insurable employment earnings. There is no age limit for deducting EI premiums. Like the CPP contribution, the employer is responsible for withholding and remitting the individual's portion as well as remitting the employer portion (1.4 times the individual contribution) to the tax authorities. The maximum employee contribution for 2019 is CAD860 and the corresponding maximum employer contribution is CAD1,204.



Tax (domestic)

Under the Income Tax Act, employees who are required to pay for employment expenses, including those for a home office, that are not reimbursed by their employer may be able to claim a deduction on their return for such expenses.

For a valid claim, employees must generally obtain a properly completed and signed Canada Revenue Agency Form T2200, Declaration of Conditions of Employment. To be entitled to deduct home-office expenses, an employee must be "required by the contract of employment" to maintain such an office, as certified by the employer on the T2200. The space must also be either where she "principally" (more than 50 per cent of the time) performs her duties of employment or be used exclusively to meet customers on a regular and continuous basis in the course of employment.

Assuming an employee does qualify to write off home expenses, they would be able to deduct a variety of expenses, such as the cost of electricity, heating and maintenance, but you can't deduct mortgage interest, property taxes, home insurance or capital expenses or depreciation (capital cost allowance)

Home Office - Data Protection



Data Protection

Work From Home arrangements should consider the following when it comes to data protection:

- Whether employees are permitted to store secure company information on personal devices and employee networks, consider requiring all employees to store all work related documents on company networks to ensure security and document management.
- Use of personal Wi-Fi networks that are secured and password protected to help guard against external interference and risks to company property. Password and encryption requirements on phones, laptops, mass storage devices and other devices, whether company owned or personal
- Consider refreshing employees on technology use policies, including appropriate use and KPMG’s rights with respect to device monitoring
- Consider whether employees are allowed to take home company documents or other property
- Assess equipment “must haves” and “nice to haves”: this may vary by role
- Consider home office-specific data protection policies

Legislation:

- The Federal private sector law, PIPEDA, governs the interprovincial and international collection, use and disclosure of personal information. It applies to personal information (including employee information) held by federally regulated businesses, such as banks, airlines, railways, telecommunications companies and internet service providers, across the country.
- PIPEDA also applies generally to personal information (excluding employee information) that is collected, used and disclosed by organizations in the course of a commercial activity which takes place within a province that does not otherwise have “substantially similar” legislation.
- The private sector privacy statutes in Alberta, British Columbia and Québec have each been deemed “substantially similar” to PIPEDA and, PIPEDA will not apply to commercial organizations operating within those jurisdictions, other than federally-regulated businesses.
- The health privacy statutes in Ontario, New Brunswick, Newfoundland & Labrador and Nova Scotia have been deemed substantially similar to PIPEDA, and PIPEDA does not apply in respect of private health providers operating within those jurisdictions but continues to apply to other commercial activity therein.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- X To be entitled to deduct home-office expenses, an employee must be “required by the contract of employment” to maintain such an office, as certified by the employer on the T2200.**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- X Only if employers have a right to ask employees to stay home from work if they meet the publicly available risk criteria—i.e., they have symptoms of COVID-19. Employers must ensure they are not basing requests to stay home on legally-prohibited discriminatory grounds—for example, ethnicity or place of origin.**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes
- No
- X There are not legislative prohibitions in Canada from hiring an individual to work full-time from a home office.**

Home office cross-border

Would home office be possible for employees living abroad?

- Yes
- No
- X This may result in income tax issues for the employee in question as they would be earning income from one jurisdiction but living in another**

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Home Office in Chile

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

<p>How popular is home office work among employees in general?</p>	<ul style="list-style-type: none"><input checked="" type="checkbox"/> (Very) popular<input type="checkbox"/> Moderate<input type="checkbox"/> Unpopular
---	--

Trend towards home office

<p>Going forward, will home office work be key for an employer to be attractive / competitive?</p>	<ul style="list-style-type: none"><input type="checkbox"/> Yes<input checked="" type="checkbox"/> Possibly / not clear yet<input type="checkbox"/> No
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Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

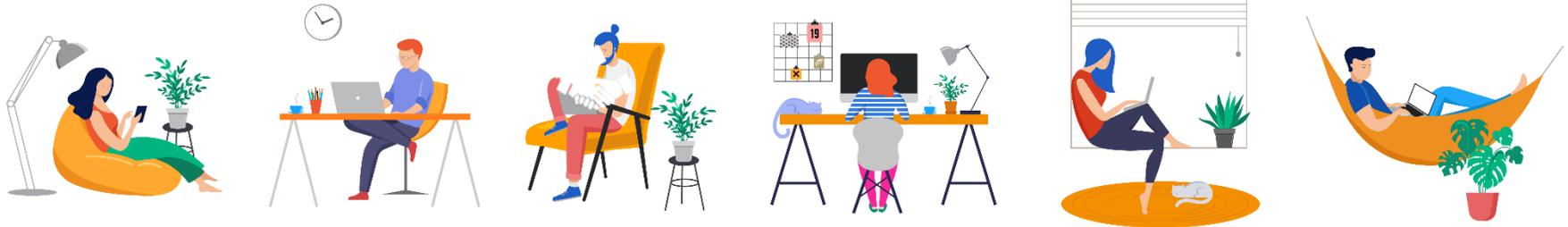
How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward
- Medium impact**
- No particular impact
- Other:

Home Office - Legal Requirements



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Mandatory legal requirements

- Home office must be agreed upon in employment contract or addendum
- The parties must indicate whether home office is applied on a total or partial basis.
- Place or places from where the employee would be rendering services from and in case services can be provided from different locations, it can be agreed that the employee can freely choose from where the services shall be rendered.
- Duration of the home office regime (fixed or indefinite)
- Control mechanism
- Workday schedule: if the employee is subject to workday schedule, the daily hours must be stipulated (maximum 45 on a weekly basis). Also, the parties can agree that the employee is entitled to distribute the schedule at his/her convenience. Alternatively, the employee can be free from workday schedule in certain cases.
- A minimum 12 hours in any 24 hour period must be stipulated in the employment contract.



Employee consent

- Not required **Required** It depends
- Form of consent: addendum of the employment contract duly signed by the employee.
 - What are the consequences if an employee does not agree with the home office:
 - If the employee does not agree with providing services under a home office regime the employer should make available the office or corresponding facilities for him/her to provide services.
 - Employer cannot impose home office without consent of the employee.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required** Required It depends

Home Office - Legal Risks & Limitations



Legal risks

- Legal risks could be mostly related to workday schedule, as it could be difficult to control its compliance without controlling the employees' log in and log off time.
- From a data protection perspective, consent of the employee for sharing his/her personal information if required should be in place.



Legal limitations

- The employees' working from home are entitled to a minimum 12 hours of "disconnection time" in any 24 hour period.
- If home office was agreed upon in the employment contract, and afterwards the parties intend to change this regime, they must sign an addendum.
- If it was agreed during the labor relationship then the parties must give a 30 day notice to go back to the original modality of services provision.

Home Office - Duties & Rights



Employee duties and rights

- Working from home cannot imply an impairment for the employee especially regarding the remuneration.
- Employees working from home have the same labor individual and collective rights as any employee.



Employer duties and rights

- The currently enacted “teleworking” law provides that the employer must comply with general rules of hygiene and safety regarding the employee.
- For these purposes the employer must inform the employee of the hygiene and safety conditions he/she must comply with when working from home.
- Must inform in writing of the risks that his/her employment tasks may carry, preventive measures and appropriate work means.
- Prior home office is implemented, employer must train the employee regarding the health and safety measures, either directly or through the work accidents and professional diseases’ insurance administrator.
- Employers can also request to the above mentioned entity to verify on site whether the employees’ work space complies with all safety and health conditions required in applicable ruling.
- The Labor authority can control the compliance of applicable labor regulations in the employees’ work space, prior consent of them.
- From a collective labor perspective, the employer must inform the employees working from home of the company’s active unions, or notify when a union is constituted.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>If stipulated in the employment contract as a telework modality, the employer would be liable for compensating potential additional expenses the employee may incur in. However it is very likely that in this scenario ordinary allowances cover eventual expenses.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>Employees are entitled to access the companys' facilities anytime. If the employer needs the employee back at the work location when working from home, all transportation expenses must be covered by the employer.</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- Not legally required but common practice
- Other: Not legally required but a practice that is extending mainly to shorten the week.**



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A



Customary policy elements ("best practice")

- Some companies are implementing home office on Fridays or Mondays, so that employees can seize a longer weekend.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

There are no specific rules, therefore it should be understood that ordinary social security contributions are applicable, which are the ones indicated below:

- Pension 10% on monthly remunerations capped in around USD 3,000
- Health 7% on monthly remunerations capped in around USD 3,000
- Unemployment 0.6% on monthly remunerations capped in around USD 4,200.

Employer borne contributions are calculated over the same caps above indicated considering the following rates:

- Death and disability insurance: 1.53%
- Work accidents: 0.90% basic rate
- Unemployment 2.4%



Tax (domestic)

Remunerations received for working from home would be subject to employment tax in accordance to general rules. Employment tax is levied on monthly remunerations in progressive brackets ranging from % to 40%.

Home Office - Social Security & Tax



International



Social security (international)

- Foreign employees working in Chile can be exempted from contributing to the Chilean social security system provided the following requirements are met:
- They are professionals or technicians
- They remain affiliated and contributing to a foreign social security system that provides coverage in the contingencies of death, old age, disability and disease
- They manifest their will in this sense in the employment contract or addendum.

- Please note this applied on a general basis, regardless the modality under which the services are provided.



Tax (international)

From a Chilean perspective, it could be understood that home office should not trigger a PE as for these purposes the main consideration would be the entitlement to close businesses on behalf of the employer company. Thus, a PE should be triggered whenever this requirement concurs, regardless the modality the employee is rendering services under.

Home Office - Data Protection



Data Protection

- In Chile, Data protection is a constitutional right, thus from a Labor perspective, data protection has the rank of a fundamental right for the employees.
- Therefore, any violations to the data protection act, i.e. using employees' information without consent, would entitle them to claim before the Labor courts the employers' breach, risking a sanction indemnity from 6 to 11 remunerations.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

Contacts



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Home Office in Croatia

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

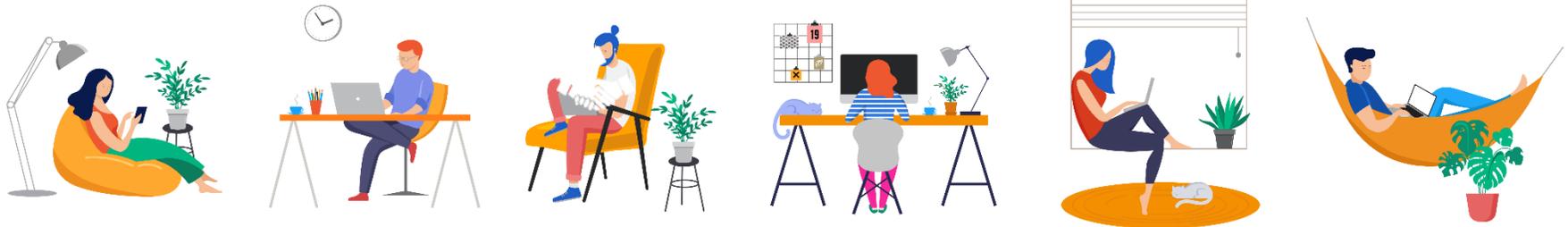
- Simple
- Moderate
- Burdensome**

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that many more companies will introduce home office going forward**
- Medium impact
- No particular impact

Home Office - Legal Requirements



Mandatory legal requirements

The Employment Contract, based on which an employee works from home (regardless of whether only one day per week or more), must contain additional elements prescribed by the Croatian Labour Law (**CLL**), as follows:

- working hours
- machines, equipment and tools that the employer must provide and maintain
- compensation to be paid to the employee for use of the employee's own machines, tools and equipment
- compensation for other costs incurred by the employee
- manner of the employee's professional training

The above elements may be incorporated in the Employment Contract by reference to the employer's internal by-law (if the employer has an internal by-law).

The employer is responsible for safety at work.



Employee consent

- Not required **X Required** It depends

An employee's place of work is a mandatory provision of an Employment Contract. If the parties agree that the employee would work from home, this must be regulated in the Employment Contract (or an annex thereto), which is possible only if both parties agree to the same.

If an employee who has been working from the employer's premises does not agree with the employer's proposal to work from home, the employer may have an option to terminate the Employment Contract due to business reasons, provided that the legally prescribed requirements are met (otherwise, the employer would be exposed to the risk of wrongful termination claims).

An employee could refuse to work from home if safety at work requirements are not met, and such a refusal must not have any adverse implications for the employee.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required **X It depends**

An employer that has at least 20 employees must render an internal by-law setting out *inter alia* the manner of work organization at the level of the employer, as well as other matters relevant for employees. If the employees have established an employees' council or there is a union representative at the level of the employer, the employer must consult with the employees' council / union representative prior to rendering such an internal by-law.

In relation to safety at work, there may be a need for involvement of a safety at work expert in order to train the employee to work in a safe manner, to examine whether the employee's work place at home is safe, and, if necessary, to update the employer's safety at work risk assessment.

Home Office - Legal Risks & Limitations



Legal risks

To avoid any negative implications (such as fines from the state authorities or employee claims), employers intending to agree with an employee home office should ensure that:

- The Employment Contract has the mandatory content prescribed by the CLL
- Clear rules on how the employee's work will be supervised are set
- Any privacy / personal data protection aspects are considered in advance
- Safety at work legislation has been complied with.



Legal limitations

According to the CLL:

- The salary of an employee working from home must not be lower than the salary of those employees who perform the same or similar type of work at the employer's premises
- Working from home must not be agreed for work where special working conditions apply, in accordance with the relevant legislation (e.g. work with heavy machinery or work where the employee is exposed to harmful effects)
- The workload and deadlines for completion of work tasks must not be determined in the manner that violates the employee's right to daily, weekly and annual vacation.

There is no legal limitation in relation to the maximum percentage of regular work time that can be worked from home. In practice, most employers that allow employees to work from home allow it for one day per week.

Home Office - Duties & Rights



Employee duties and rights

The CLL does not prescribe any duties of employees who work from home which would be in addition to or different from the duties of those employees who work from the employer's premises.

Should an employer wish to introduce any additional duties of employees who work from home, this may be done through the employees' Employment Contracts or through the employer's internal by-law.



Employer duties and rights

In general, an employer must ensure safe working conditions, while an employee must comply with all safety and health measures prescribed by safety at work legislation.

The Croatian Ministry of Labour rendered an opinion on the application of safety at work legislation to employees who work from home during the COVID-19 epidemic which recognized that the employee's home is not a place primarily intended for work, as a result of which the safety at work regulations would apply only to the extent possible, making sure that the employee's health and safety are protected.

However, under "normal" circumstances, the Croatian safety at work legislation does not make a difference between work taking place at an employer's premises and work taking place at an employee's home, nor does it explicitly provide for any exceptions from the general safety at work legislation in relation to employees who work from home. As a result, compliance with the safety at work obligations may constitute an administrative burden for employers. The main areas that need to be considered are the following:

- Safety at work risk assessment – as of January 2020, an employer is no longer obliged to update its safety at work risk assessment in relation to an employee who would occasionally work from home provided that (i) such an employee usually works at the employer's premises and (ii) the type of work performed has been categorized as low risk.
- Training the employee to work from home in a safe manner
- Examining the work environment, i.e., the employee's home
- Work related injuries

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>As noted earlier, the salary of an employee working from home must not be lower than the salary of those employees who perform the same or similar type of work at the employer's premises.</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The Employment Contract must specify whether the employee will use his/her own machines, tools and equipment and, if so, how the employee will be compensated for their use.</p> <p>Furthermore, the Employment Contract must contain a provision on how the employee will be compensated for other costs incurred in relation to the work performed (e.g. Internet, electricity, telephone and similar).</p> <p>Working from home may also affect the employee's entitlement to the reimbursement of transportation costs, if applicable.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to pay any additional compensation?</p> <p>The Employment Contract must regulate how the employee will be compensated for the costs incurred in relation to work performed from home.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to pay any additional compensation?</p> <p>Same as under point a) above, because it does not make a difference whether work from home was based on the initiative of the employer or the employee.</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<p>X Legally required</p> <ul style="list-style-type: none"> <input type="checkbox"/> Not legally required <input type="checkbox"/> Not legally required but common practice <p>As noted earlier, an employer that has at least 20 employees must render an internal by-law setting out <i>inter alia</i> the manner of work organization at the level of the employer, as well as other matters relevant for the employees.</p> <p>If the employees have established an employees' council or there is a union representative at the level of the employer, the employer must consult with the employees' council / union representative prior to rendering such an internal by-law.</p> <p>If there is no obligation to consult with the employees council / union representative (i.e. they do not exist at the level of the employer), defining duties and rights in an internal by-law may be beneficial as it allows the employer to amend the same unilaterally, as opposed to amendments to the Employment Contract, where both parties must agree to the same.</p>	<p>N/A</p>	<p>In practice, the elements that can be included in the internal by-law related to working from home are the following:</p> <ul style="list-style-type: none"> – Determining the compensations payable to the employee (e.g. for use of own equipment, own electricity, Internet and other costs) – Specific procedure for approval and reimbursement of certain costs (e.g. those exceeding a certain amount) – Use of employer's bank cards – The manner in which the employee would be supervised (e.g. by whom, how, when, how will the work be evaluated) – Training and education – Personal data aspects – Information security aspects (use of IT equipment and confidential data) – Safety at work aspects – Disciplinary actions

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Social security legislation in Croatia does not provide for specific obligations for home office. Therefore, if home office is implemented, there would be no additional obligations for the employer, that is, a different calculation for accident and health insurance obligations to the rules currently applied for employees who work at the employer's premises or other places as instructed by the employer.



Tax (domestic)

No tax issues or application of a different tax treatment for either an employer or an employee have been identified as a result of the implementation of home office.

International



Social security (international)

No additional social security obligations as a result of the implementation of home office have been identified for either an employer or an employee.



Tax (international)

If an employee works from home office in Croatia for a foreign employer, the home office could, depending on the duration of usage and other factors, be considered a fixed place of business and thus result in a Permanent Establishment (PE) risk for the foreign employer. In such a case, the PE risk should be properly evaluated on a case by case basis.

Currently, there is no practice or guidance issued by the Croatian Tax Authorities in relation to this topic.

Home Office - Data Protection



Data Protection

- To comply with the GDPR principle of accountability, every employer should have in place internal policies that address the organizational and technical measures for protection of personal data (including personal data contained in IT equipment, or working papers). Consideration must also be given to information security aspects.
- An employer's obligations towards an employee who works from home office related to data protection (e.g. information obligations, exercise of data subject's rights) are the same as for those employees who work at the employer's premises.
- Should an employer wish to introduce a tool that allows the employer to oversee the manner in which work is being performed by an employee (e.g. checking the employee's location, checking whether the employee is online, etc.), the employer would need to conduct a **data protection impact assessment (DPIA)** prior to introducing the same, in line with the GDPR requirements. This is also in line with the decision published by the Croatian Personal Data Protection Agency, requiring that a DPIA be conducted *inter alia* for the following data processing activities:
 - ✓ Processing of personal data in the manner which includes tracking of an individual's location or behavior through a systematic processing of communication data (metadata) originating from the use by the individual of a phone, Internet, or other communication channels such as GSM, GPS, Wi-Fi, tracking or processing of location data;
 - ✓ Processing of employees' personal data through the use of applications and tracking systems (e.g. such as processing of personal data for the purpose of tracking work, location, communication and similar).
- In addition, we note that an employer must obtain **prior approval from an employees' council or a union representative** (provided that they exist at the level of the respective employer) in matters related to collecting, processing, use and delivery of employees' personal data to third parties, such as introduction of a surveillance tool.
- The use of a surveillance tool would have to be regulated through an **internal by-law**, and the employee would have to be informed about its use in a **transparent manner** before the processing starts.

Home Office - Frequent Legal Questions



Employee right to claim home office

Does the employee have the right to claim home office?

- Yes
- No (unless specifically agreed)**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only under exceptional circumstances (such as COVID-19 epidemic) if this is needed to protect the employee's health and safety**

Full-time home office

Is it possible to hire employees to work at home office full-time?

- Yes**
- No

Home office cross-border

Would home office be possible for employees living abroad?

- Yes
- No
- It depends on the legislation applicable to the employment relationship**

Contacts



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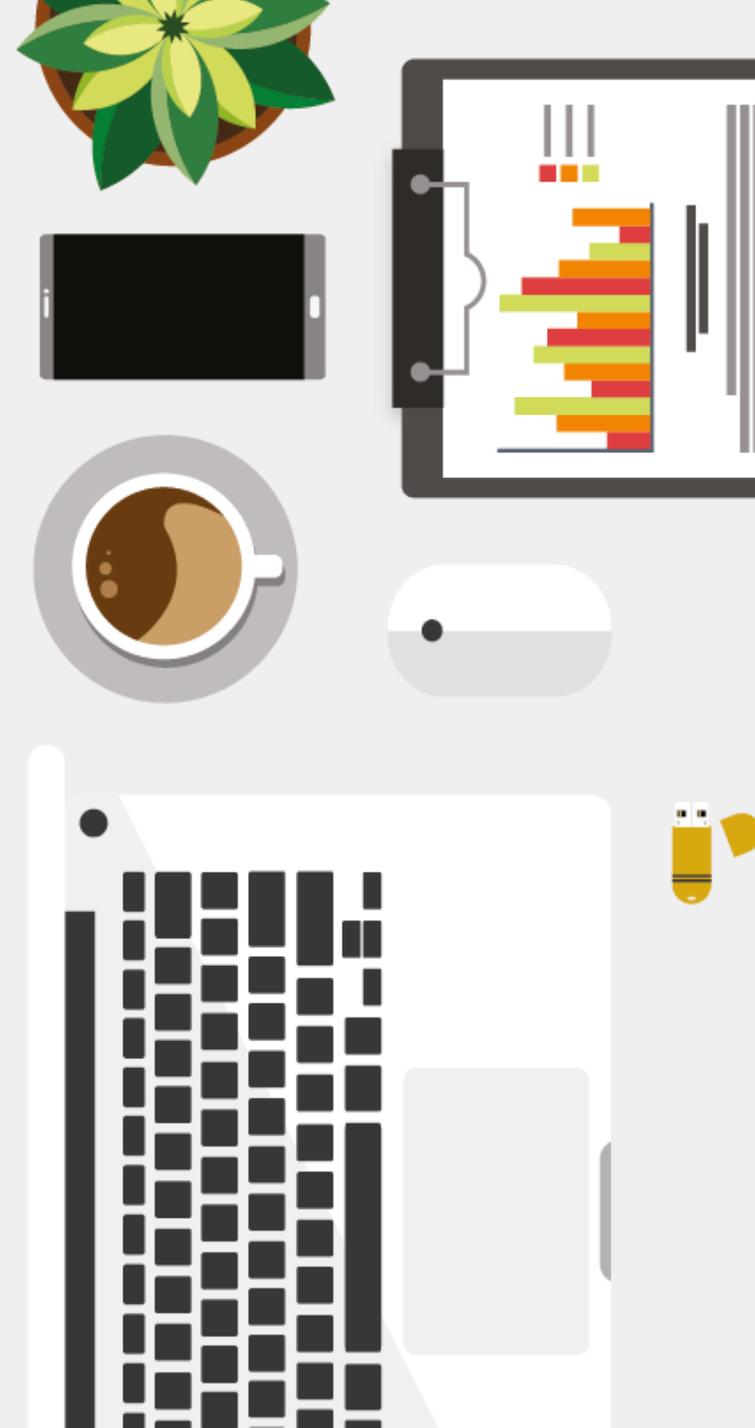
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Home Office in the Czech Republic

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular**
- Moderate
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

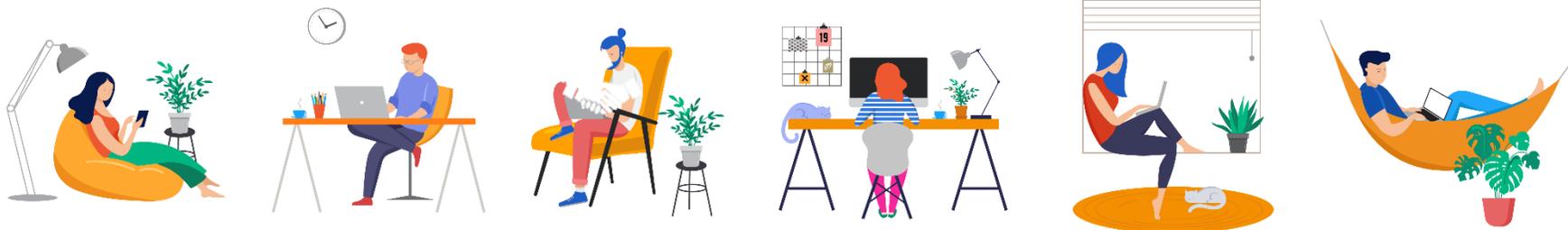
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Home office is possible only on the basis of an agreement between the employer and the employee (it does not have to be in written form, but it is recommended)
- There are no other direct mandatory legal requirements



Employee consent

Not required **Required** It depends

- Form of consent:

The employee must agree with working from home.

- What are the consequences if an employee does not agree with the home office:

The employee cannot be forced to work from home.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required Required It depends

- Generally, no third party involvement is required, however, to comply with the general occupational health and safety regulations, consultation with the OHS provider is recommended.

Home Office - Legal Risks & Limitations



Legal risks

- The legal regulation of home office is very concise in the Czech Labour law regulations. The Czech Labour Code only contains one provision dealing with home office and the provision only addresses the situation when the employee working from home is scheduling his/her working hours by himself/herself (which is not very usual). The Czech Labour Code is not specifically taking into account any other possible forms of the home office.
- Given the above, it is highly recommended for the employers to implement their own home office regulations or guidelines and to conclude detailed agreements with the employees.
- Especially the following topics should be addressed:
 - Occupational health and safety protection at the home workplace;
 - Reimbursement of costs incurred by the employee in connection with working from home;
 - Working hours limitations (to avoid unexpected costs in connection with overtime or working during night, weekend or public holiday);
 - The manner of assigning work to the employee;
 - Overtaking and checking of the employee's work;
 - Security of data transfers.
- As to the occupational health and safety protection, it is vital to bear in mind that the employer is obliged to ensure the employee's safety during the performance of work regardless of the fact that the employee is working from home and out of the direct control of the employer. The employer is liable for any accident at work, even if it happened during the home office of the employee.



Legal limitations

- There are no direct legal limitations in respect of working from home.

Home Office - Duties & Rights



Employee duties and rights

- The Czech law does not establish any specific duties or rights with respect to the home office that would go beyond the generally applicable duties and rights.
- There are only certain differences in respect of the employees that work from home and schedule their working hours on their own. These employees are not subject to the regulation of working hours scheduling or on delays or interruption of work caused by unfavourable weather conditions, they are not entitled to salary compensation or compensatory time off for overtime work, work during a holiday or for majority of the important personal impediments to work.



Employer duties and rights

- The Czech law does not establish any specific duties or rights with respect to home office that would go beyond the generally applicable duties and rights.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> Other: The employer is generally obliged to reimburse the employee for all costs the employee incurred in connection with working from home. However, there is no specific regulation that would provide more detail. It is not unusual that the employees do not ask for the compensation and it is not provided, however, such practice is not in compliance with law.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>The employer must pay all the expenses incurred by the employee in connection therewith. However, in practice, the compensation is often not provided in these cases.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>The employer must pay all the expenses incurred by the employee in connection therewith.</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- X Not legally required but common practice**
- Other:



Mandatory policy elements

There are no mandatory elements of a home office policy.



Customary policy elements ("best practice")

- General home office rules applicable to all the respective employees.
- Occupational health and safety protection rules.
- The manner of checking the working tasks performed by the employees while working at home.
- Working hours rules.
- Data security.

Domestic



Social security and health insurance (domestic)

There is no special regulation compared to the employees working from the employer's workplace.



Tax (domestic)

There is no special regulation compared to the employees working from the employer's workplace.

Home Office - Social Security & Tax



Social security (international)

If an employee of a Czech company is working from his/her home outside the Czech Republic or if an employee of a foreign employer is working from his/her home located in the Czech Republic, it is always necessary to consider the EU Social security regulations as well as any bilateral agreements concluded between the Czech Republic and the other state, if any, to correctly determine in which state the employee should be socially and health insured and what obligations may arise for the employer and/or the employee in the state of social security and health insurance.



Tax (international)

If an employee of a Czech company is working from his/her home outside the Czech Republic or if an employee of a foreign employer is working from his/her home located in the Czech Republic, it is always necessary to consider the income tax obligations that may arise in the state of the employee's home (e.g. risk of creation of permanent establishment, payroll tax obligations, obligation to file a personal income tax return, etc.).

Home Office - Data Protection



Data Protection

The data protection regime of the employees working from home is the same as the data protection regime of other employees. All GDPR principles and rules must be obeyed. The Czech Data Protection Authority recently informed that employers and employees must take extra care when the work is carried out remotely as the data transfers between them are subject to greater risks than if the employees work from the employer's workplace.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office	<input type="checkbox"/> Yes
	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?	<input type="checkbox"/> Yes
	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?	<input checked="" type="checkbox"/> Yes
	<input type="checkbox"/> No
	<input type="checkbox"/> Only if ...

Home office cross-border

Would home office be possible for employees living abroad?	<input checked="" type="checkbox"/> Yes
	<input type="checkbox"/> No
	<input type="checkbox"/> Only if...

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Home Office in Dominican Republic

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular**
- Moderate
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

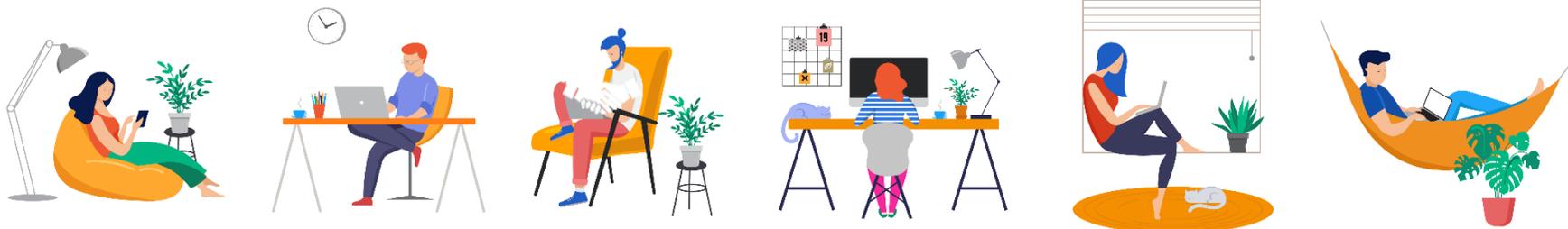
- Simple**
- Moderate
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office – Legal Requirements



Mandatory legal requirements

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.



Employee consent

X Not required Required It depends

Form of consent:

N/A

What are the consequences if an employee does not agree with the home office:

Should the employee not agree with home office, it may constitute a fair cause for dismissal.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

X Not required Required It depends

Home Office - Legal Risks & Limitations



Legal risks

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.



Legal limitations

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.

Home Office - Duties & Rights



Employee duties and rights

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.



Employer duties and rights

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>N/A</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>N/A</p>

Home Office - Policy



Policy Requirement

- Legally required
- X Not legally required**
- Not legally required but common practice
- Other:

Mandatory policy elements

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.

Customary policy elements ("best practice")

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.



Tax (domestic)

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.

Home Office - Social Security & Tax



International



Social security (international)

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.



Tax (international)

- Home office is not currently subject to Dominican Law regulation. However, a bill was recently introduced in the Dominican Congress, aiming to set forth a home office regulation.

Home Office - Data Protection



Data Protection

In order to guarantee data protection concerning home office, our risk management department has implemented a Security Policy for the KPMG Personnel, regarding the management and usage of KPMG's information and databases; which is in accordance with both, Dominican and international laws and regulations on Data Protection (e.g. the General Data Protection Regulation).

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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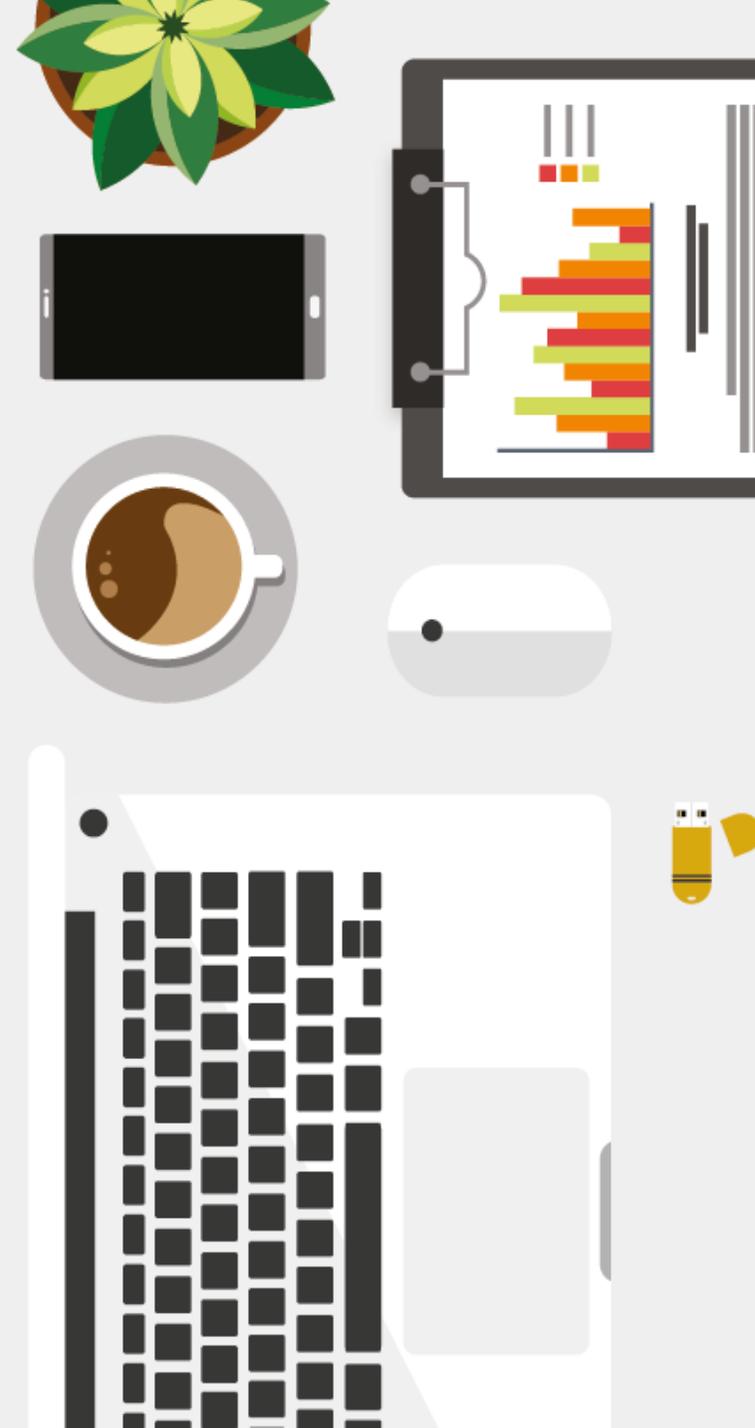
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Home Office in Estonia

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

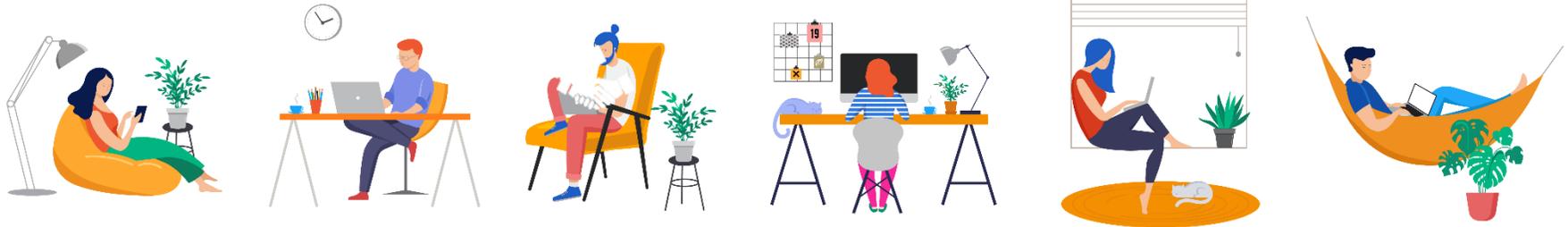
- Simple**
- Moderate
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Agreement between employer and employee (with exceptions).
- The employer must ensure the occupational health and safety of the teleworker.



Employee consent

- Not required Required It depends

Form of consent:

Generally working in a home office is agreed upon in the employment contract which is concluded in written form

What are the consequences if an employee does not agree with the home office:

Generally the employer must then enable working at the office. However in the situation of force majeure employee is obligated to follow the instructions of the employer and work from home if it is necessary to meet the requirements of the extraordinary situation.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required It depends

Home Office - Legal Risks & Limitations



Legal risks

- The employer may not be able to assess the risks of the employee's working environment and therefore there is a risk that the employer shall be responsible for workplace accident or development of occupational disease.



Legal limitations

- Teleworking can not be performed in case the working environment requires special requirements (e.g., forced ventilation, noise insulation).

Home Office - Duties & Rights



Employee duties and rights

- The employee must comply with the requirements of the employer to create a safe teleworking environment and must help the employer to identify the hazards in the teleworking environment.
- The employee must inform the employer of any change in working conditions related to telework.
- The employee shall be entitled to claim that the expenses related to work in the home office (e.g internet connection for work, office supplies) shall be compensated.



Employer duties and rights

- The employer is responsible for the occupational health and safety of the teleworker.
- Employer must instruct the employee on the dangers of the teleworking environment; the health effects of the hazards; the measures to prevent damage to health.
- The employer must compensate the costs related to work.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> Other: Any of the above costs may be compensated, but the use of the internet and office equipment is most common. Please note though that if the employee uses internet/office equipment etc. also for personal use, the employer can compensate the costs (as business-related expense) in proportion in which they are used for work.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>Both parties must agree on working in an home office. In such case the employer is obliged to compensate the extra costs arising from working in an home office. If no extra cost arise the employer is not obliged to any compensation.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>Both parties must agree on working in an home office. In such case the employer is obliged to compensate the extra costs arising from working in an home office. If no extra cost arise the employer is not obliged to any compensation.</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required X Not legally required <input type="checkbox"/> Not legally required but common practice <input type="checkbox"/> Other: ... 	<p>N/A</p>	<ul style="list-style-type: none"> - Instructions for use of employer's property; - Instructions for safe use of IT systems; - Instructions to comply with health and safety requirements; - Compensation of expenses related to home office; - Frequency of the use of home office and notification about the use of home office (if the home office is used from time to time).

Home Office - Social Security & Tax



Domestic



Social security (domestic)

The employer must ensure the occupational health and safety of the teleworker. If this is not done, the employer may be held responsible for occupational disease developed during the employment and shall be obliged to pay compensation until the recovery of employee's health.

There are no difference in social security contributions between the employees working from home vs working from office.



Tax (domestic)

If the employer makes rental payments to the employee for the home office then withholding tax obligation would apply to the employer (company).

A resident natural person has the right to deduct interest payments on a loan taken in order to acquire a house or apartment for himself or herself. If home is used for renting (as home office) purposes it may theoretically have an impact on the right of deduction.

Gains from the transfer of immovable property are not subject to income tax if it was used by the taxpayer (employee) as his or her place of residence until transfer. Therefore, when using the immovable partly as a home office might theoretically result in partial taxation when transferring the immovable.

In order to cover costs (furniture; utility bills etc.) the costs need to be done for business purposes. If the subjects are also used for personal purposes then a proportional compensation should be paid (50:50 has been accepted by the court), otherwise it may be treated as a fringe benefit subject to taxation (income tax and social tax).

It is possible to deduct VAT on respective costs only if the invoice is issued to the employer not to the employee. Depending on simultaneous use for personal purposes, the VAT could be deducted proportionally.

Home Office - Social Security & Tax



International



Social security (international)

In case of foreign employees, generally the accident and health insurance regulations of the country of location of the employee should be followed.

In case the employee has been assigned to another country and has obtained an Estonian A1 certificate then there is no difference in social security contributions between the employees working from home vs working from office. In case it is a foreign employee working in some other country the regulation of the country of work should be most likely followed.



Tax (international)

If the Estonian company would have employee(s) working in other countries then a PE risk might arise. Nevertheless, it is rather unlikely that an Estonian Tax Authority would raise the issue.

From the Estonian perspective, covering the costs for a foreign employee working from home office without being subject to taxation is possible as long as the costs are made for business purposes (see the previous slide).

Home Office - Data Protection



Data Protection

The employee must observe data protection requirements when teleworking and choosing the teleworking location, meaning that the employee always uses screen protection at meetings, does not process personal data in a public place, and does not use public internet connections.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if if the employer has not complied with all the necessary safety requirements and therefore it is not safe to return to office.**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only in the situation of force majeure when working from home is necessary to meet the requirements of the extraordinary situation.**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

Contacts



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Home Office in Finland

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular**
- Moderate
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward
- Medium impact**
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Agreement or employee's consent
- Home office policy will do if the employee and the employer have agreed that it will be followed and the employee has had possibility to familiarize with it before agreement.



Employee consent

- Not required **Required** It depends

Form of consent:

There's no prescribed form of consent.

What are the consequences if an employee does not agree with the home office:

The employee will continue to work in the employer's premises.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required** Required It depends

Home Office - Legal Risks & Limitations



Legal risks

- Can possibly lead to underachievement or neglect of work duties regarding some employees as there are no real-time control. This can lead to terminations of employments which are always risky for the employer.
- Confidentiality of clients' information can also endanger when working at the home environment.
- May possibly lead to more sickness absences due to worse ergonomics than in the office.



Legal limitations

- There are no legal limitations as such. Every employee can work at the home office if this is agreed in advance. The Working Hours Act is applied to home office work if the employee is in a category of employees who are covered by the Working Hours Act.

Home Office - Duties & Rights



Employee duties and rights

- The duties and the rights are the same than when working at the employer's premises.



Employer duties and rights

- No specific employer's duties and rights. The employer is not entitled to visit employee's home as this is against the constitutional rights of every human being. The employer's duty to take care of the health and safety of the employees will not be removed when working at the home office but the employer does not have to (and cannot as mentioned above) to visit every employee's home and assess the dangers that the employee may be exposed to.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- Not legally required but common practice**
- Other:



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A



Customary policy elements ("best practice")

- On which conditions employees are entitled to work at the home office.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

No impact as such in a domestic situation. Note that the obligatory accident insurance would not apply for accidents in the home office as compared to actual office, i.e. the coverage is limited



Tax (domestic)

If a domestic employer lets an individual employee work from the home office within a domestic situation there will not be a PE tax risk.

Home Office - Social Security & Tax



International



Social security (international)

A non-Finnish employer company employing an individual remotely in Finland, would have to insure the employee based on Finnish social security rules, unless an A1 applies.

During the Covid-19 pandemic, exceptions from Finnish social security has been possible if an A1 is applied and received.



Tax (international)

If a foreign employer allows an individual to work remotely in Finland a short remote work period during Covid-19 will not result in a tax risk. However, a longer more permanent situation the PE should be assessed.

Home Office - Data Protection



Data Protection

Data protection matters related to working from home are regulated in the EU General Data Protection Regulation, Finnish Data Protection Act (1050/2018) and the Finnish Act on the Protection of Privacy in Working Life (759/2004).

The principles and the requirements of the GDPR are to be complied with at all times. These include, among other things, the requirements of data protection by design and by default, the requirement to implement appropriate technical and organizational measures to ensure and demonstrate compliance with the Regulation, and the requirement to be able to respond to personal data breaches within the 72-hour time limit.

The Finnish Act on the Protection of Privacy in Working Life sets out additional requirements as to how employees' personal data may be processed. As a main rule, the Act does not permit processing that exceeds what is necessary in order for the employer to perform its duties and obligations, and the employee's consent cannot be used to derogate from this limitation. The Act also sets out limitations as to how the employees can be monitored when performing their work duties: when implementing a technical monitoring system (such as logging, video surveillance, DLP), the necessity of said systems should be assessed separately and employees must be informed about the implementation of new monitoring solutions.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if this has been agreed in advance**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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Home Office in France

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other

Home Office - Legal Requirements



Mandatory legal requirements

- Company agreement or unilateral charter
- Employees' consent
- Data protection
- Hygiene and security



Employee consent

Not required Required **It depends**

Form of consent:

No specific form of consent required by Law, the consent can be evidenced by any means. The form of the consent is usually provided for in the company agreement or the unilateral charter.

In practice, the consent is mentioned in the employment contract or in an addendum.

Pursuant to Article L. 1222-11 of the French Labor Code (FLC), in case of epidemic risk (which qualifies for Covid-19), home teleworking can be imposed by the employer without the employee's consent.

What are the consequences if an employee does not agree with the home office:

As mentioned home office cannot be imposed except in case of epidemic risk. In case of refusal she/he cannot be sanctioned.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required **Required** It depends

- Implementation of home teleworking is implemented through a company agreement,
- Or a unilateral charter established by the employer,
- Which requires the prior information and consultation of the works council,
- And the information of the Labour Administration.
- In the absence of such a company agreement or charter, the employer and the employee can agree on the use of telework.

Home Office - Legal Risks & Limitations



Legal risks

- Hygiene and security and related employer's general liability. The FLC requires the employer to take the necessary measures to ensure the safety and health (whether physical or psychological) protection of staff (including home working). As such, an assessment of the professional risk shall be carried out.
- Duration/control of the working time which can lead in particular to claims for overtime backpayment.



Legal limitations

- All employees who fall under the scope of Article L1222-9 of the FLC are eligible.
- According to said Article, teleworking means any form of work organization in which work which could also have been performed on the employer's premises is carried out by an employee outside these premises on a voluntary basis using information and communication technologies.
- The rights and conditions of work of the teleworker is the same than all other employees and in particular regarding the maximum duration of work.

Home Office - Duties & Rights



Employee duties and rights

- Teleworkers have the same rights as employees working on the company premises. Teleworkers have the same access to training and career development opportunities as employees in comparable situations who work on company premises.
- Teleworkers have the same collective rights as all of the company's employees.
- The employee must guarantee the reliability and compliance with safety standards of the installations and equipment of her/ his home workstation in the form of a declaration of honor.
- The teleworkers must declare their situation to their insurance company and provide a certificate from their insurance company which guarantees that their comprehensive home insurance covers all the risks associated with teleworking.
- The teleworkers have the same general duties than other employees linked to their employment contract and all related employees' obligations.



Employer duties and rights

- Annual meeting on the working conditions, workload and control of the working time.
- Teleworking must not lead to exceeding the legal working hours or reducing the minimum resting times.
- Information on the use of professional equipment and related sanctions for misuse.
- Specific measures to be taken to ensure respect health and safety protection (including in particular psychosocial risks,...).
- The occupational doctor is informed of the content of the teleworking agreement/ charter.
- The employer ensures that measures are taken preventing the teleworker from being isolated from the rest of the staff working on the company premises and from his/her Management.
- The employer provides the employee with the necessary resources for the proper performance of her/ his work.
- The employer has the same general rights linked to the employee's employment contract and all related employee's obligations

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input checked="" type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> Other: home insurance if increased due to teleworking and any cost related to home working</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>The employer will only have to pay expenses on a prorated basis.</p> <p>a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>The employer will only have to pay expenses on a prorated basis.</p>

Home Office - Policy



Policy Requirement

X Legally required

- Not legally required
- Not legally required but common practice
- Other: ...



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

- All items mentioned in the preceding slides shall be covered.



Customary policy elements ("best practice")

- All items mentioned in the preceding slides shall be covered as home working is mainly implemented through in-house agreement or charters.
- In case of a simple agreement with the employee the conditions are mentioned in the employment contract and globally cover the same aspects.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

In the event of sick leave due to an illness or accident at work, teleworkers are subject to the same rules as employees working on the premises of the company.

Employees with disabilities can benefit from the possibility of teleworking under conditions adapted to their situation after the advice and recommendations of the occupational doctor.

The teleworking expenses are excluded from social security if deemed incurred for professional purpose. This expenses can be reimbursed at cost or through a lump-sum payment.



Tax (domestic)

Professional expenses are excluded from income tax under certain conditions where they are in particular incurred for professional purpose.

Home Office - Social Security & Tax



International



Social security (international)

The applicable social security regime and labour law regulation shall be assessed if the teleworker is working from home outside France.



Tax (international)

The PE risk shall be assessed if the teleworker is working from home outside France.

Home Office - Data Protection



Data Protection

Teleworking is a solution which must be accompanied by reinforced security measures to guarantee the security of the information systems and data processing.

The National Commission for Data Protection and Liberties (CNIL-France) published recommendation/guidelines aiming at securing professional data which shall be followed.

The Employer shall also ensure the employee's data privacy.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if in case of epidemic risk (eg Covid 19)**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes under the conditions mentioned above concerning prior assessment regarding applicable social security, law and PE risk**
- No
- Only if ...

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Home Office in Germany

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

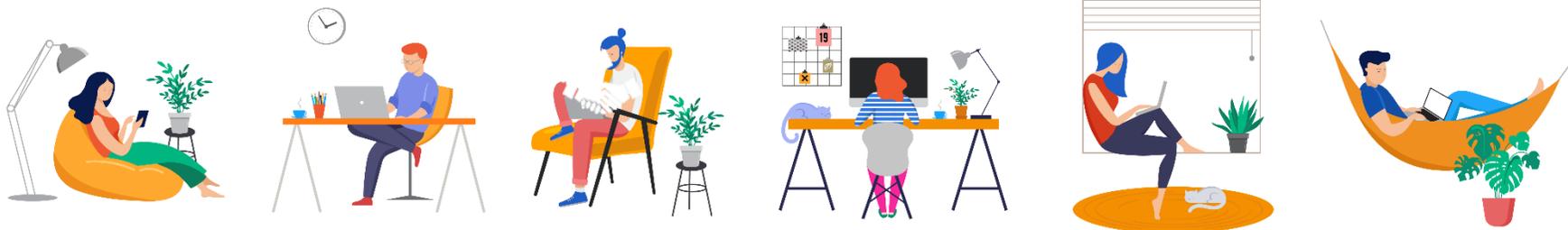
- Simple
- Moderate
- Burdensome**

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward
- Medium impact**
- No particular impact
- Other

Home Office - Legal Requirements



Mandatory legal requirements

- If the place of work is stipulated by the employment contract the employee must consent to a (not only preliminary) home office; otherwise the employer may unilaterally instruct the employee to work from a home office
- Further the employer must ensure that all legal requirements which govern the employment at site are also obeyed when work is performed from a home office (e.g. working time regulation, occupational health and safety, data protection etc.)



Employee consent

Not required Required **X It depends**

Form of consent:

As far as the implementation of working from a home office requires an amendment to the existing employment contract the employee must agree to such amendment (usually in written form)

What are the consequences if an employee does not agree with the home office:

As far as the employer cannot instruct the employee to work from a home office unilaterally, in the case of the employee not agreeing to work from home there will be no home office



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required Required **X It depends**

- As far as a works council has been established the employee representation / works council ("*Betriebsrat*") must be involved in the implementation of home office
- Other third parties were not to be involved

Home Office - Legal Risks & Limitations



Legal risks

- Violation of working time regulation, as the employer is strongly limited in its possibilities to properly control employees if they obey the statutory limits of working time (Sunday work, breaks etc.)
- Data protection issues (as protectable data are transferred into the home office)



Legal limitations

- N/A

Home Office - Duties & Rights



Employee duties and rights

- There are basically no duties and rights which go beyond the employee's regular duties and rights



Employer duties and rights

- There are basically no duties and rights which go beyond the employee's regular duties and rights. In the absence of respective agreements with the employee, the employer is not entitled to visit the home office without the employee's respective consent

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input checked="" type="checkbox"/> Rental costs (on an pro rata basis)</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>There is no obligation to any compensation beyond the regular compensation under the employment contract; as far as accrued the employer must reimburse expenses</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>See above</p>

Home Office - Policy



Policy Requirement

- Legally required
- X Not legally required**
- Not legally required but common practice
- Other



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

- N/A



Customary policy elements ("best practice")

- Data protection and secrecy
- Working time
- Equipment, reimbursement of expenses
- Termination of home office; employer's right to instruct the employee to return back to site
- Employer's right to visit the home office

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Basically there are no particular social security topics which must be considered in view of home office.



Tax (domestic)

From an employer's perspective no particular taxation issues must be taken into consideration.

Home Office - Social Security & Tax



International



Social security (international)

Basically there are no particular social security topics which must be considered in view of home office.



Tax (international)

From an employer's perspective no particular taxation issues must be taken into consideration.

Home Office - Data Protection



Data Protection

The employer remains the controller pursuant sec. 4 para. 7 GDPR and therefore remains responsible for a compliant treatment of personal data under the GDPR. Especially the employer as controller must ensure that personal data are processed only subject to the principles defined under sec. 5 GDPR

For the purpose of data protection appropriate technical and organizational measures must be established, e.g.

- the usage of secure video-or audioconferencing systems, messengers, e-mail clients etc.; encryption of data and e-mail traffic, e.g. by using VPN or two-factor authentication.
- instruction and sensitization of employees by trainings, instructions and work procedures.

If possible the employer should issue a respective guideline containing all relevant instructions as regards data protection.

Home Office – Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if there are no substantial interests on behalf of the employee objecting; not on a permanent basis**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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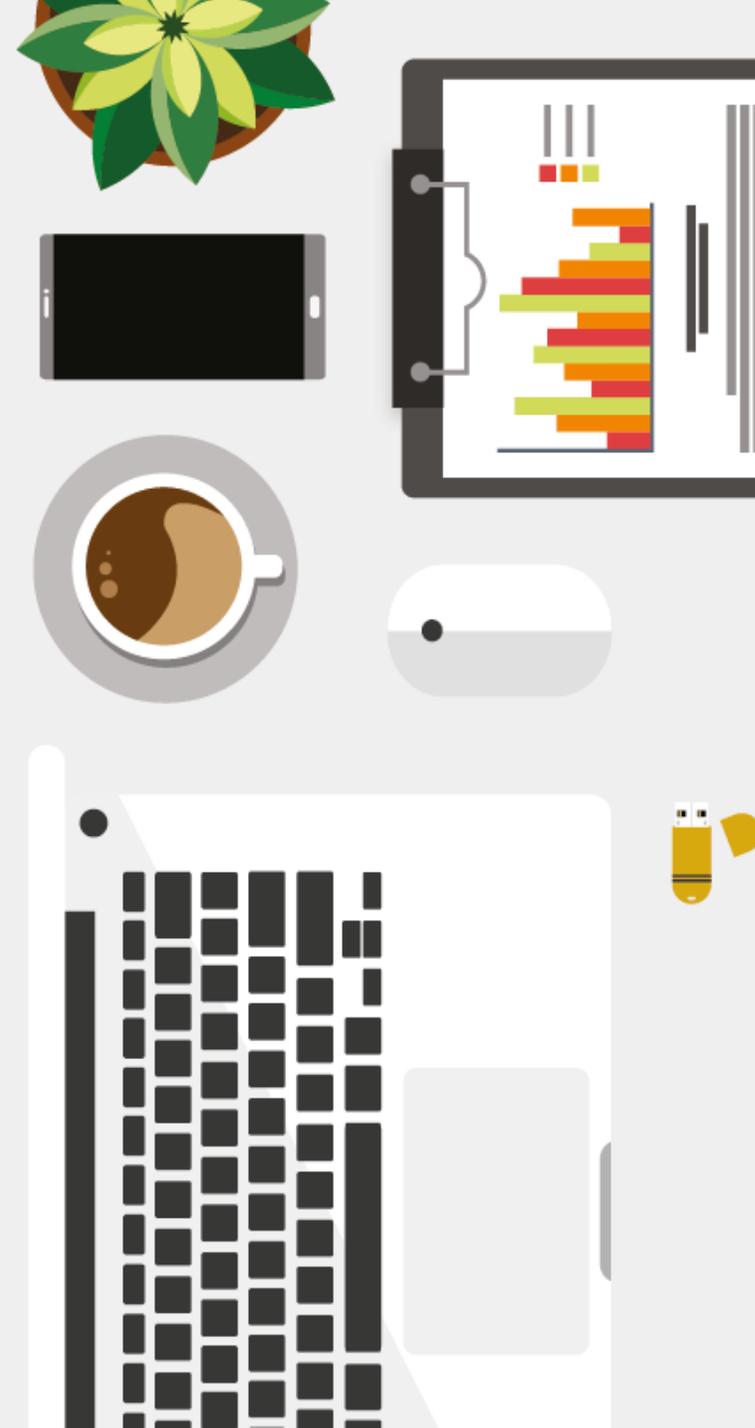
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Home Office in Greece

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate
- Unpopular**

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

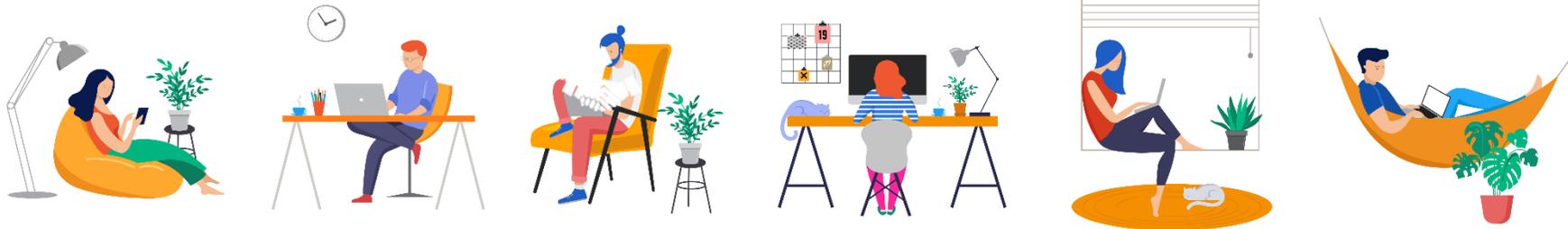
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other: [please specify here]

Home Office - Legal Requirements



 **Mandatory legal requirements**

- Written agreement including certain details (duties, the method of determination of salary, the method of working hours monitoring, reimbursement of home office costs etc.) to be delivered to the employee within 8 days from its conclusion. The employer must also inform the employee of the employees' representatives within 2 months from the conclusion of the agreement.
- In case of conversion of normal employment to home office employment, a 3 month period is provided to the parties for the termination of the home office employment (upon 15 days prior notice) and the return to normal employment
- Provision by the employer of the technical support required and reimbursement of repair costs of equipment used (including personal equipment of the employee, unless otherwise agreed) and the cost of use of the employee's house.

 **Employee consent**

Not required **Required** It depends

Form of consent:

Contract (or contract amendment) is required

What are the consequences if an employee does not agree with the home office:

In case of amendment of the existing employment status, if the employee does not consent to the change, the change will qualify as termination of the employment agreement by the employer with all related consequences (payment of dismissal indemnity).

 **Involvement of third parties**
(authorities, trade unions, employee representations etc.)

Not required Required It depends

Home Office - Legal Risks & Limitations



Legal risks

The main legal risks arise from the fact that not all aspects of home office work are regulated. For instance:

- Labour accidents issues (will an accident at home be considered labour accident? How can it be proven?)
- Working hours monitoring is not easy.
- Technical insufficiencies and capabilities might lead to loss of confidential information etc.



Legal limitations

- In case of conversion of normal employment to home office, a 3 month notice period is provided to the parties to terminate it (upon prior 15 days notice).

Home Office - Duties & Rights



Employee duties and rights

- The employee is entitled to terminate home office within 3 months from the conversion of normal employment to home office (upon 15 days prior notice)
- The employee should be able to prove the costs related to the provision of home office employment so as to be reimbursed by the employer.
- No other particular duties or rights.



Employer duties and rights

- Greek legislation does not provide for specific health and safety protection measures to be taken by the employer in case of home office employment. However, the general duty of the employer to safeguard the employees' health and safety could be found to apply to home office as well.

Home Office - Compensation & Expenses



 **Compensation requirement**

Is there a need to adjust the salary?

Yes

No

 **Expenses**

Is there a need to adjust expenses regulation?

Yes

No

The expenses to be reimbursed are regulated in the agreement.

Which of the following elements must typically be compensated?

Internet

Electricity

Equipment for home office

Rental costs

Other:

 **Examples**

a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?

The matter is to be agreed between the parties.

b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?

The matter is to be agreed between the parties.

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- Not legally required but common practice
- Other: A Home Office Policy is not legally required but strongly advisable to regulate.**



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A



Customary policy elements ("best practice")

- Eligible persons
- Division of time
- Expenses reimbursement
- Safety and Health Measures
- Technical and organizational measures
- Hierarchy

Home Office – Social Security & Tax



Domestic



Social security (domestic)

The social security treatment of home office employee is not amended (the normal social security rates will apply and normal security contributions withholdings will be effected). Labour accident or illness issues in case of home office working are not regulated by Greek legislation.



Tax (domestic)

The tax treatment of home office employee is not amended (the normal tax rates will apply and normal tax withholdings will be effected).

Home Office - Social Security & Tax



International



Social security (international)

The scenario involves:

- a) Greek national employed by a foreign company (domiciled outside Greece) working from home in Greece;
- b) Foreign national employed by a foreign company (domiciled outside Greece) working from home in Greece.

In both cases, social security contributions will normally be due in Greece (place of provision of services). The extreme conditions of the COVID-19 situation have not been addressed specifically in Greek social security legislation.

Labour accident or illness issues in case of home office working are not regulated by Greek legislation.



Tax (international)

The scenario involves:

- a) Greek national employed by a foreign company (domiciled outside Greece) working from home in Greece;
- b) Foreign national employed by a foreign company (domiciled outside Greece) working from home in Greece.

In both cases, PE issues may arise depending on the nature of activities carried out by the employees in Greece (core business activities or auxiliary/preparatory activities) and assuming presence and permanence can also be evidenced. Under the extreme conditions arising from the COVID-19 situation, the element of willful presence and permanence should be further examined within the context of PE risk (e.g. in case an employee is locked up in Greece due to travel restrictions).

Personal taxation issues (e.g. tax residency, filing obligations etc.) may arise for foreign employees engaged in Greece if certain conditions are met. The extreme conditions of the COVID-19 situation should be taken into consideration while examining these issues as well.

Home Office - Data Protection



Data Protection

The main principles and best practices to ensure compliance of the employer with GDPR rules while their employees work from home are summarized as follows:

- The employer should raise awareness amongst employees warning them of the elevated risk of phishing attacks while working from home.
- The employer should share definitive sources of advice on how to stay safe and provide regular communications on the approach the organization is taking for the home office employment.
- Employees should set up strong passwords, and preferably two-factor authentication, for all remote access accounts; particularly for Office 365 access.
- Remote employees should be provided with straightforward guidance on how to use remote working solutions including how to make sure they remain secure and tips on the identification of phishing.
- The employer should ensure that all provided laptops have up to date anti-virus and firewall software and run a helpline or online chat line which remote employees can easily access for advice, or report any security concerns including potential phishing.
- Technical measures should be taken (for instance, encrypt data at rest on laptops used for remote working given the risk of theft, disable USB drives to avoid the risk of malware, offering employees an alternate way of transferring data such as a collaboration tool, ensuring that critical security patches and update firewalls and anti-virus software are applied across IT estate, including any laptops in use for remote working).

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only as a support measure during COVID-19 crisis**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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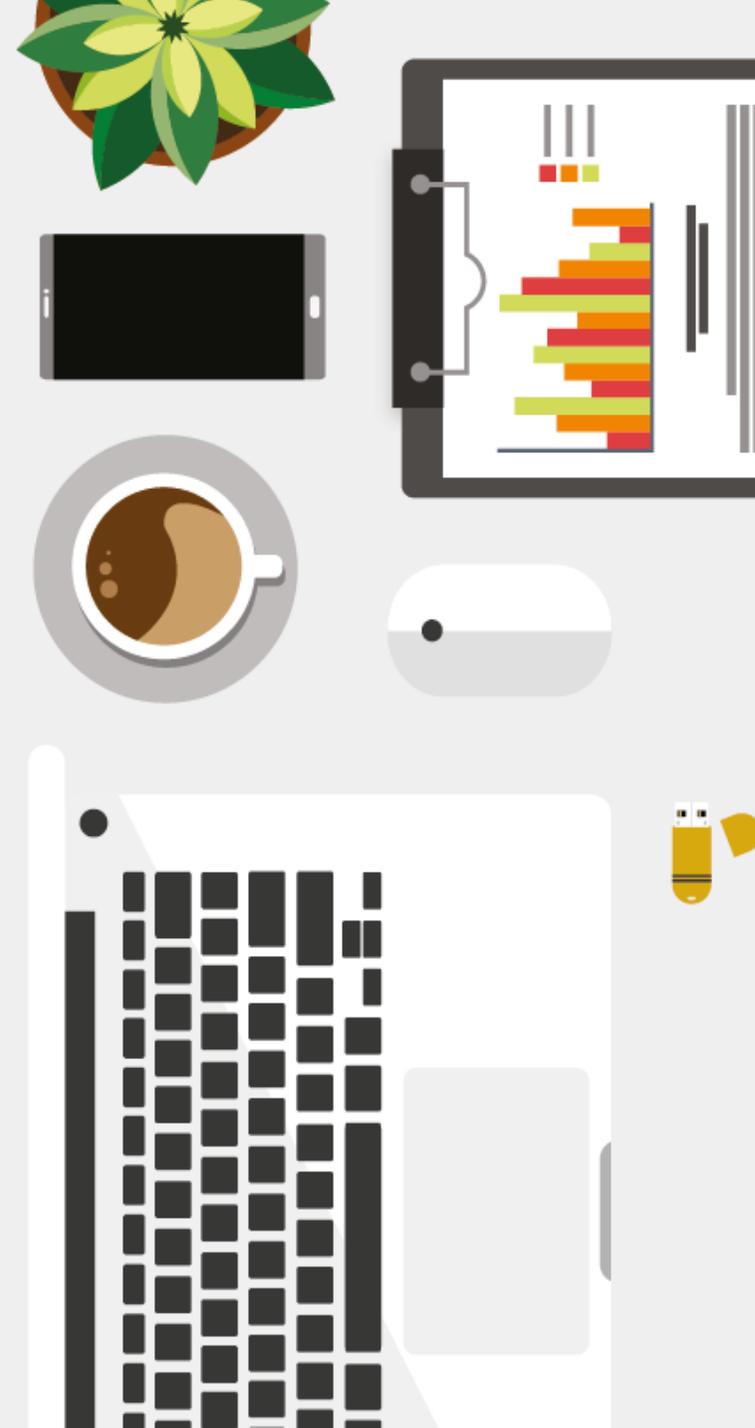
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Home Office in Guatemala

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward
- Medium impact
- No particular impact**
- Other:

Home Office - Legal Requirements



 **Mandatory legal requirements**

- In the contract it must establish the place where the job is going to be executed

 **Employee consent**

Not required **Required** It depends

Form of consent:

Currently in Guatemala there is no law about home office; therefore, in the case of implementing it, there should be a contract modification and after it is signed, a copy of the agreement is required to be sent to the Labor Ministry

What are the consequences if an employee does not agree with the home office:

This situation may originate a judicial process on the part of the person who thinks that the contract has been modified and harms him.

 **Involvement of third parties**
(authorities, trade unions, employee representations etc.)

Not required **Required** It depends

- **The Labor Ministry after receiving the copy of the contract or modification, has to verify there is no damage to labor rights**

Home Office - Legal Risks & Limitations



Legal risks

- Currently there is no law regulating the home office in Guatemala.
- There is no legal way to measure the time actually worked by the worker during home office
- If the limits of ordinary daily working hours are exceeded, it will be necessary to pay overtime.
- In an eventual legal dispute, the employer is considered to be at a disadvantage because there is no legal regulation of the home office.



Legal limitations

- The work day in Guatemala by law cannot exceed 8, 7 or 6 hours a day, depending on the type of working day, except for the employer's representatives, those who work without immediate supervision, those who occupy surveillance posts, those who work outside the company such as agents or commission agents, who are not subject to this limitation

Home Office - Duties & Rights



Employee duties and rights

- They must comply with the working hours established in Guatemala for each working day.
- Right to receive full payment of your salary
- Provide your services exclusively to your employer if it was agreed in your individual employment contract.



Employer duties and rights

- Right to establish an internal work regulation that regulates the home office.
- Right to establish within the individual employment contract of each worker, the guidelines for developing home office.
- Obligation to comply with the limits established for working hours.
- Obligation to provide all the tools for accomplish the job, otherwise it can be a reason for the employee for finishing the contract with legal cause, and that will originate a compensation payment.
- Agree exclusively with the worker in the provision of their services so that they do not provide services for another employer.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>It depends if the two parts agree on it.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>It depends if the two parts agree on it, otherwise it can be a justify cause for finishing the contract.</p>

Home Office - Policy



Policy Requirement

- Legally required
- X Not legally required**
- Not legally required but common practice
- Other:



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

- **N/A there is no law for home office regulations**



Customary policy elements ("best practice")

- The expenses that will be covered by the employer, by quantity or percent
- Schedule
- Supervision forms
- Special permits

Home Office - Social Security & Tax



Domestic



Social security (domestic)

There is no difference about social security for home office, it will be charged as usual.

Contributor		Social Security Base
Employer	12.87%	Employee salary
Employee	4.83%	Employee salary



Tax (domestic)

There is no difference about taxation for home office, it will be taxable as usual..

Tax Base	Fixed Amount	Tax Rate
\$0.01 to \$39,000.00	0.00	5%
\$39,000.00 and up	1959	7% on the surplus of \$39,000.00

Home Office - Social Security & Tax



International

 **Social security (international)**

N/A

 **Tax (international)**

N/A

Home Office - Data Protection



Data Protection

In Guatemala there is no Data Protection Law

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes
- No
- Only if it is agreed since the beginning of the labor relation, or the two parts agree on it**

Home office cross-border

Would home office be possible for employees living abroad?

- Yes
- No
- Only if it is agreed since the beginning of the labor relation, or the two parts agree on it**

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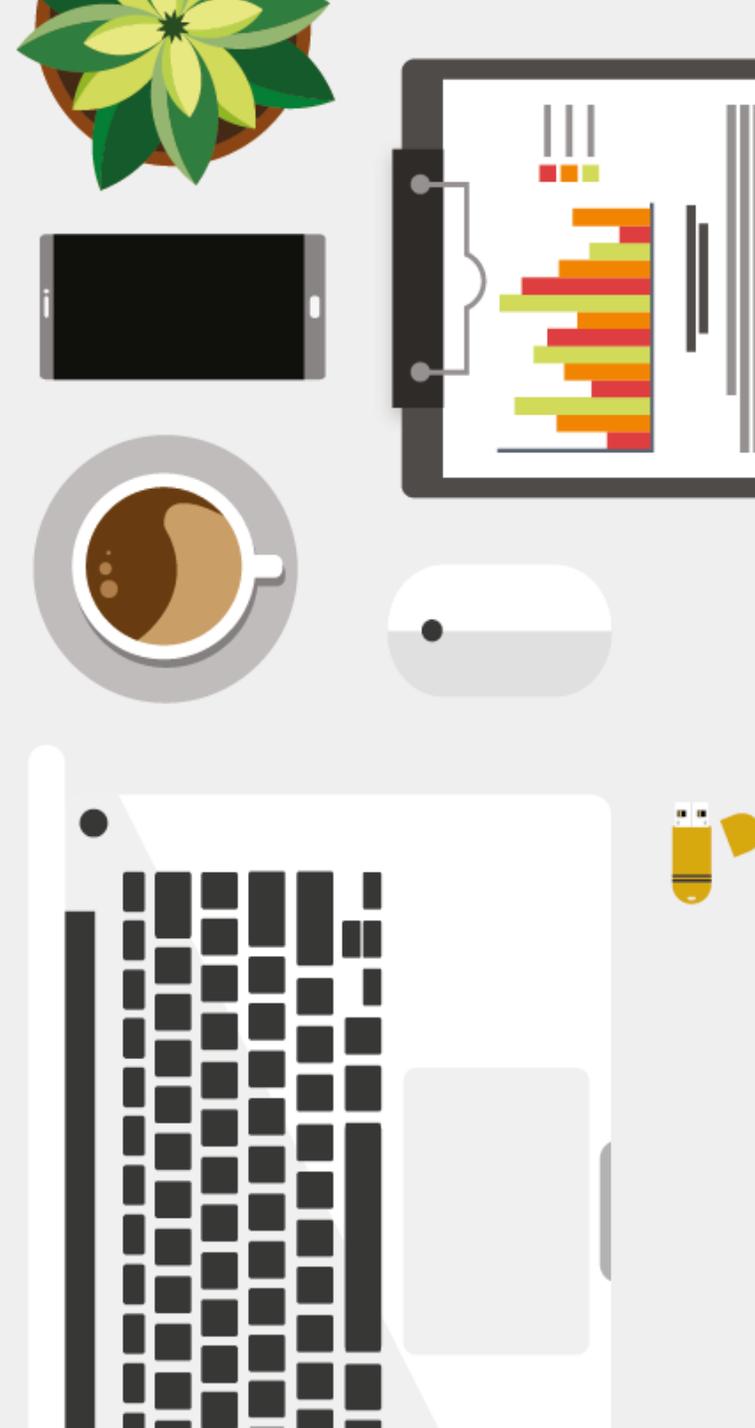
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Home Office in Hong Kong

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate
- Unpopular**

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

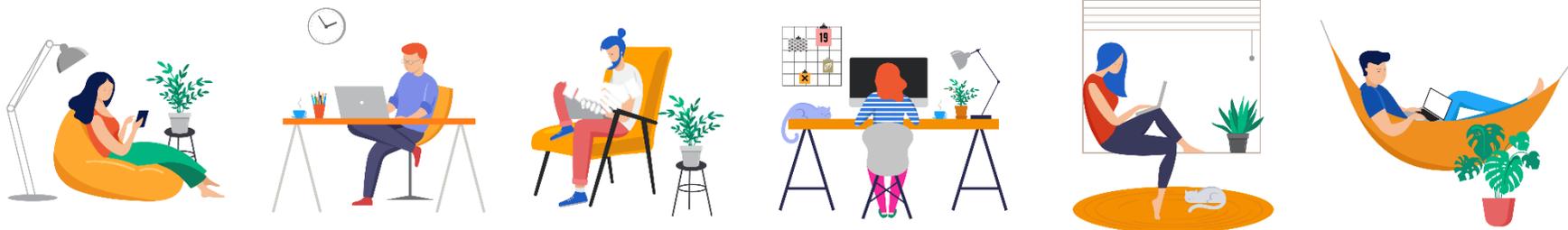
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward
- Medium impact**
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Generally, the location of work will be included in the employment agreement. This will need to be changed to include home office arrangement.
- Employers must ensure that the employees compensation insurance policy covers home office arrangements



Employee consent

- Not required **Required** It depends

Form of consent:

Generally, employment agreements have a clause which states that the agreement may be modified by written agreement between the parties. As such, as a bare minimum, employees must give a written acknowledgement (either by hand or email) of the change to home office.

What are the consequences if an employee does not agree with the home office:

Absent any consent, and the employer unilaterally imposes home office on employees may amount to a breach of the employment agreement (which may entitle the employee to terminate the employment agreement and potentially receive redundancy payments).



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required** Required It depends

Home Office - Legal Risks & Limitations



Legal risks

- Policies must be in place to address workplace safety issues arising out of home office arrangements.
- Employers should have in place policies on handling confidential information (including personal data and company data) to ensure employees understand and prevent inadvertently making such data public.
- Actively manage employees' work (including the work processes) to ensure that no harm is done to third parties. Under Hong Kong laws, employers are vicariously liable for any negligence done by its employees.
- Policies should be in place to ensure that discrimination and bullying are continued to be monitored and handled.
- For employees who are entitled to overtime, there should be proper systems in place to ensure proper records of overtime and that overtime is worked in accordance with the employment agreement.



Legal limitations

- No legal limitations generally. However, policies and best practices on selection of employees to take up home office should be in place to ensure that there is no discrimination.

Home Office - Duties & Rights



Employee duties and rights

- Employees ought to ensure that sensitive information is kept confidential, extra care must be placed on printing of documents.
- Employees should ensure that they have proper and secure networks to handle the flow of information and also not vulnerable to being hacked.
- For employees who work overtime, they should keep proper records of the time they have worked.



Employer duties and rights

- Employers should carrying out training sessions to ensure employees understand how to keep their home office a safe place to work.
- While not a requirement, but policies should also be in place to ensure the wellbeing of employees (e.g., advice on screen time and making sure employees are getting enough breaks)
- Employers should also have policies in place to ensure that they can effectively monitor employee performance (while not being too intrusive on privacy)

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- X Not legally required but common practice**
- Other:

Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

- Workplace safety
- Monitoring policy
- Confidentiality and data privacy

Customary policy elements ("best practice")

- Differentiation between home office on a full time basis and part time basis
- Eligibility criteria
- Request process
- Workplace safety
- Monitoring policy
- Confidentiality and data privacy
- Reporting obligations
- Tax (for employees working in other jurisdictions)

Home Office - Social Security & Tax



Domestic



Social security (domestic)

There is no difference whether an employee works remotely or in the office.

In Hong Kong, employees are required to be enrolled in the Mandatory Provident Fund . It is a compulsory pension fund and employees and their employers are required to make monthly contributions based on a percentage of their salary.



Tax (domestic)

Generally, there are no difference whether an employee works remotely or in the office. However, if an employee is working remotely from Hong Kong but is not a permanent residents of Hong Kong, they will require a work visa in order to work in Hong Kong.

To obtain a work visa, the employee needs sponsorship from the employer in Hong Kong. This is further complicated if the employee works for an employer that does not reside in Hong Kong.

When the employee ends his/her remote working arrangement from Hong Kong and returns to his/her home country, there is a requirement under the tax laws in Hong Kong for the employee's last months' income to be withheld for tax clearance purposes.

International



Social security (international)

See response in “Social security (domestic)”

Employees are exempt from enrolling in the Mandatory Provident Fund, if they enter Hong Kong for employment for not more than 13 months, or who are covered by overseas retirement schemes.



Tax (international)

Tax issues may potentially be quite complicated or simple depending on a number of factors. We set out some of these below

The first question perhaps is whether the employment is considered as a Hong Kong based employment (for employers that do not reside in Hong Kong, there are employer reporting obligations).

As to the question of corporate tax, consideration must be given on whether the employer is by definition “carrying on business in Hong Kong”. If it is, then there are generally profits tax and business registration requirements. Consideration whether carrying on business in HK (profits tax and business registration)

Further, Hong Kong does not have double tax treaties with certain common jurisdictions, which could increase risk of profits tax or salaries tax liabilities / double taxation), including Singapore, US and Australia.

As for employees working across Hong Kong and Mainland China, differences in the personal tax systems can give rise to double taxation issues, despite existence of double taxation agreement.

Home Office - Data Protection



Data Protection

Currently in Hong Kong, personal data is governed by the Privacy Commissioner for Personal Data. They have issued a guideline addressing home office working arrangements. We summarize these points below:

- Before transferring paper or digital files from work to home, seek prior instructions or approvals from supervisors;
- Minimise the transfer of data out from the employers' premises and information systems;
- Take all practicable steps to protect personal data from unauthorised or accidental access, processing, erasure, loss or use, paying attention to particular aspects including the type of data and the transmission method in concern.
- Redact the personal data / confidential information before transferring out from the employers' premises.
- The use of portable devices for data storage and transmission shall only be allowed if prior approval from supervisor is obtained and the documents inside are password-protected.
- Ensure the security of digital data and keep a record on its movement.
- Policy should be in place regarding employees who use their own devices to ensure that they are aware of the risks about the security of internet connection to prevent data leakage. For example, never share the work device account/password, ensure the wifi connection is secure and that the password is frequently changed.
- When employees encounter suspicious websites or emails, they should not only refrain from clicking on any links, but should inform the employer's IT department (or contact authorities if there is a suspicion of fraud).

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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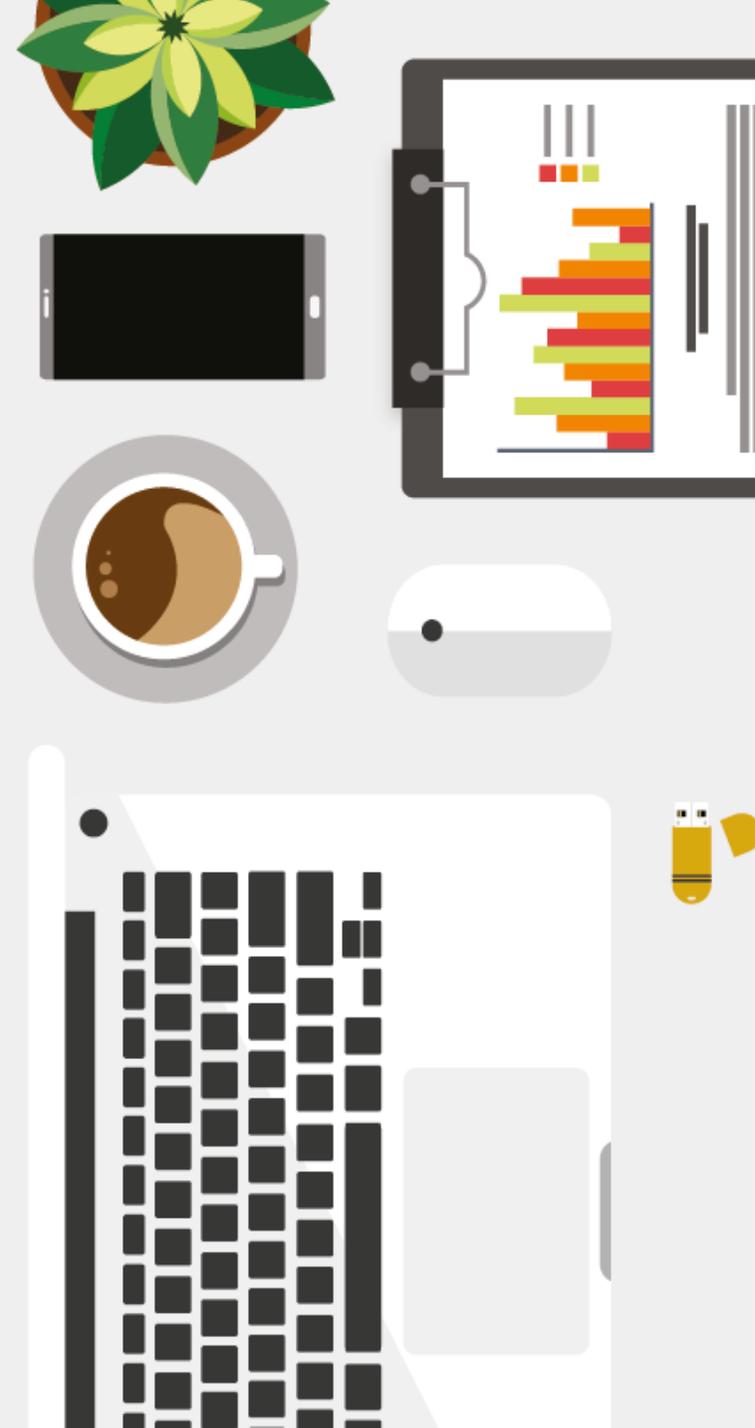
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Home Office in Hungary

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Home office is not expressly regulated by the Labour Code. However, unilaterally, an employer may order the employee to work at a location being different from the original place of work annually 44 working days (which rule may result in the application of a home office arrangement).
- The employer shall provide the necessary working conditions (e.g. equipment).
- The conditions for the safe performance of work which do not endanger health must be met.
- It is important to note that these are general requirements laid down by the Labor Code of Hungary, as there is no detailed regulatory framework for Home Office yet, and therefore the practice of companies are mostly shaped by the recommendations of authorities.
- It is highly foreseeable that the Labour Code will be amended with specific home office regulations in the future.



Employee consent

Not required Required **X It depends**

Under regular circumstances parties either agree on the option of home office work or employer's policies set out the conditions thereof.

Until the expiry of a period of thirty days following the end of the state of danger, **the employer may unilaterally order employees to work at home.**

What are the consequences if an employee does not agree with the home office:

This measure is considered as the employer's instruction, and the breach of such instruction by the employee may result in disciplinary actions, including even the termination of the employment.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required Required **X It depends**

Should there be an operative works council at the employer, the employer shall seek for the prior opinion of the works council at least 15 days before the implementation of e.g. new methods concerning work organization.

Home Office - Legal Risks & Limitations



Legal risks

- If an accident takes place while working from home, during regular working hours, at the place where the employee actually performs his work, e.g.: the desk and its immediate surroundings, and the accident occurs in connection with work, it may easily be qualified an accident at work. An employer has objective liability for work accidents and it is hard to be released from the consequences thereof.
- It is important to note that Home Office is not the same as teleworking (which is regulated by the Hungarian Labour Code), despite possible similarities caused by changed circumstances due to the epidemic (currently both might be performed on a regular basis at a place other than the employer's facilities, by using computers). However, teleworking can only be ordered by amending the employment contract, while occasional home office can even be ordered by internal regulations. According to the general rules, the most important difference between home office and teleworking is that in case of teleworking the usual place of work is outside the employer's premises, while in case of home office the place of work is the employer's premises and the employee is allowed on a case by case basis to work from home.



Legal limitations

- There is no developed legal framework for the regulation of home office yet, however, there is a growing need for legislative intervention on this issue. As for now, there are no specific legal limitations regarding the implementation of Home Office, and the general requirements laid down by the Labor Code shall apply.
- As there is no specific regulation occasional work performance (e.g. weekly / monthly 1-2 days) are classed as home office. The most important rules thereof, are set out in employers' policies.

Home Office - Duties & Rights



Employee duties and rights

- The employee shall obey to the employer's instruction regarding home office. This order is the employer's instruction, and the breach of such instruction by the employee may result in disciplinary actions, including even the termination of the employment.



Employer duties and rights

- The employer shall provide the necessary working conditions (e.g. the equipment necessary to work from home).
- The employer shall be responsible for the safety of the work, so he must assess the occupational safety and health requirements of the place of work on the basis of the information provided by the employee and any necessary inspections. As part of this, he can request, among other things, pictures (photos) and a statements from the employees.
- The employer shall be liable to compensate his employees for justified expenses incurred in connection with the fulfillment of the employment relationship.
- Additional obligations with regards to the current period of state of danger:
 - The employer may take the necessary and justified measures to check the employee's state of health.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No, provided that the employee has equipment and other sources (e.g. internet at home) enabling him or her to perform work from home.</p>

Home Office - Policy



 **Policy Requirement**

- Legally required
- Not legally required
- X Not legally required but common practice**
- Other:

 **Mandatory policy elements**

The following are the minimum items to be covered by a home office Policy:

N/A

 **Customary policy elements ("best practice")**

- Costs and expenses arisen in connection with home office
- Equipment for work
- Conditions of work performance
- Checking the compliance with the health and safety rules
- Temporal scope
- Personal scope
- Purpose of the policy
- Instruction right of the employer

Home Office - Social Security & Tax



Domestic



Social security (domestic)

As explained in connection with previous issues, there is no detailed regulatory framework for Home Office in Hungary yet. Accordingly, there are no specific deviations from the general rules related to Social Security & Tax.

However, it can be stated that if an accident takes place while working from home, during regular working hours, at the place where the employee actually performs his work, e.g.: the desk and its immediate surroundings, and the accident occurs in connection with work, it may easily constitute an accident at work.



Tax (domestic)

Should a Hungarian employee work under home office arrangement in Hungary under a Hungarian employment contract this does not result in any PE risk, however, this issue may be reviewed if the above preconditions would be different.

Equipment provided by the employer to the employee for home office does not result in tax payment obligation neither for the employer nor for the employee.

Home Office - Social Security & Tax



International

 **Social security (international)**

N/A

 **Tax (international)**

N/A

Home Office - Data Protection



Data Protection

According to the Guidance on processing data related to the coronavirus epidemic issued by the Hungarian National Authority for Data Protection and Freedom of Information, in the case of data processing related to legal relationships aimed at the performance of work (such as employment), the employer is responsible for ensuring the conditions for the safe performance of work which do not endanger health and for planning and developing the related processes of data processing. Given the close intertwining of the epidemic and Home Office in the Hungarian regulations, this Guidance provides the basic rules regarding both.

Under this, the measures expected from the employer include:

- the development of the so-called pandemic/business continuity action plan (hereinafter: action plan) (it is recommended that it should extend to preventive steps to be taken to reduce threats, measures to be taken upon the eventual appearance of the infection, preliminary consideration of the data protection risks of the measures applied, issues of responsibility within the organization and building efficient and adequate channels of communication facilitating the provision of information to the data subjects);
- as part of the action plan, in terms of the preliminary measures reducing threats, a detailed information document has to be drafted and made available to the employees concerning the most important issues to be known in relation to the coronavirus (source of the infection, mode of spreading, period of incubation, symptoms, prevention), and who to turn to in the event of any alleged contact with the coronavirus or upon the onset of other conditions specified in the information material;
- if needed, conduct of business and business/service trips and events may eventually have to be reorganized and **the possibility of eventually working from outside the workplace must be ensured**;
- attention needs to be called with emphasis to the fact that in the event of any alleged contact with the coronavirus and upon the onset of other conditions specified in the information material individuals should report this to the designated person and visit the company doctor or another physician immediately in order to protect their own and their colleagues' health.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if the employer fails to ensure the conditions for the safe performance of work which do not endanger health.**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes – under general provisions of the Labour Code for 44 working days
- No
- Only until the expiry of a period of thirty days following the end of the state of danger.**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes
- No , such agreement would be telework**
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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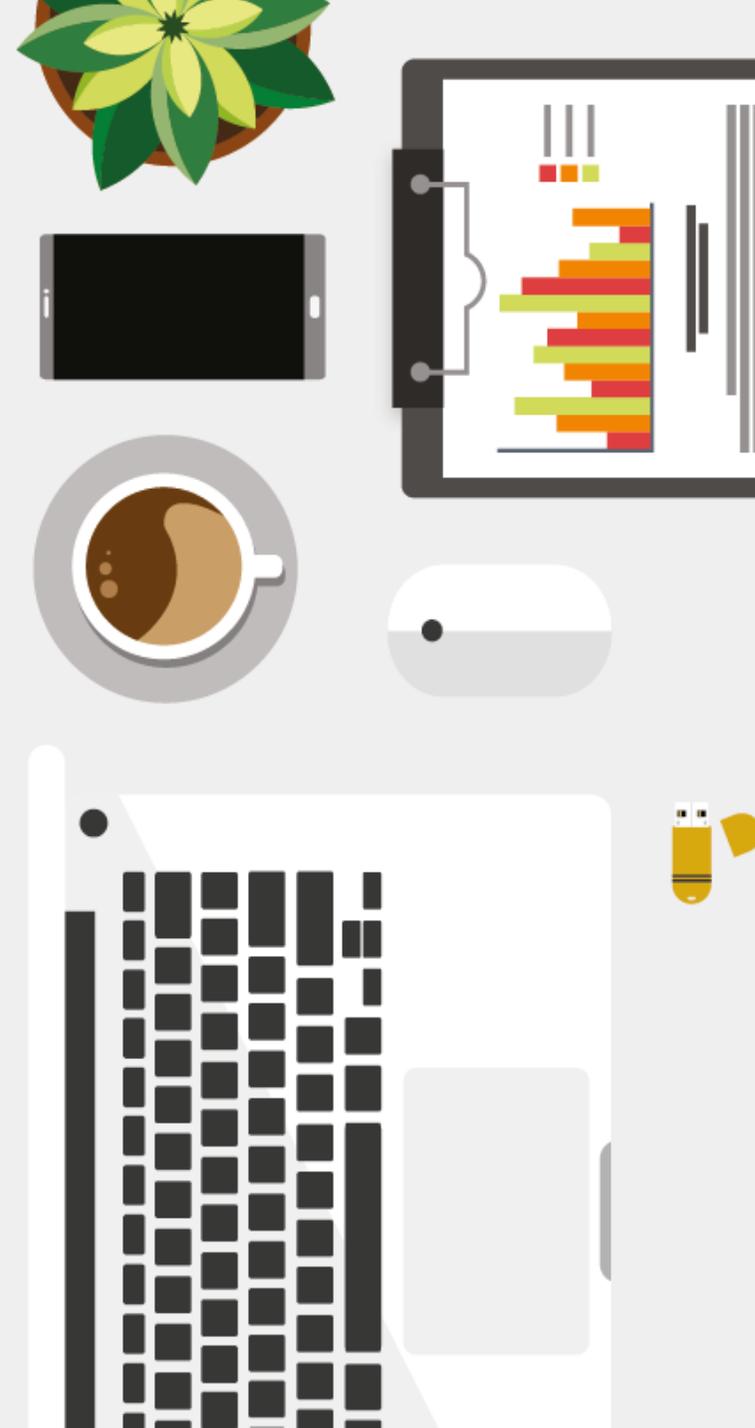
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Home Office in Iceland

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

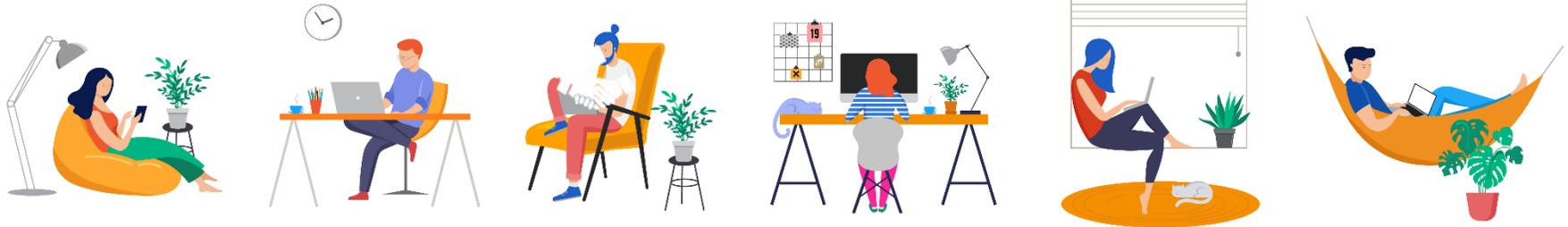
- Simple**
- Moderate
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other

Home Office - Legal Requirements



Mandatory legal requirements

- Employee consent or provision in employment contract
- Written instructions concerning scope of work, supervisor(s), etc.
- Appropriate measures concerning privacy and data security.



Employee consent

Not required Required **X It depends**

Form of consent:

Employee consent is required for home office unless expressly provided for in employment contract.

What are the consequences if an employee does not agree with the home office:

If not stipulated in employment contract, an employee may freely accept or reject an employer's proposal for a home office arrangement. A refusal is not a valid ground for dismissal. Conversely, an employer may freely grant or refuse an employee's request to work from home.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required Required **X It depends**

- **Employer, trade union representative and/or representatives of workplace health and safety authorities have a right of inspection of premises from which remote office duties are performed. Such inspections are subject to employee's consent if work is performed from his/her home.**

Home Office - Legal Risks & Limitations



Legal risks

- Data security.
- Possible liability due to health and safety issues, e.g. if inadequate measures are taken concerning screen time, seating position etc.
- Possible liability for work-related accidents occurring in the home.



Legal limitations

No particular limitations on availability of home office; some businesses may however be required to maintain staffed premises open to the public.

Home Office - Duties & Rights



Employee duties and rights

- Duty of care in use of equipment provided by employer
- Responsible internet usage
- Observance of data protection rules and policies
- Home office employees are entitled to the same opportunities as regards training and promotion as other employees.



Employer duties and rights

- Employer is responsible for provision and maintenance of hardware necessary for performance of work duties.
- In general, employer is responsible for extra costs relating to connectivity etc.
- Provision of tech support.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No. The employer is not legally required to accede to employees' requests for home office work.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No such obligation apart from payment of regular salary.</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"><input type="checkbox"/> Legally requiredX Not legally required<input type="checkbox"/> Not legally required but common practice<input type="checkbox"/> Other	<p>The following are the minimum items to be covered by a home office Policy:</p> <p>N/A</p>	<p>N/A</p>

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Attention should be given to whether coverage of workplace insurance includes home office workers.



Tax (domestic)

N/A

Home Office - Social Security & Tax



International



Social security (international)

Attention should be given to whether coverage of workplace insurance includes home office workers.



Tax (international)

N/A

Home Office - Data Protection



Data Protection

A data protection regime covering use and management of data, authentication, incident management, use of remotely-connected machines and network should be implemented, as well as a clean-desk policy and other measures to safeguard privacy and confidentiality of work documents and other information.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if specified in employment contract or with employer's consent**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if expressly provided for in employment contract**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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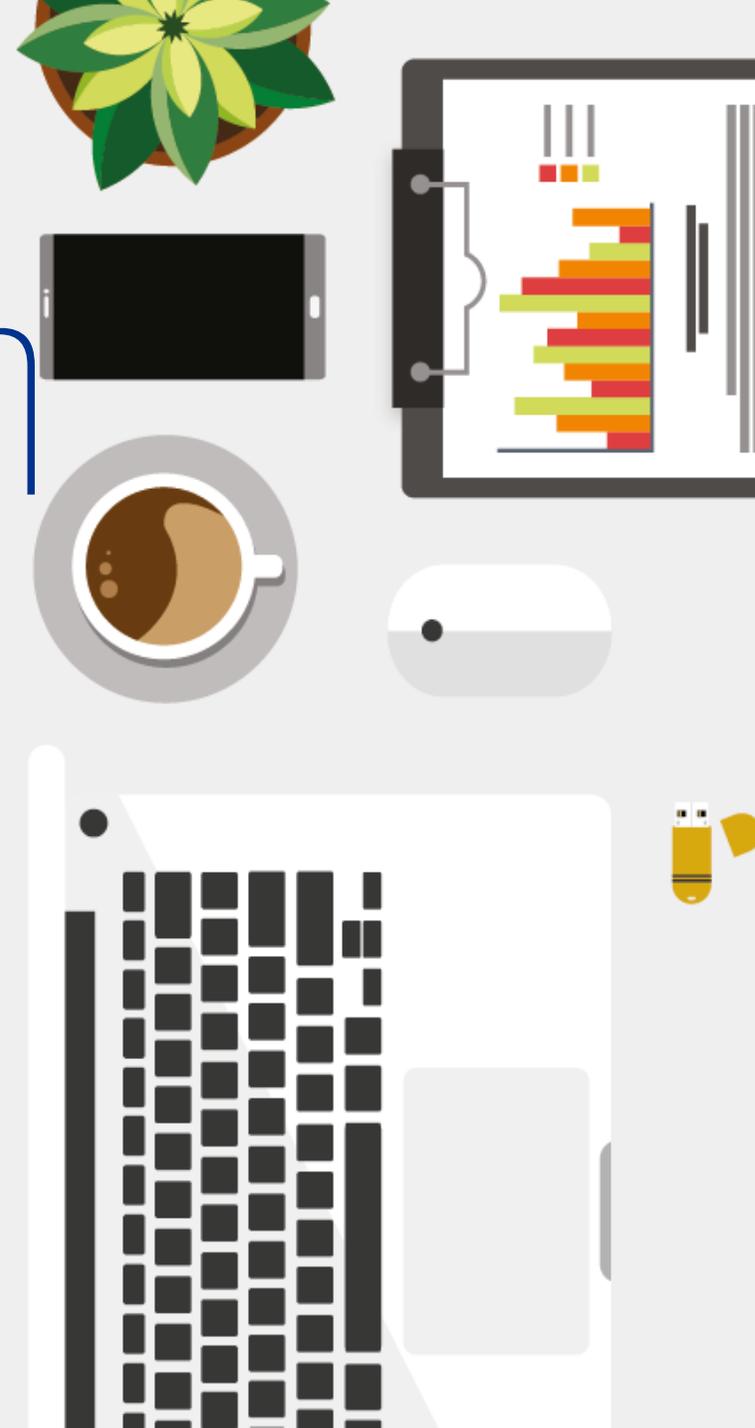
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Home Working in Ireland

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Working



Popularity of home working

How popular is home office working among employees in general?	<input type="checkbox"/> (Very) popular <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Unpopular
---	--

Trend towards home working

Going forward, will home office work be key for an employer to be attractive/competitive?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Possibly/not clear yet <input type="checkbox"/> No
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Relevance of Home Working



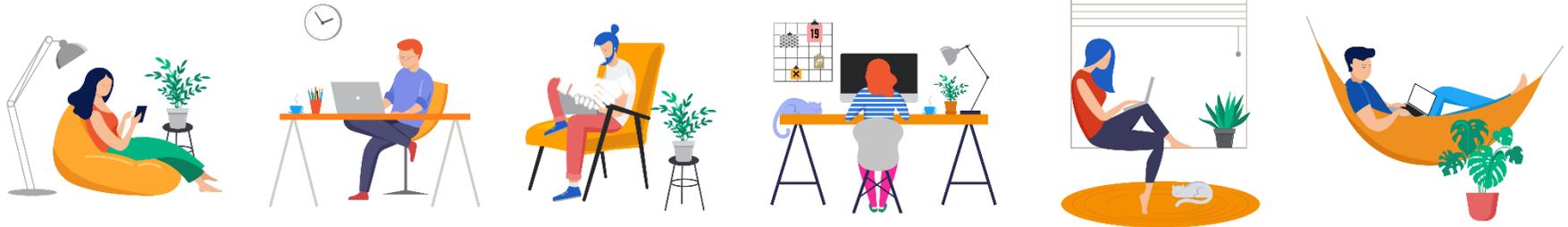
Difficulty of home working implementation

How simple is it to implement home working?	<ul style="list-style-type: none"><input type="checkbox"/> Simple<input checked="" type="checkbox"/> Moderate<input type="checkbox"/> Burdensome
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Impact of Covid-19

How has Covid-19 impacted the acceptance of home working?	<ul style="list-style-type: none"><input checked="" type="checkbox"/> Strong impact – it is expected that many more companies will introduce home working going forward<input type="checkbox"/> Medium impact<input type="checkbox"/> No particular impact<input type="checkbox"/> Other
--	--

Home Working - Legal Requirements



Mandatory legal requirements

- If working from home is a clear requirement of the contract at the outset, employees can be made to work from home without further consent. If the employer wishes to impose homeworking at a later date, this would be a variation of the contract requiring employee consent.
- Some employment contract provisions should be tailored to fit the specific needs of homeworking (e.g. place of work, hours of work and confidentiality).
- Employees can request a homeworking arrangement. Employers should consider such requests carefully but there is no automatic right to work from home.
- Homeworkers may need training on their obligations and those of the employer in relation to data protection and confidentiality. Employers should also carry out a data privacy impact assessment.



Employee consent

- Not required Required **X It depends**

Form of consent:

Depending on the employment contract, consent can be oral, or implied but should, ideally, be in writing.

What are the consequences if an employee does not agree with home working:

If an employer cannot obtain employee consent, the employer may wish to unilaterally impose homeworking without consent. However, this is not without risk as the employee may seek to bring a breach of contract claim or could resign and bring a claim for constructive unfair dismissal (unlikely in current Covid-19 circumstances, but there is still a risk of such claims).



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required **X It depends**

Generally there is no need to involve third parties.

However – if the employer recognises a trade union and the location where employees work is subject to collective bargaining with trade union representatives, the trade union may need to agree to the change. Note that trade union recognition is relatively rare in Irish private companies.

Home Working - Legal Risks & Limitations



Legal risks

- Employers should take care that the salary and benefits package provided to a homemaker is not less favourable than those provided to comparable employees. If they are treated less favourably and they have fall within one of the grounds of employment equality, a homemaker may seek to bring a claim under employment equality legislation.
- Employees with disabilities may have some protection in relation to a homeworking request. In particular, the employer's duty to make reasonable adjustments in relation to a disabled person is likely to be relevant. Permitting and facilitating homeworking may well amount to a reasonable adjustment, depending on all the circumstances.
- Employers will need to ensure they comply with their health and safety obligations in relation to home workers, including looking after employees' well-being while working from home with limited social contact.
- Risk of claims as a result of having to work from home - if an employer fails to obtain employee consent to working from home and the employer unilaterally imposes homeworking without consent, this is not without risk that an employee may seek to bring a breach of contract claim or could resign and bring a claim for constructive unfair dismissal (unlikely in current Covid-19 circumstances, but there is still a risk of such claims).



Legal limitations

- There are no express legal limitations but more practical considerations would be whether the employee's role is suitable for homeworking.

Home Working - Duties & Rights



Employee duties and rights

- Employees can request a homeworking arrangement but there is no automatic right to work from home.
- The homeworker should be self-motivated, self-reliant, disciplined and able to complete work to scheduled deadlines. They may require greater than average initiative, flexibility, communication and time management skills and an ability to cope with reduced social contact. They also need to continue to comply with company policies including policies relating to IT usage, time and attendance, and social media.
- The homeworker must be able to cope with the extra pressures of working in the home where the demands of family life may be difficult to ignore. Ideally, before requiring or permitting any significant amount of homeworking, an employer should be satisfied that the worker has these characteristics.
- All employees have an implied duty not to disclose confidential information or use it for any purpose other than the employer's business. In practice, however, confidentiality is more difficult for an employer to police when the employee is working from home. Despite this, the homeworker should continue to keep confidential information secure.
- To this end, the employer may want to consider precautions for keeping confidential information secure such as: forbidding access by household members; passwords and encryption; and a secure filing cabinet and facilities for confidential disposal such as a shredder or confidential bin.



Employer duties and rights

- The employer should reserve the right to ask the employee to revert to normal working practices.
- The employer should continue to require the homeworker to keep confidential information secure.
- If a homeworker is using computer equipment supplied by the employer and will have access to the internet and/or email facilities, the employer will need to consider the application of any systems it has in place for monitoring the use to which the homeworker might put the facilities at their disposal. The employer will also need to satisfy itself that the risk of a data security breach is low, possibly by way of a data privacy impact assessment.
- An employer is responsible for an employee's welfare, health and safety so far as is reasonably practicable. Employers must conduct a suitable and sufficient risk assessment of all the work activities carried out by their employees, including homeworkers, to identify hazards and assess the degree of risk.
- Employers should consider each individual homeworker arrangements to ensure that they comply with any duties they may have towards that individual. For example, if a homeworker has a disability, the provision of equipment (or reimbursement of the employee's equipment expenses) may be required as a reasonable adjustment.



Compensation requirement

Is there a need to adjust the salary?

- Yes
 No

However –

When considering benefits provided with employment, such as a subsidised staff restaurant, an employer should ensure that homeworkers have access to those benefits or facilities (whatever the likelihood of the homemaker actually taking advantage of them).

If it appears that a homemaker will not be able to take advantage of some or all of those benefits because of their place of work, the employer should consider whether they should be compensated or provide an alternative arrangement.



Expenses

Is there a need to adjust expenses regulation?

- Yes
 No

Which of the following elements must typically be compensated?

- Internet
 Electricity
 Equipment for home office
 Rental costs

X Other: The contract should specify which expenses the employee can claim (if any), such as travel expenses to attend the office, telephone, heating and lighting costs, and any increased insurance premiums.



Examples

- a) An employee wishes to do occasional home working (1 day per week on average). Is the employer obliged to provide any compensation?

No, although this will depend on the employer's policy and the terms of the employment contract.

- a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to provide any compensation?

No, although this will depend on the employer's policy and the terms of the employment contract.

Home Working - Policy



Policy Requirement

- Legally required
- X Not legally required**
- Not legally required but common practice
- Other



Mandatory policy elements

The following are the minimum items to be covered by a home working Policy:

N/A



Customary policy elements ("best practice")

- A homeworking policy should cover the criteria for assessing whether or not a homeworking arrangement will be practical, effective and meets business needs.
- The policy should include how homeworkers will be managed, and implications for matters ranging from taxation to security of the organisation's information.
- A larger employer is likely to need a more extensive homeworking policy than a small employer. Small firms might agree individual homeworking arrangements in writing, but it would be advisable to have a policy covering key points to ensure consistency in the business.
- Depending on the circumstances, it may be sensible to consult with employees or any employee or trade union representatives in relation to the policy. Alternatively, some of the provisions of the employment contract can, and should, be tailored to fit the specific needs of homeworking. However, this may require employee consent or consultation with employees.

Domestic



Social security (domestic)

Social Security (PRSI) is to be applied by Irish employers as normal. The employer is responsible for deducting PRSI from employees salary at source under the payroll tax withholding (PAYE) system and remitting the Employee PRSI together with Employer's PRSI, plus employee income tax and Universal Social Charge (USC) to the Irish Revenue authorities.

Should the employer be participating in the Temporary Wage Subsidy Scheme, the employer should ensure that the correct Social Security/PRSI Class 'J9' is applied through out the scheme for all relevant employees participating in the scheme.

Should an employer make a payment of the €3.20 per day to employees who are qualifying e-workers, the payment is chargeable to PRSI.



Tax (domestic)

An employer is required to deduct income tax, USC and PRSI from an employee's salary under the PAYE system as normal while employees are working from home.

An employer can pay a qualifying e-worker a tax free allowance of up to €3.20 per day, for each day the qualifying employee is working from home to cover the increase in home utilities costs due to home working. To be classified as an e-worker the following conditions must be satisfied before an employee can qualify as an e-worker:

- There is a formal agreement in place between the employer and the employee under which the employee is required to work from home,
- An employee is required to perform substantive duties of employment at home; and
- An employee is required to work for substantial periods at home.

However, where the Irish Government recommends that employers allow employees to work from home to support the national public health objective during the Covid-19 crisis Irish Revenue have confirmed that such employees will qualify as an e-worker for the Covid-19 period.

Where an employer does not pay an employee an e-working allowance but the employee is a qualifying e-worker, the employee can make a claim for tax relief through their Irish tax return for their e-working utility costs only. The method of calculating the relief is outlined in Revenue's Tax and Duty Manual 'E-working and Tax' at this link -> <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-05/05-02-13.pdf>

International



Social security (international)

Social Security (PRSI) is to be applied as normal when employees are engaged in home working. The employer is responsible for deducting PRSI from employees salary at source under the payroll tax withholding (PAYE) system and remitting the Employee PRSI together with Employer's PRSI, plus employee income tax and Universal Social Charge (USC) to the Irish Revenue authorities.

Should an employee be remaining in Ireland for longer than their initial assignment, the employer should consider whether the employee's A1 Certificate or Certificate of Coverage (which may have retained the employee on their home social security system and exempted them from Irish PRSI), needs to be extended for their remainder of their stay in Ireland. In absence of a valid A1 Certificate, Certificate of Coverage or PRSI exemption, PRSI should be applied by the employer on the employee's remuneration who is working in Ireland.

Further, should an employee be on assignment outside of Ireland but retained on the Irish social security system by way of an A1 Certificate or Certificate of Coverage, an employer should consider whether these certificates need to be extended to cover any extended durations where an employee may not be able to return to Ireland due to Covid-19 movement restrictions.



Tax (international)

All taxation implications of an employee homeworking in a foreign jurisdiction should be considered (including but not limited to corporate taxation, permanent establishment risks and foreign employment tax implications).

The Irish Revenue authorities have eased employment taxation payroll withholding (PAYE) rules during the Covid-19 crisis. These include, but are not limited to, the following:

PAYE (Employment Tax) Dispensation Applications

As a result of the restrictions on travel as a consequence of Covid-19, Revenue will not strictly enforce the 30-day notification period requirement for PAYE dispensations applicable to short term business travellers from countries with which Ireland has a double taxation treaty who are going to spend in excess of 60 workdays in Ireland in a tax year.

Foreign Employments - Operation of PAYE

The Irish Revenue will not seek to enforce Irish payroll tax withholding obligations for foreign employers in genuine cases where an employee was working abroad for a non-Irish entity prior to Covid-19 but relocates temporarily to Ireland during the Covid-19 period and performs duties for his or her non-Irish employer while in Ireland.

PAYE Exclusion Order - Irish Contract of Employment

Regarding employees who are working abroad for a foreign employer under an Irish contract of employment where a PAYE exclusion order is in place, the position will not be adversely impacted where the employee works more than 30 days in the State due to Covid-19.

Further detail is available on Revenue's website ->

<https://www.revenue.ie/en/corporate/communications/covid19/compliance-with-certain-reporting-and-filing-obligations.aspx>

Home Working - Data Protection



Data Protection

EU General Data Protection Regulation (**GDPR**) and the Data Protection Act 2018 (**DPA 2018**) (together the data protection legislation) require that personal data is processed in accordance with a number of principles set out in Article 5 of the GDPR.

Homeworkers may need specific training on their obligations and those of the employer in relation to data protection and confidentiality, concerning the procedures which they must follow, and what is, and is not, an authorised use of data.

Employers should also carry out a data privacy impact assessment of the data protection implications of employees working from home.

Home Working - Frequent Legal Questions



Employee right to claim home working

Employee right to claim home working	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Only if ...
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Employer right to instruct home working

Does the employer have an (exceptional) right to unilaterally instruct the employee to do homeworking?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Only if working from home is a clear requirement of the contract
--	--

Full-time home working

Is it possible to hire employees to work at home full-time?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Only if ...
---	---

Home working cross-border

Would home working be possible for employees living abroad?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Only if tax, social security and immigration issues have been considered
---	--

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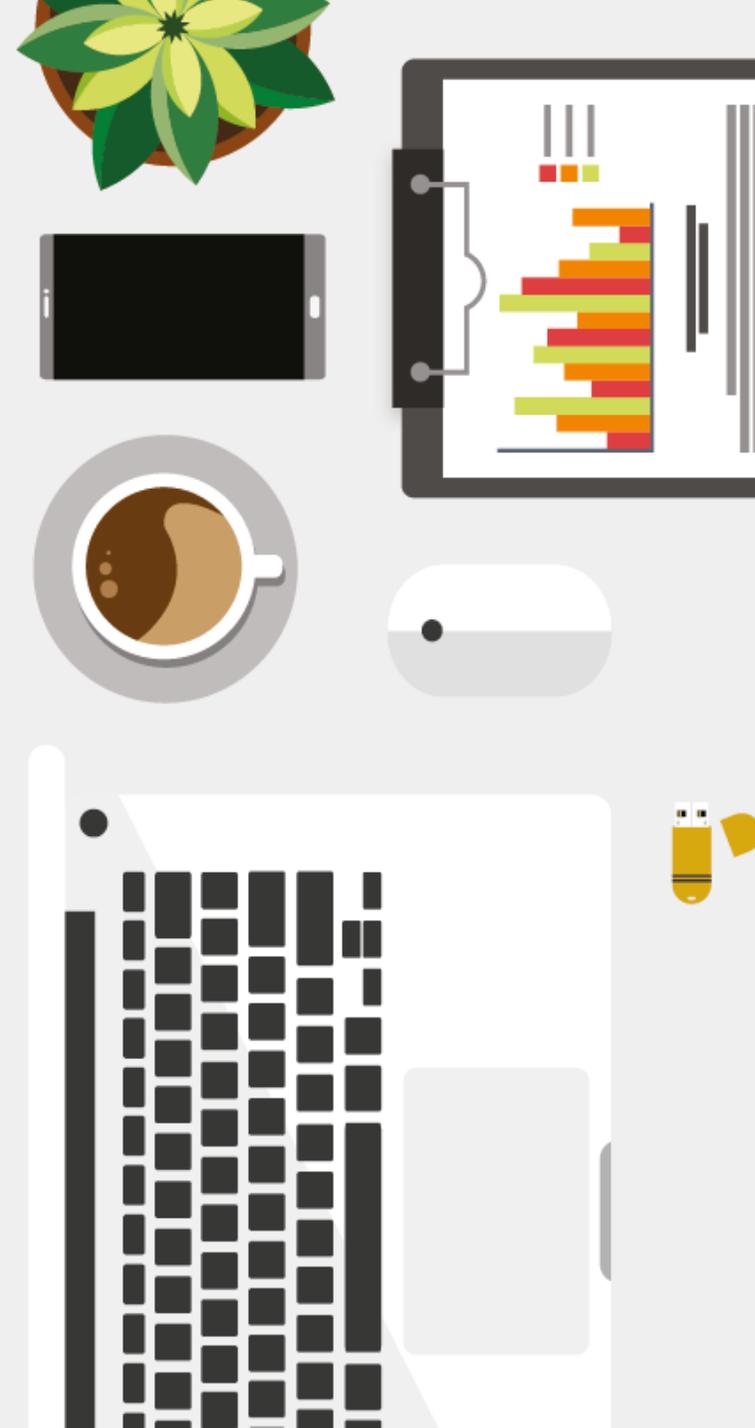
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Home Office in Italy

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple**
- Moderate
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Home office work is only a different modality of performance of the employee's job and duties, therefore, the economic and regulatory treatments applied to employees working at home office must be equal to those applied to employees working at the company premises (as far as they are compatible with the relevant modality of work)
- Home office work is regulated in writing through an agreement between employer and employee



Employee consent

- Not required **Required** It depends

Form of consent:

Agreement with the employee

What are the consequences if an employee does not agree with the home office:

Agreement with the employee is one of the requirements, otherwise home office cannot be put in place (unless for exceptional cases, as it happens, for instance, in case of health emergency)



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required **It depends**

- **Communication to the Labour authorities is mandatory.**
- **The employer may also execute a collective agreement with the trade unions**

Home Office - Legal Risks & Limitations



Legal risks

Please see the content of other boxes



Legal limitations

- Regular working hours and rest period must be respected
- Employees has the right to be disconnected for a number of hours in a day/week
- Regular salary to be paid
- Other employees and trade union rights must respected as well as for work c/o the company's premises

Home Office - Duties & Rights



Employee duties and rights

- The regular employees' duties remain unvaried
- Please note that "Home Office" is only a different modality of performing the normal job and duties assigned to an employee, which implies only a different place of work where they are carried out



Employer duties and rights

- Employers have the same "limitations" in their controlling powers that they have during the regular performance of work c/o the company's premises.
- Employers cannot request that an employee is available 24/24h
- Employer have to update the 'Risk Evaluation' relating to health and safety in the workplace and the information booklet given to employees

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> None</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- X Not legally required but common practice**
- Other:



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A



Customary policy elements ("best practice")

- Distribution and rotation of working time between home office and company office
- Additional employee's duties in terms of confidentiality and handling of confidential data
- Disconnection right
- Non discrimination right
- Work organized by objectives

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Home office work is subject to the same social security contributions as working time c/o company's premises



Tax (domestic)

Home office work is subject to the same tax burdens as working time c/o company's premises.

PE risk has to be evaluated case by case.

Home Office - Social Security & Tax



International



Social security (international)

The same rules applicable to working hours performed by a “commuter” in different countries (or to a person seconded to a foreign country) are applied also in case of home office work.



Tax (international)

The same rules applicable to working hours performed by a “commuter” in different countries (or to a person seconded to a foreign country) are applied also in case of home office work.

PE risk has to be evaluated case by case.

Home Office - Data Protection



Data Protection

GDPR and local rules applicable to employees working *c/o* company's premises are applied also to home office.
Company policies may provide specific rules and guidelines on protection of company's data in case an employee performs his/her duties outside the company premises.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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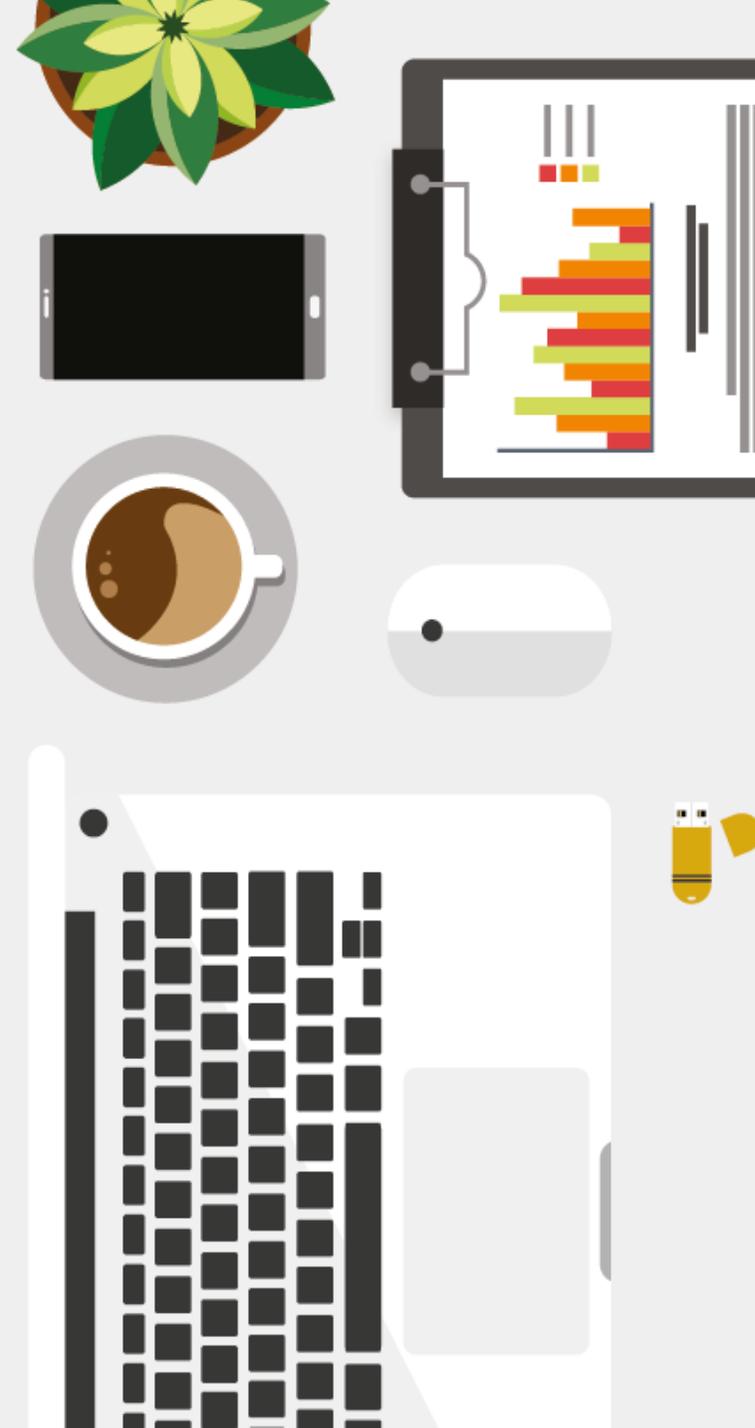
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Home Office in Lithuania

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular**
- Moderate
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

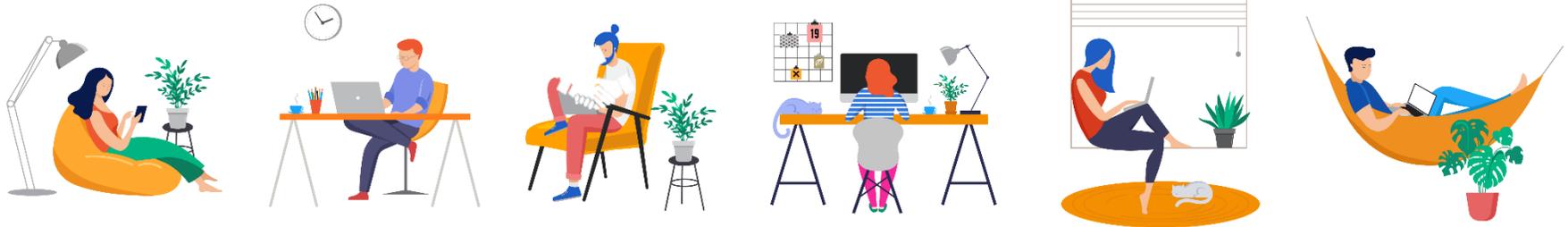
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- The remote work shall be assigned at the request of an employee or by mutual agreement of the employer and the employee.
- The requirements for the workplace (if such exist), the work equipment provided, the procedure re provision of the equipment, the rules re using the work equipment and a person whom the employee has to report to shall be established in writing.
- The additional expenses incurred by employee due to the remote work must be reimbursed by the employer.
- An employee shall allocate working time at his own discretion.
- When controlling an employee the employer must comply with data protection regulation and cannot violate the employee's right to privacy.



Employee consent

Not required **Required** It depends

Form of consent:

Consent by email is sufficient.

What are the consequences if an employee does not agree with the home office:

If an employer offers to an employee to work remotely due to declared quarantine in Lithuania and the health condition of the employee but the employee does not agree to work remotely the employer is entitled to suspend the employee from work.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required **Required** It depends

- **An employer must regularly, at least once per year, upon the request of the work council, inform the work council, or in the absence thereof – the employer-level labour union, about the remote work situation at the company, indicating the number of employees working remotely and the positions held thereby, as well as the average remuneration by occupational group and gender where there are more than two employees in the occupational group.**

Home Office - Legal Risks & Limitations



Legal risks

- **Risks related to a home office security:**
 - Personal security and safety. The equipment used at a home office should be safe to use, the workplace should be safe to work at and the compliance with the Law on Safety and Health of the Employees of Lithuania shall be ensured.
 - It is necessary to assess whether the confidential information safety will be ensured.
 - It is necessary to ensure that the IT infrastructure used at the home office is secure.
- **Risks related to a remote work efficiency:**
 - There is a risk that an employee working remotely might work less efficiently and abuse the remote work.
 - It is advisable to an employer to approve the order following which the remote work is conducted, to establish a regular reporting process to ensure the maintenance the compliance with an employee's labour duties established under the employment contract.



Legal limitations

- While working remotely the maximum working time and minimum rest period requirements shall be observed.

Home Office - Duties & Rights



Employee duties and rights

An employee must comply with the order established by the employer stipulating:

- requirements for the workplace;
- specific rules concerning working process;
- reporting process.



Employer duties and rights

- If an employer cannot prove that it would cause excessive costs due to production necessity or the specifics of work organisation, the employer must satisfy an employee's request to work at least one-fifth of standard working hours remotely when requested by employee who is pregnant, who recently gave birth, or who is breast feeding, an employee who is raising a child under the age of 3, or an employee who is a single parent raising a child under the age of 14 or a disabled child under the age of 18.
- If, while working remotely, an employee incurs additional expenses related to the job or the purchase, installation or use of work equipment, he must be reimbursed.
- An employer must regularly, at least once per year, upon the request of the work council, inform the work council, or in the absence thereof – the employer-level labour union, about the remote work situation at the company, indicating the number of employees working remotely and the positions held thereby, as well as the average remuneration by occupational group and gender where there are more than two employees in the occupational group.
- An employee working remotely must be provided with necessary safety and health equipment. The equipment and the workplace must meet the requirements established by law.
- If an employer is not able to assess the professional risks at a remote workplace, it must train an employee how to assess such risks so that the employee itself could assess the professional risks at his remote workplace.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> Other expenses related to the remote work</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>It depends on a specific situation. If the employee incurs additional expenses related to the job or the purchase, installation or use of work equipment, then he must be reimbursed respectively.</p> <p>a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>Yes, the employee should be paid with the compensation.</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required <input type="checkbox"/> Not legally required X Not legally required but common practice <input type="checkbox"/> Other: 	<p>The following are the minimum items to be covered by a home office Policy:</p> <p>N/A</p>	<ul style="list-style-type: none"> – General guidelines of remote work – Cases when an employer agrees with the remote work (cases that are not in conflict with the Labour Code of Lithuania) – Requirements for home office – Requirements related to employees' health and safety – Compensation policy – Reporting provisions applicable for an employee – Requirements related to IT infrastructure and cybersecurity – Requirements related to information confidentiality

Home Office - Social Security & Tax



Domestic



Social security (domestic)

General rules on social security allowances apply in respect to remote work



Tax (domestic)

From employment taxation perspective, there is no special tax treatment for such employees in Lithuania. For corporate income tax purposes, given that the employer and the employee working remotely are both located in the same country, we do not see any specific tax issues that may arise due to some employees temporarily working from home.

Home Office - Social Security & Tax



International



Social security (international)

General rules on social security allowances apply in respect to remote work



Tax (international)

Lithuanian tax authorities have not issued any specific guidance on international tax aspects in relation to remote work changes due to COVID-19. However, Lithuanian authorities generally follow OECD guidance. Based on recently issued OECD guidance on these matters, a few potential tax issues may arise in respect of the COVID-19 restrictions: possible tax residency changes of employees working remotely, potential permanent establishment (PE) risk due to these employees, change in taxation of employment income of those working from home.

Based on the OECD position, generally, it is unlikely that changes in the working patterns of employees due to the COVID-19 pandemic will create changes to the determination of a PE or change tax residency of respective employees working temporary from home. However, where the changes may become permanent over time to some arrangements, residency and taxation of employees, as well as companies in respect of foreign PEs, should be considered.

Home Office - Data Protection



Data Protection

- In the event that the remote work requires to introduce a new resource or tool, it is necessary to assess not only the reliability of it, but also what personal data would be processed using that resource or tool and for what purposes. When using electronic resources or tools, in addition to login details and access rights, other personal data related with the execution of tasks, performance, results are also processed.
- The surveillance of an employee working remotely cannot be based on the consent of the employee. In order to monitor the employee the employer could rely on Article 6 (1) (f) of the BDAR and carry out a test of balance of interests to assess whether the employer's interests outweigh the interests of the employee.
- When an employer performs the surveillance and control of the employee a data protection impact assessment shall be performed. If the results of the assessment show that the processing of the data would pose a significant risk if the data controller does not take measures to reduce the risk, the data controller must consult with the State Data Inspectorate of Lithuania in advance.
- If the remote work changes the processing of employees' personal data (scope, duration, purposes, etc.) on which they were informed, the employer must prepare a privacy statement regarding the processing of employees' personal data while working remotely, clearly identifying specifically what is changing.
- An employer must instruct the employees on:
 - Specific employee responsibilities (usage and updating of operating systems, requirements for antivirus programs, selection and change of passwords, Internet threats, the obligation to disconnect from a resource or tool when not in use, thus limiting unauthorized access to personal data and employer's resources or tools by third parties);
 - Who to contact in the event of a security incident or personal data breach.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right

to claim home office

- Yes
- No
- Only if she is pregnant, recently gave birth, or is breast feeding, is raising a child under age of 3, or a single parent raising a child under age of 14 or a disabled child under age of 18.**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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Home Office in Mexico

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- There are no specific legal requirements for implementing and maintaining teleworking, for that reason we apply the general employment regulations
- It is recommended to have a policy for employees that can work by teleworking.



Employee consent

Not required **X Required** It depends

- Form of consent:

The contract must be amended and signed by both parties.

- What are the consequences if an employee does not agree with home office?

It could be considered as a unilateral change of working conditions and it may be a constructive dismissal.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

Not required **X Required** It depends

- Union must recognize the change of working conditions and include them in the collective agreement.
- Any amendment to the collective agreement has to be submitted before the employment authorities in order to be effective.

Home Office - Legal Risks & Limitations



Legal risks

- Salaries and benefits not adjusted to the form of teleworking.
- Control of absenteeism and incapacity periods.
- Abuse of information technology.
- Confidentiality of information.
- Occupational hazards, in particular psychosocial and ergonomic factors.
- If applicable, identify causes for termination of the employment relationship.



Legal limitations

- Maximum forty-eight working hours of home office.

Home Office - Duties & Rights



Employee duties and rights

- In particular, to comply with the obligations applicable to the teleworking related to work development, fulfillment of objectives, work times.
- Comply with obligations of safety and health at work.
- Follow the rules of work supervision and results reporting time.
- Communicate to the employer the causes of absenteeism.
- Take care of the work tools provided for the development of distance work and health care.
- Submit to medical examinations provided for in work regulations.
- Comply with information security rules.



Employer duties and rights

- Establish policies that regulate the teleworking, either full or part time.
- In particular, to comply with contractual obligations related to the determination of objectives, supervision and payment of remuneration.
- Provide business tools for the use of information technology.
- Establish mechanisms for identifying employees through information technology.
- Regulate remote communication means.
- Training in the use of information technology and confidential information management.
- Adhere to occupational health and safety standards applicable to the teleworking.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p> <p>.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No, in the case of alienating teleworking there is no obligation to provide additional compensation.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No, sometimes compensation is granted to obtain the technological conditions to operate by means teleworking.</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- Not legally required but common practice

X Other



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

- The place where the work will be done.
- Working time rules.
- Health and safety at work, including psychosocial and ergonomic aspects.
- Days and locations of payment.
- Rules for the use of seats and chairs.
- Rules to prevent occupational hazards.
- Time and method for workers to have medical examinations.
- Permits and licenses.
- Disciplinary measures



Customary policy elements ("best practice")

- IT security policies.
- Data protection
- Rules for digital identification.
- Communication measures.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Employees under the teleworking scheme are subject to compulsory social security insurance. In this case, employers are obligated to pay employer's contributions, payroll taxes and housing contributions



Tax (domestic)

The employers with employees under the teleworking model have the obligation to withhold and pay the tax caused on the income from wages and salaries, without establishing any benefit or subsidy due to teleworking

Home Office - Social Security & Tax



International



Social security (international)

If an employee is registered in the payroll of a Mexican company and the employment agreement is executed under Mexican Laws then must be paid social security contributions as Mexican employee.



Tax (international)

- In the event that expats cannot return in time to their home country, whose contracts expired and continue carrying out activities for the parent company, the potential risk would be deemed a Permanent Establishment (PE) in Mexico. Likewise, the risk of continuing to be considered as residents for Mexican tax purposes should be evaluated, since they continue having a permanent home in the country.
- If an individual tax resident renders independent personal services in Mexico, must be verified that he does not exceed a period of 183 days within a twelve months period from the time they arrived to the country, since a withholding tax would be triggered (25%), according to the Double Tax Treaties in force the term of 183 days may vary (could be shorter in some of them), hence these provisions must be reviewed in detail. If a legal entity is hired to carry out services, it must be analyzed if the permanence in the country do not create a potential risk that may trigger a PE.
- In the event that the Board Member Meetings are not held in the country of residence of the company, it must be evaluated whether this situation would imply a potential change of tax residence and its effects on federal taxes (CIT, VAT, formal obligations, accounting, digital tax invoicing, among others), as well as the application of Double Tax Treaty benefits.
- Debt structures due to the Sanitary contingency should be analyzed (inbound and outbound). According to the tax provisions related to the non-deductibility of abroad payments to related parties resident in low taxation jurisdictions, as well as the new limitations for interest deductions in force since 2020.

Home Office - Data Protection



Data Protection

Elaborate privacy notice for employees.

Regulate not only personal data but also to establish obligations for the protection and handling of business information and its transmission.

Review the security of video conferencing platforms and training in order to prevent phishing or malware.

Realize a policy which determines valid and permitted devices for working, access to corporate systems, responsibilities and duties for employees, contact mechanisms for reporting data protection incidents and consequences.

Restrict access to information according to each employee's position and prohibit the installation of unauthorized or unlicensed software.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if the employment agreement establishes that work will be performed at employee's home.**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if labor authorities allow like in current health emergency.**

Full-time home office

Is it possible to hire employees to work in home office full-time?

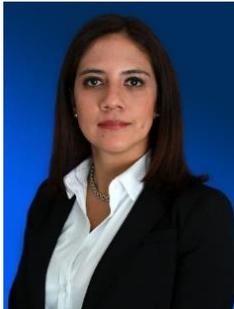
- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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Home Office in Norway

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular**
- Moderate
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

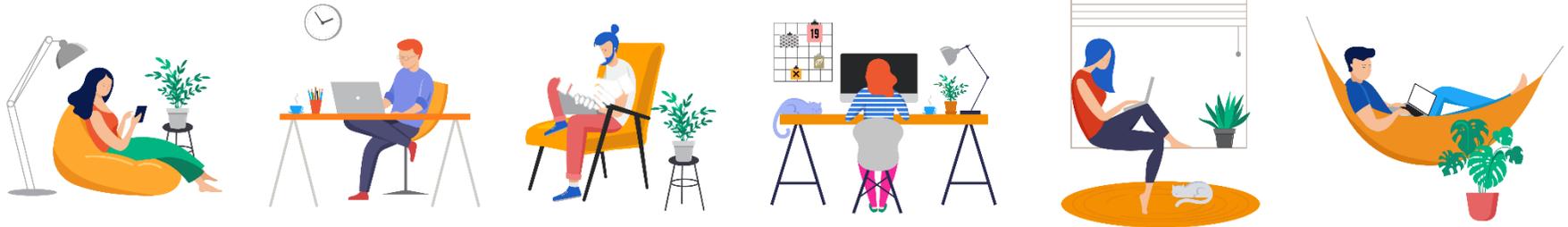
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

Unless the home office agreement is only applicable for a short and temporary period of time, the employer must comply with the Norwegian regulation concerning “work performed in the employee’s home” [FOR-2002-07-05-715].

This implies among other things that the employer must comply with some of the following mandatory requirements:

- Written agreement must be in place, that includes among other time work time regulations, duration, equipment, confidentiality, storing documents etc.
- The employer is as far as practically possible, responsible for that the employee have a safe and sound working environment.
- The home office should be included in the employer’s internal control systems etc.



Employee consent

- Not required **Required** It depends

Form of consent:

Normally, an agreement must be made and the employee’s consent is required for establishing a home office solution. There might to a limited extent be some exceptions from this main rule following COVID-19 and similar restrictions to the workspace

What are the consequences if an employee does not agree with the home office:

If the employee does not consent or agree to working from home office, he/ she shall, as per the employment contract, have a right to work from the office location.

Some exceptions may apply in special circumstances, e.g. when it’s not possible to perform work from the office location due to COVID-19 restrictions.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required **It depends**

There might be collective bargaining agreements and tariffs that require involvement and discussions with employee representatives before home office is implemented for a larger group of employees.

Home Office - Legal Risks & Limitations



Legal risks

- Any employer's who willfully or negligently breaches the provisions or orders contained in or issued pursuant to the Norwegian Working Environment Act is liable to a fine, imprisonment for up to one year or both.



Legal limitations

- The employer does not have physical access to the employee's home office unless specifically agreed with the employee.

Home Office - Duties & Rights



Employee duties and rights

- Employees shall contribute to carry into effect those measures that are implemented in order to create a safe and sound working environment.



Employer duties and rights

- In order to safeguard the health, safety and working environment for the employees, the employer shall as far as practically possible make sure that the working conditions in the employee's home is safe and sound. This implies among other things that the workplace, the work equipment and the indoor environment shall not lead to any unfortunate physical strain
- Employees that mainly carry out work during night shall be offered a health check before commencing work, and thereafter at regular intervals. (Not applicable to employees that normally work less than three hours of the daily working hours in night time).

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required <input type="checkbox"/> Not legally required X Not legally required but common practice <input type="checkbox"/> Other: ... 	<p>The following are the minimum items to be covered by a home office Policy:</p> <p>N/A</p>	<ul style="list-style-type: none"> – Working hours regulations applicable when working from home – Provisions for at what times the employee should be available for the employer (e.g. for phone calls, meetings etc.) – Provisions on working environment, including equipment and facilities – Provisions on confidentiality and access to documents etc. – Provisions on the role of the safety deputy/ employee representatives – Provisions on internal control mechanisms – Other deviations from the employment contract applicable when working from the home office

Home Office - Social Security & Tax



Domestic



Social security (domestic)

N/A



Tax (domestic)

Employees that have home office, may under certain conditions, claim deduction for costs, either a standard deduction of NOK 1 850, or for relevant costs that have incurred applicable to the home office.

In order to claim the deduction, there is a number of conditions that must be fulfilled. Among other things:

- The physical character of the home office (is the room sufficiently separated from the other rooms in the home).
- The individual work situation
- Etc.

We recommend that all conditions are assessed on an individual basis before claiming any deduction.

Home Office - Social Security & Tax



International



Social security (international)

Employees working from a home office in Norway is to be considered members of Norwegian social security, unless they submit an A-1 form in order to be exempted from Norwegian social security.

Employees that are member of Norwegian social security are liable to pay Norwegian social security contributions at a rate of 8,2 %.

Employers with employees that are member of Norwegian social security, and working in Norway are liable to pay Norwegian social security contributions at a rate of 14,1 %.



Tax (international)

Foreign employers with employees working from a home office in Norway is liable to report payroll, deduct and pay tax withholding to the Norwegian tax authorities.

The foreign employer may also run a risk for establishing a permanent establishment in Norway, depending on duration etc.

Home Office - Data Protection



Data Protection

There are no specific requirements to data protection in relation to home office except that it should be addressed in the home office agreement. Employers should however pay attention to and consider how GDPR provisions, and how they relate and apply when employees are working from office.

Relevant topics that should be assessed are among other things:

- Confidentiality and document access for remote working employees.
- Implementation and privacy compliance of new digital solutions to support home office.
- Need for enhanced access controls (multi-factor authentication, strong password policies etc.).
- Data loss prevention controls.
- Information & communication to employees concerning relevant threats to security.
- Increased monitoring of cyber compliance among employees.

We also recommend to read up on KPMG's advice for scaling security for remote working, available here: <https://home.kpmg/xx/en/home/insights/2020/04/scaling-security-for-remote-working.html>

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

Contacts



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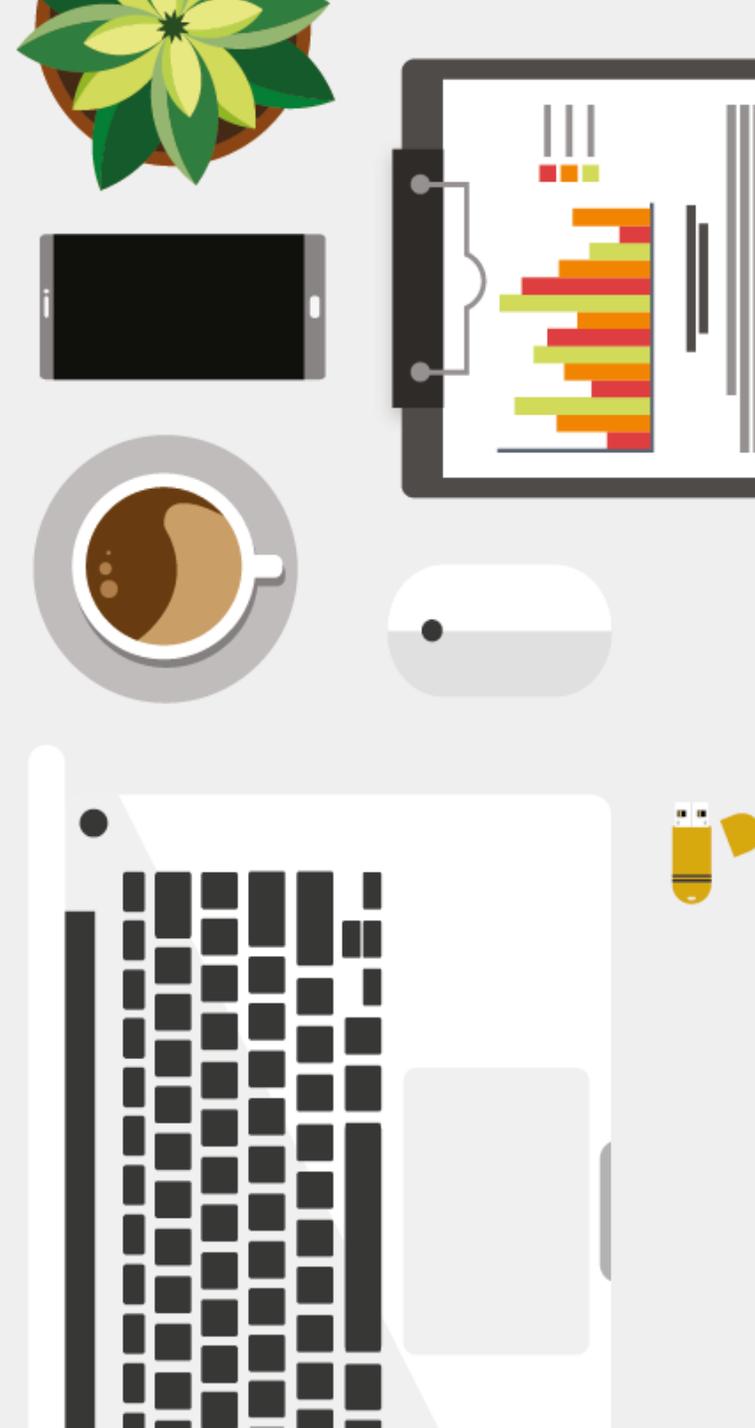
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Home Office in Peru

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?	<input type="checkbox"/> (Very) popular <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Unpopular
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Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Possibly / not clear yet <input type="checkbox"/> No
--	--

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- In Perú it is regulated the teleworking modality. However, the purpose of this document we will refer to teleworking as "Home Office". There is a special modality called "Remote Work" created only for the pandemic context and it will end once the emergency state concludes

Teleworking requirements:

- To enter into a contract or addendum in writing with the employee. This document shall have, among others, the following information:
 - ✓ The technological tools, as well as the party responsible for providing them. If the tools are provided by the employer, the agreement establishes the conditions for their use, the employee's responsibilities and the proceeding for returning the tools. If the tools are provided by the employee, the agreement shall include the amount of the corresponding compensation.
 - ✓ The security and management of the employer's information.
 - ✓ The supervision or reporting mechanism to be implemented to facilitate the control and supervision of the work, if applicable.
- In addition, the employer must register the workers into the payroll as a teleworker.



Employee consent

- Not required **Required** It depends

Form of consent:

In writing.

What are the consequences if an employee does not agree with the home office:

The employer may be fined by the labor administrative authority – SUNAFIL.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required** Required It depends

Home Office - Legal Risks & Limitations



Legal risks

- In case the employer provides the informatic tools, he is obliged to guarantee their suitability.
- If the employer does not provide the informatic tools and even though the employee is still at the employer's disposition but could not perform his/her duties due to the lack of tools, the employer shall continue paying the remuneration.
- In cases of loss or deterioration of the informatic tools that make their use impossible for reasons not attributable to any of the parties, the employee must immediately inform the employer so that the employer may take measures to ensure the continuity of work. In such cases, the employee will be entitled to the reimbursement of the authorized expenses incurred to ensure the continuity of services.



Legal limitations

The current legislation does not have any legal limitation. However, the all constitutional and labor rights shall be complied when employees perform teleworking such as the maximum working time, the right to privacy, among others.

Home Office - Duties & Rights



Employee duties and rights

Duties

- Comply with current regulations on information security, protection and confidentiality of data and safety and health at work.
- During the working day, the worker must be available for coordination with the employer.
- Keep confidentiality of the information provided by the employer so that the employee can perform his/her services.
- In case the informatic tools are supplied by the employer, they cannot be used by any individual other than the employee, who must return the objects in good condition at the end of this working modality.

Rights

- Be trained about the informatic tools, as well as restrictions on the use of such tools, current legislation on the protection of personal data, intellectual property and information security.
- Right to privacy and inviolability of communications.
- Protection of maternity right and breastfeeding time of the worker.
- Health and safety at work, as appropriate and considering the special characteristics of home office.
- In any case, the home office will not affect the exercise of the union's rights.



Employer duties and rights

Duties

- Train workers on the computer resources provided, restrictions on use, protection of personal data, intellectual property and information security.
- To provide the adequate conditions for work (internet access, informatic programs, equipment, among other) or agree that the mentioned conditions will be paid by the employer.
- Comply with regulations on safety and health at work.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>But when the employee provides his/her own electronic tools, the employer must pay the corresponding expenses, including communication costs, without prejudice to the greater benefits that could be agreed by individual or collective agreement. This compensation is not considered as remuneration as it is a reimbursement of the expenses paid by the employee.</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>In this case, the legislation regarding home office is not applicable, so the need to compensate the worker or not will depend on what the parties have agreed.</p> <p>a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>Because home office is only applicable when an agreement between the employer and the worker has been reached, this case is not under the teleworking legislation. In any case the employee shall accept this option. If the electronic media is provided by the worker, in application of home office regulation, the employer is obligated to compensate it.</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required X Not legally required <input type="checkbox"/> Not legally required but common practice <input type="checkbox"/> Other: 	<p>The following are the minimum items to be covered by a home office Policy:</p> <p>N/A</p>	<ul style="list-style-type: none"> – Types of teleworking. – Information about electronic tools to be used during teleworking. – Duties and rights of workers. – Working day. – Mechanism of control and supervision of the worker. – Mechanisms of safety and health at work. – Determination of the compensation when tools are provided by the employee. – Employees obligations for protecting the employer's data and confidentiality.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

The home office worker does not have an especial regulation about social security in comparison with a regular worker:

- Social security health contributions (EsSalud):
Employers must make a contribution for all their employees, including foreign employees registered on the payroll, based on the total monthly remuneration, including salary in kind, with certain exceptions such as profit sharing payments and extraordinary bonuses. The rate of this contribution is 9% of the employee's compensation.
- National and Private Pension fund contributions (ONP/AFP):
The contribution for the National Pension System is 13% of the employee's remuneration, and the contribution for the Private Pension System is 10% of the employee's compensation, plus commission for the pension fund administration and insurance premiums for disability and burial coverage (in total this contribution is about 13%). This contribution shall be withheld from the employee's salary.



Tax (domestic)

The home office worker does not have an especial regulation about tax legislation in comparison with a regular employee:

- Employee's compensations are subject to Income Tax.

Home Office - Social Security & Tax



International



Social security (international)

Home office regulations are only applicable to employees who provide their services in Peru, there is not a special consideration about Social Security in comparison with a regular employee.



Tax (international)

Home office regulations are only applicable to employees who provide their services in Peru, there are not any special consideration about tax legislation in comparison with a regular worker.

Home Office - Data Protection



Data Protection

The current legislation establishes the following elements to be complied by the employer regarding data protection:

- To process the data with the prior informed, express and unequivocal consent of the employees and to document it.
- To inform the employees about the purpose of collecting their data (which must be determined, explicit and lawful) and how this data will be treated.
- To collect data that is updated, truthful, accurate, necessary and relevant.
- To use the data only for the purpose it was collected.
- To allow employees and other data holders (for example, their families) to access, update, rectify, delete, block and oppose the information.
- To guarantee the security and confidentiality of the information and to keep it stored for the time necessary to fulfill the purpose of the treatment.

For the handling of the employee's information, each employer may generate the corresponding data protection policy and also it is obligated to train their employees about said policy.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if the government issues a legal disposition enabling the employers to do so. Currently, because of Covid-19, employers are entitled to instruct the employees to do home office unilaterally. And there are mandatory rules to instruct employers to apply home office for employees who are considered within the Risky Group (employees over 65 years old, with cancer, serious asthma, among other conditions).**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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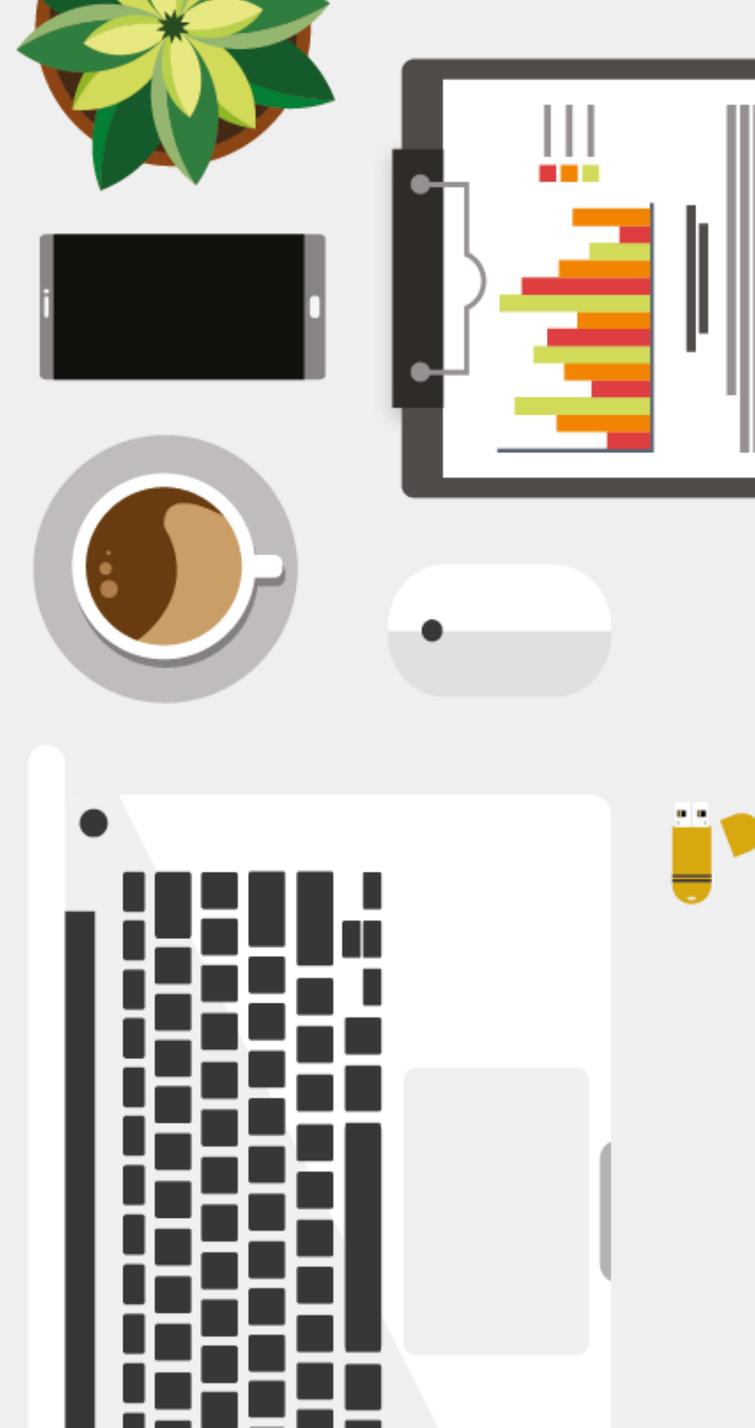
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Home Office in Poland

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular***
- Moderate****
- Unpopular

* Due to COVID-19 home office became very popular
** Before COVID-19

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple***
- Moderate
- Burdensome

* Due to the fact that in Poland there are no regulations specifying the rules of implementing home office (as opposed to teleworking – please see explanations on slide 4). The solutions adopted in Poland concerning home office only concern the period of coronavirus epidemic.

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

In connection with the coronavirus epidemic in Poland, most of the employers (where it is possible) apply preventive measures in the form of ordering an employee to work from home (home office). There are no legal provisions in force in the Polish Labour Code which define such a way of performing work. A related legal institution is the possibility of performing work in the form of teleworking, which, however, does not coincide with the common understanding of home office. As a rule, teleworking applies only when the employees regularly perform work outside the company, using electronic means of communication. It is the criterion of regularity and repeatability that is decisive in determining whether teleworking or home office is involved. Teleworking is quite formalised requires adopting the respective by-laws and even inserting certain provisions in employment contracts. In this publication, we refer to provisions regarding home office, not teleworking. In view of the increasing popularity of home office mode of work, the respective regulations have been adopted for the time of the epidemic to regulate home office work.



Employee consent

X Not required Required It depends

Form of consent:

The employee's consent is not required under current legislation.

What are the consequences if an employee does not agree with the home office:

It is assumed that a refusal to follow the employer's order (to perform work from home), unless it is contrary to the law or the employment agreement, may be treated a violation of the employee's obligations. According to art. 108 § 1 of the Labour Code the employer may issue a warning or reprimand for the employee's failure to observe the established organization and order in the work process, as well as occupational health and safety regulations.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

X Not required Required It depends

The current regulations do not require the consent of trade unions or employee representation to order the employee(s) to work from home (home office).

Home Office - Legal Risks & Limitations



Legal risks

The lack of regulations in the field of home office causes doubts on some issues under labour law.

Quite often home office is confused with teleworking (which commonly is also called home office).

One of the basic risks/disadvantageous for the employer is difficulty in controlling the performance of work by the employee(s). The draft bill, which is currently examined by the Polish Parliament, stipulates that the employer will have the right to control the way the work is performed. Among other things, the employer will have the right to instruct the employee to keep records of the activities performed, which should include, in particular, the description of these activities, the date and time of their performance. The choice of the form in which the employee should keep such records as well as its frequency will also be up to the employer's decision.

Certain doubts may appear if an employee has an accident, i.e. whether such an accident should be treated as an accident at work or not (especially if such accident happened outside of the premises).



Legal limitations

According to the current legislation implementing home office is not connected with any restrictions (apart from those standard working conditions resulting from the Labour Code). In the Polish Parliament, however, the works are carried out on the introduction of regulations aimed at regulating specifically home office.

According to the draft bill, the employer will only be able to order home office to an employee who has the skills and technical and accommodation capacity to perform such work and the type of work allows for it.

In particular, home office, in accordance with the draft bill, may be performed by using means of direct remote communication or concern the performance of manufacturing parts or material services - this list is open and does not limit the types of permitted home office activities or means by which home office may be performed by an employee.

It is also worth noting that it is intended that the contemplated regulations in field of home office will be in force only during epidemic period.

Home Office - Duties & Rights



Employee duties and rights

Current legislation does not provide for any additional or extraordinary rights or obligations for employees in connection with home office.

The draft bill provide for minor modifications in this respect. As we have already mentioned, the drafted regulations stipulate that an employee will be obliged to keep records of the activities performed (if the employer issues such an order).



Employer duties and rights

Current legislation does not provide for any additional or extraordinary rights or obligations for employer in connection with home office.

The draft bill provide for modifications in this respect. According to the proposed regulations, the employer will be obliged to provide means of work and materials for work needed to perform the work and logistic service of the work. As far as new rights for employers are concerned, the draft bill provides that the employer will have the right to control the way in which the employee performs his/her work, as well as the employer will have the right to instruct the employee to keep records of the activities performed by the employee.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> Other: In Poland, there are no legal provisions regulating the reimbursement of expenses incurred by an employee in connection with home office.</p> <p>According to the draft bill, which are currently under consideration in the Polish Parliament, in case of ordering an employee to perform work in the form of home office, the employer will be obliged to provide means of work and materials for work needed to perform the work and logistic service of the work. These solutions are aimed at relieving the employees from the need to organise the means and materials needed to perform remote work on their own. However, the reimbursement of expenses is not regulated.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No, regulations do not provide such obligation</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required <input type="checkbox"/> Not legally required X Not legally required but common practice* <input type="checkbox"/> Other: <p>* As opposed to the teleworking.</p>	<p>N/A</p>	<p>The common practice is that home office regulations (if adopted by an employer) contain the following items:</p> <ul style="list-style-type: none"> – home office admissibility conditions, – rights and obligations of employer and employee, – rules concerning confirmation of employee's presence at work, – rules on the use of company/private equipment, transfer of documents and data, securing Internet connections, access to information that is a secret of the employer as well as personal data to which the employee will have access and how to secure them, – rules on the record of home office work, – rules of contacting the employee with the employer/supervisors and ordering tasks and handing over the documents necessary for their performance – rules and method of controlling the work performed by the employee, – health and safety rules.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

The performance of work in the form of home office does not affect the general rules on payment of social security contributions.



Tax (domestic)

The performance of work in the form of home office does not affect the general rules on payment of taxes.

Home Office - Social Security & Tax



International



Social security (international)

The performance of work in the form of home office does not affect the general rules on payment of social security contributions.



Tax (international)

The performance of work in the form of home office does not affect the general rules on payment of taxes.

Home Office - Data Protection



Data Protection

No specific regulation in case of home office (other than the standard one resulting from RODO and the Labor Code).

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes**
- No
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes***
- No
- Only if ...

* The common practice in Poland during epidemic period is that employers order rotational work.

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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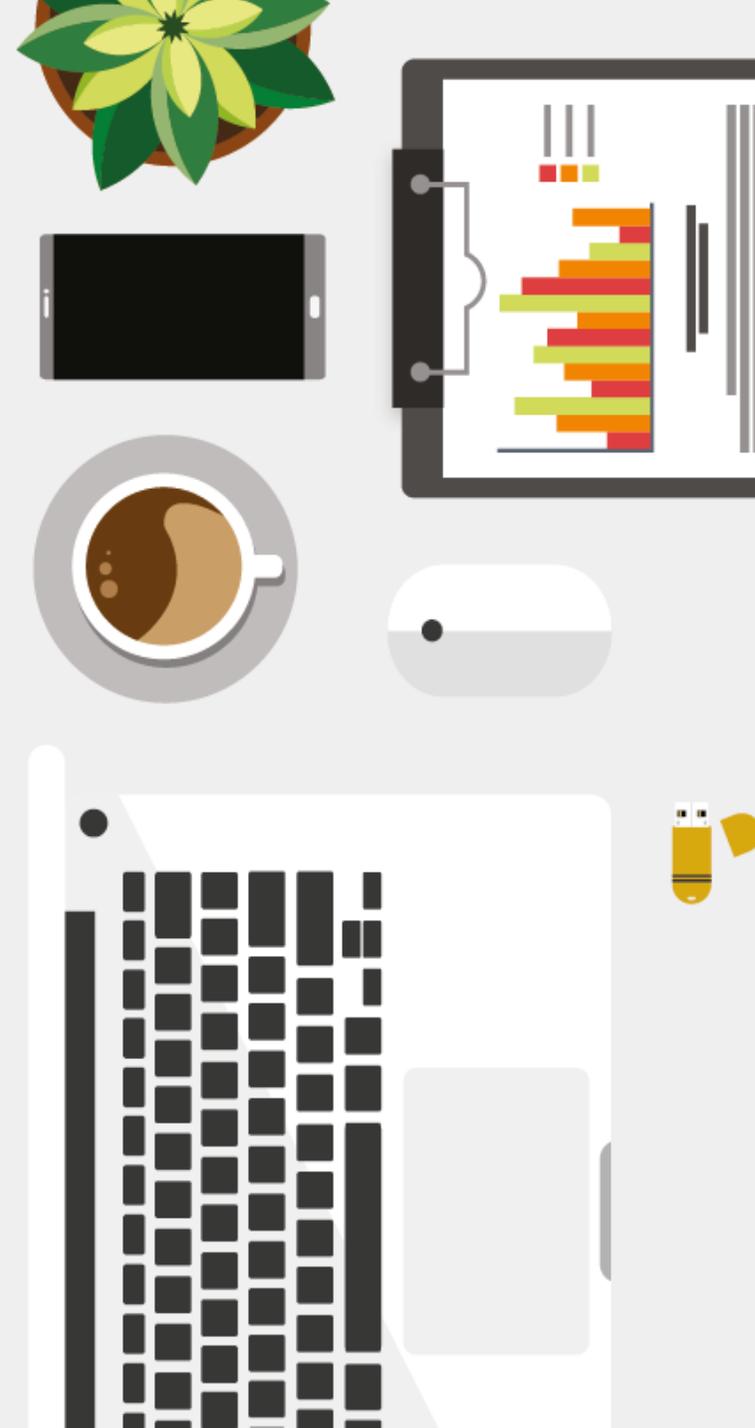
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Home Office in Romania

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular**
- Moderate
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

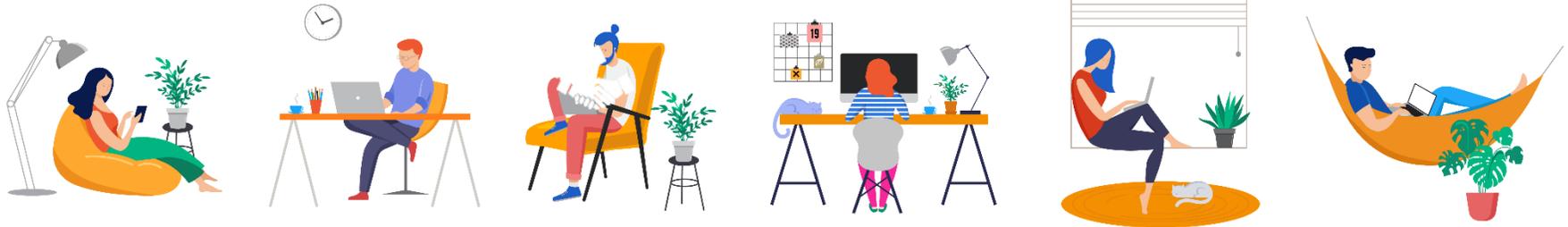
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- **Parties' consent and contractual framework** – in Romania home office (teleworking) is based on the **parties' mutual consent** and it has to be **expressly provided in the individual employment agreement/addendum** to it;
- **Registration of home office** – implementation of home office is subject to registration with employees' electronic general register within a certain time limit;
- **Overtime** – overtime performance during home office may take place at the employer's request, with the employees' prior written consent;
- **Contractual framework** – in case of home office, the individual employment agreement/addendum to it have to provide certain mandatory clauses, their absence triggering administrative fine sanctions;
- **Health and safety at work** – both employer and employees have certain specific health and safety obligations while performing work at home;
- **GDPR** – the employer must inform the employee with respect to the legal and internal applicable rules of personal data protection.



Employee consent

- Not required **Required** It depends

Form of consent:

Under the applicable law, employees' consent have to be expressed under the individual employment agreement or addendum to it, as the case may be. The individual employment agreement, as well as the addendum have to be signed in hard copy format (under observance of the specific regulations, the addendum may be signed with the electronic signature).

What are the consequences if an employee does not agree with the home office:

If the employee does not agree with implementation of home office, then such organization manner of work may not be implemented. Pursuant to the applicable legal provisions, employee's refusal to perform his/her working duties by means of home office may not represent a reason for unilateral amendment of his/her individual employment agreement, nor a reason for his/her disciplinary sanctioning.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required** Required It depends

Home Office - Legal Risks & Limitations



Legal risks

Non-compliance with the applicable law requirements may trigger financial risks for the employer, as follows:

- Performance of home office in absence of the express provision according to which the employee works under home office manner (administrative fine amounting RON 10,000 for each identified person);
- Absence of the parties' mutual consent (materialized under the individual employment agreement/addendum to it) upon home office work (administrative fine amounting RON 5,000);
- Parties' non-compliance with overtime requirements, i.e. employer's request and employee's written consent (administrative fine amounting RON 5,000);
- Absence of certain mandatory clauses (e.g. the period and/or the days in which the employee carries out the activity at the work place organized by the employer, the place(s) where the working activity is carried out by means of home office, the program within which the employer is allowed to check the activity of employees, as well as the manner in which the employer perform the control etc.), as provided under law, from the individual employment agreement/addendum to it (administrative fine amounting RON 5,000);
- Employer's non-compliance with its obligation of ensuring the employee the necessary communication and information technology means for performance of home office (administrative fine amounting RON 2,000);
- Employer's non-compliance with its obligation to register the individual employment agreement/addendum to it providing for home office with employees' electronic general register on the day prior to the commencement of the activity by means of home office, at the latest (administrative fine ranging between RON 5,000 and RON 8,000) etc.



Legal limitations

- Pursuant to the applicable legal provisions, teleworking requires and is limited to employees of whose working responsibilities imply the use of the information and communication technology means;
- Implementation of home office is conditioned by parties' mutual consent;
- Performance of overtime is conditioned by the employee's written consent;
- Implementation of home of office implies the employer's obligation to ensure the employee the necessary communication and information technology means for its performance.

Home Office - Duties & Rights



Employee duties and rights

Employee's duties:

- To carry out the working activity according to his/her professional training and to the instructions received from the employer so as to expose neither himself/herself to accidents or professional illness, nor other persons who may be affected through his actions or omissions during the working process;
- To inform the employer with respect to the conditions existing at the place for the performance of home office and to allow the employer's access in order to check the health and safety events occurred;
- To be available for his hierarchical superiors and colleagues and to communicate with them through all the internal communication methods used by the employer;
- Not to change the work health and safety at work conditions from the place(s) where the working responsibilities through home office are carried out;
- To only utilize work equipment that does not jeopardize his/her health and safety at work;
- To carry out his/her working responsibilities in compliance with the provisions relating to the employees' obligations as set out under health and safety at work law, as well as in compliance with the provisions of the individual employment agreement;
- To comply with the specific rules and prohibitions regarding the used internet networks, as well as with those applicable to the equipment made available, as they are established by the employer etc.

Employee's rights:

- Employees benefit from all the rights falling under law, internal regulation and applicable collective bargaining agreements.



Employer duties and rights

Employer's obligations:

- To ensure the means relating to the information and communication technology and/or the safe work equipment as needed for the performance of the working responsibilities by the employees, unless the parties agrees otherwise;
- To ensure the employees a proper and sufficient health and safety at work training when changing the place for the performance of the home office activity, and also in case of implementing a new work equipment or any other work procedure;
- To inform the employees upon the data protection provisions as regulated by the law and the Internal Regulation;
- To ensure the employees the possibility to regularly meet their working colleagues;
- To ensure the employees all the rights as falling under the law, respectively under the Internal Regulation, as granted to the employees having the place of work at the employer's registered office;
- To ensure the employee the expenses relating to home office activity, if not otherwise provided etc.

Employer's rights:

- To control the employees home office activity (pursuant to the conditions established in the individual employment agreement/addendum to it, internal regulation and/or applicable collective bargaining agreement).

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Other:</p> <p>Note: Pursuant to the Romanian applicable legal provisions, the individual employment agreement/addendum have to provide for the conditions under which the employer ensures the expenses relating to home office activity. Also, the parties may agree that the burden of such expenses pertains to employees.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No additional compensation is to be paid. The parties may agree to whom the expenses burden pertains.</p> <p>a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>Please refer to our response above. In addition, we reiterate that under the Romanian legal provisions home office is subject to employee's consent, thus it may not unilaterally be disposed by the employer.</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- Not legally required but common practice**
- Other:

Note: Pursuant to the applicable Romanian legal provisions, there is no mandatory requirement to develop and implement a home office policy. However, as per the practice implementation of such a policy is encouraged. In absence of such a specific policy, home office aspects may be regulated under the Internal Regulation applicable at level of the employer.



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A



Customary policy elements ("best practice")

- Eligibility criteria applicable to employees for teleworking;
- Home office period and working program;
- Aspects regarding overtime;
- Parties' rights and obligations;
- Health and safety at work requirements;
- Aspects regarding GDPR etc.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

From the social security perspective, working from home, on the Romanian territory, no additional charges or obligations will be triggered for the salary incomes.

The obligations will remain the same as in case the employee works at the company premises:

- Social security contribution (employee) 24%;
- Health insurance contribution (employee) 10%;
- Work insurance contribution (employer) 2.25%.



Tax (domestic)

From the income tax perspective, working from home, on the Romanian territory, no additional charges or obligations will be triggered for the salary incomes.

The income tax (i.e. 10%) will remain the same as in case the employee works at the company premises.

Home Office - Social Security & Tax



International



Social security (international)

Working from home, may affect the applicable social security legislation. In this respect each situation should be analyzed on a case by case basis.

1. Multi – state activity

Issues may come up in cases where activity in the state of residence is not substantial - the employee works in the state of residence less than 25% of total working time. In this case, the employee is insured in the member state where he or she is employed and should already have a valid A1 form.

If the employee works from home, in the state of residence, obviously, the working time in the country of residence will increase, perhaps exceeding 25% of the total working time. Thus, there is a risk that the applicable social security legislation will change.

In this respect, the European Commission has made the following clarifications: in order to determine whether the activity in the state of residence is substantial, a reference period of 12 months must be taken into account. Thus, even if the activity in the country of residence exceeds 25% of the total working time during several weeks/months, it is important to determine whether this percentage is exceeded in a period of 12 months.

2. Secondments

If during the secondment period the employee works from a different location, which is in another state, different from the home and the host state, the A1 form available may no longer be valid and the applicable legislation may change.

The employer should check with the relevant authorities whether a new A1 form should be obtained so that the applicable law remains that of the state of origin.



Tax (international)

Salary income should continue to be taxed in accordance with the provisions of the applicable double taxation treaty, even if this could lead to complications. If the employee works in a state other than that in which he habitually works, the applicable tax treatment may change. Employers may have additional withholding obligations and employees may also have a new or increased tax liability in the state of residence.

For example If a German employer assigns a German tax resident for a period of two years to Romania, normally the salary income is taxable exclusively in Romania.

If the employee works from home, from Germany, for the company in Romania, according to the tax treaty, the salary income is no longer taxable in Romania. The right to tax rests entirely with Germany. In order to make this change in the way salary income is taxed, both companies need to know the implications and act in a coordinated manner

Similarly, in the case of a Romanian tax resident, seconded by his or her Romanian employer for two years to Germany, normally, salary income is taxed in Germany. In Romania the Romanian employer does not withhold tax and the employee must file an annual tax return. If the employee works from home and carries out his or her activity from Romania for the German company, the Romanian employer must start to withhold income tax through the local payroll. So there is again a change in the country that has the right to tax

Other aspects to be taken into consideration when employees are working in states other than those in which they normally work are:

- The risk that their activity could create a permanent establishment for the employer in that state.
- A potential change in the “place of effective management” of the company and thus a change in the tax residence of the company which implies additional tax liabilities.

Home Office - Data Protection



Data Protection

In Romania, the main framework applicable in respect of personal data protection is the General Data Protection Regulation (“**GDPR**”), together with several local laws.

As such, employers should follow the generally applicable principles set out by the GDPR and, in particular, they should:

- Have clear policies, procedures and guidance for staff who are remote working.
- Use the most up-to-date version of their remote access solution.
- Ensure that their staff is reminded to use unique and complex passwords.
- Check if multi-factor authentication is available and configure it where possible.

The Romanian Law No. 190/2018 on measures for the application of the GDPR states that, in cases where workplace monitoring systems through electronic communications are used, the processing of the personal data of employees, for the purpose of pursuing the legitimate interests of the employer, is permitted only if:

- The legitimate interests pursued by the employer are thoroughly justified;
- The employer has provided mandatory information to the employees;
- The employer priory consulted the trade union or the employees’ representatives;
- Other forms and means for reaching the same purpose have not proven to be efficient;
- The storage period for the personal data is proportional with the purpose of processing, and, generally, is not longer than 30 days.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only with the agreement of the employer**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only under exceptionally cases, provided by the law (e.g. as was established during the state of emergency in Romania ended on the 14th of May)**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Although the law does not expressly provide such case, in practice there are cases where employees are hired in home office full-time**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if ...

Contacts



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Home Office in Serbia

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

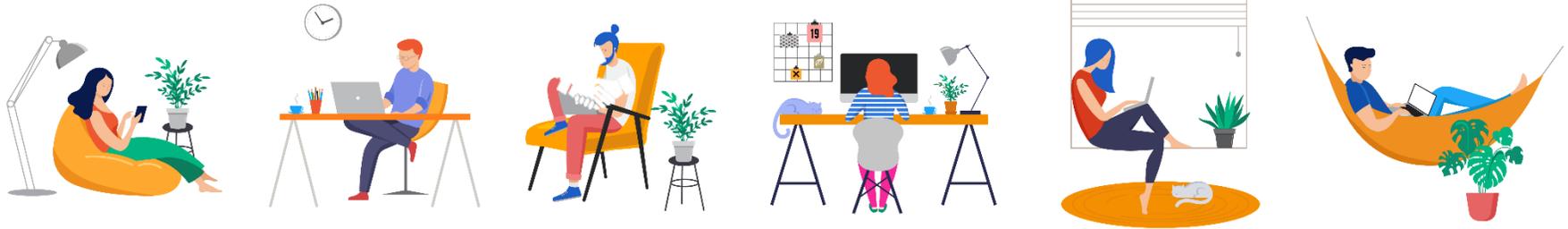
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward
- Medium impact**
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- Relevant amendments of employment contract have to be prepared. The Labor Law defines which additional elements employment contracts needs to contain in case of home work.



Employee consent

- Not required **Required** It depends

Form of consent:

Contract amendment required via proposal for annex and annex of employment contract.

What are the consequences if an employee does not agree with the home office

If employee refuses proposal for annex and annex of employment contract, employer can terminate employment contract, but employee reserves the right to challenge termination at court.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required** Required It depends

Home Office - Legal Risks & Limitations



Legal risks

- The right of employee to refuse proposal for annex and annex of employment contract. Namely, employer can terminate employment contract, but employee reserves the right to challenge termination at court.



Legal limitations

- Not defined in relevant laws

Home Office - Duties & Rights



Employee duties and rights

The Labor Law defines that in case of home office, employment contract has to regulate certain matters, such as use of equipment, supervision of work of employee, expenses compensation and similar.



Employer duties and rights

The Labor Law defines that in case of home office, employment contract has to regulate certain matters, such as use of equipment, supervision of work of employee, expenses compensation and similar.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p>Employee working from home still has the right on certain allowances such as meal allowance and vacation allowance, but does not have the right to transportation allowance, as he/she is not travelling to and from work while working from home.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>Yes</p> <p>a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>Yes</p>

Home Office - Policy



Policy Requirement

- Legally required
- X Not legally required**
- Not legally required but common practice
- Other: ...

Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A

Customary policy elements ("best practice")

Home Office - Social Security & Tax



Domestic



Social security (domestic)

No social security considerations should be considered in view of home office. Employee has the same rights and employer has the same obligations as in case of regular work.



Tax (domestic)

Official of the Ministry of Finance issued an instruction that home office work caused by Covid-19 crisis would not be considered as PE.

Home Office - Social Security & Tax



International



Social security (international)

No social security considerations should be considered in view of home office. Employee has the same rights and employer has the same obligations as in case of regular work.



Tax (international)

Official of the Ministry of Finance issued an instruction that home office work caused by Covid-19 crisis would not be considered as PE.

Home Office – Data Protection



Data Protection

No special requirements, the same rules apply defined in Data Protection Act, as when employees work from the office.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if employee refuses to sign annex of employment agreement**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No, he has to offer annex of employment agreement**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes, but only if they are assigned on work abroad by Serbian employer**
- No
- Only if...

Contacts



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Home Office in Slovenia

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes**
- Possibly / not clear yet
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

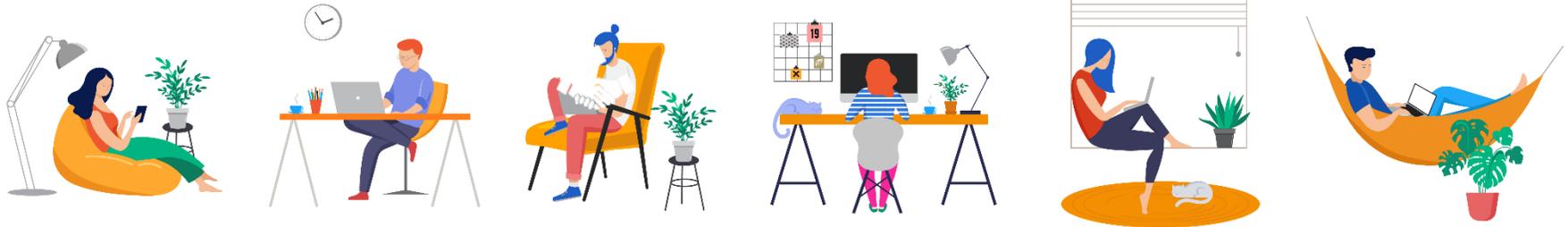
How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



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Mandatory legal requirements

- home office has to be agreed in the employment agreement,
- the employer shall be obliged to provide safe working conditions for home office,
- the employer is responsible for providing the employee with the appropriate resources for work (e.g. telephone, computer, stationery),
- the employer is obliged to reimburse the employee for any costs incurred.



Employee consent

- Not required **Required** It depends

Form of consent:

Employment agreement.

What are the consequences if an employee does not agree with the home office:

Home office is only possible with employee's consent.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required **Required** It depends

- **The employer must inform the Labour Inspectorate about the intended organisation of home office.**

Home Office - Legal Risks & Limitations



Legal risks

- health and safety regulations,
- privacy and data protection,
- working time.



Legal limitations

N/A

Home Office - Duties & Rights



Employee duties and rights

- availability to the employer – it is recommended to conclude an agreement on reporting and reviewing procedures,
- confidentiality and data protection.



Employer duties and rights

- the employer shall be obliged to provide safe working conditions for home office,
- the employer is responsible for providing the employee with the appropriate resources for work (e.g. telephone, computer, stationery),
- the employer is obliged to reimburse the employee for any costs incurred.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input checked="" type="checkbox"/> Internet</p> <p><input checked="" type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other:</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>YES</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>YES, however, home office is only possible with employee's consent.</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- X Not legally required but common practice**
- Other:



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

In case the home working elements are not regulated in detail in the employment agreement, the mandatory policy elements are as required by law:

- **Location of work - providing safe working conditions for home office,**
- **Provisions pertaining to appropriate resources for work (e.g. telephone, computer, stationery),**
- **Rules for reimbursement of any costs incurred on the employee.**



Customary policy elements ("best practice")

- Rules on availability to the employer - reporting and reviewing procedures.
- Rules governing supervision of home working.
- Provisions pertaining to employees obligation to appear at the employers business premises.
- Confidentiality and Data Protection.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Special provisions apply for home office according to the Employment Relationships Act.

Work that is organized as home office must also comply with health and safety rules under Health and Safety at Work Act.

Home office must be reported to the Labor Inspectorate of the Republic of Slovenia

Employer must also record employee's working hours according to the Labor and Social Security Registers Act.

Employees who work from home have same rights as any other employee (annual leave, holiday allowance, meal allowance, sick leave). However, commuting allowances are disallowed.

Additionally, they are eligible to receive work-from-home allowance (reimbursement for the use of own means for work at home – electricity consumption, computer usage, communications, heating, ...)

Work from home allowance is exempted from social security contributions, but only up to the tax-free amount.



Tax (domestic)

Same taxation rules apply for employees who work from home.

Since employees who work from home, receive work from home allowance, such reimbursement is subject to special tax treatment.

Work from home allowance is exempted from taxation up to 5% of the employee's monthly salary, but not more than 5% of the average monthly salary of the employees in Slovenia.

The following provision applies only if:

- compensation is laid down by special regulations or in the collective agreement or internal act of the employer;
- these are typical, necessary and customary means for performing specific work;
- the employer specified the said compensation on the basis of calculating the real costs, and
- the compensation represents a founded and reasonable sum.

As the average monthly salary is currently EUR 1.758,27, reimbursement up to EUR 87 per month is not taxable.

Home Office - Social Security & Tax



International



Social security (international)

N/A according to the background (Slovene national living in Slovenia employed by Slovene employer).



Tax (international)

N/A according to the background (Slovene national living in Slovenia employed by Slovene employer).

Home Office - Data Protection



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Data Protection

[The Information Commissioner \(IC\) in Slovenia summarizes guidelines regarding the protection of personal data when working from home, as available on the link below:](#)

https://www.dataprotection.ie/sites/default/files/uploads/202003/Guide%20for%20Individuals%20Working%20Remotely_0.pdf

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No**
- Only if ...

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

Contacts



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Home Office in Spain

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?	<input type="checkbox"/> (Very) popular <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Unpopular
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Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Possibly / not clear yet <input type="checkbox"/> No
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Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

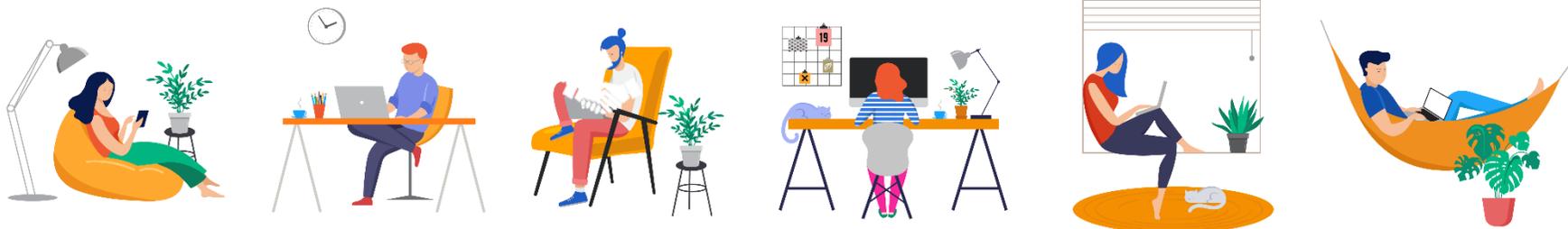
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other:

Home Office - Legal Requirements



Mandatory legal requirements

- It is regulated in the workers' statute (art. 13).
- Home Office is voluntary for the worker and for the company.
- Home Office must be agreed in writing.
- Remote workers will have the same rights as they had at the time of carrying out the services in the work center, except for those inherent in carrying out the service in the work center in person.
- Remote workers will be paid the same as other workers.
- The employer must report on the company's health and safety policy.
- Control of working time is the responsibility of the company. The company must grant the record the worker's day-to-day work.



Employee consent

- Not required **Required** It depends

Form of consent:

The agreement establishing the Home Office must be formalized in writing. Whether the agreement is set out in the initial or subsequent contract, it must comply with the same rules as for the basic copy of the employment contract to the workers' representatives.

What are the consequences if an employee does not agree with the home office:

The Home Office cannot be imposed on the employee on a mandatory basis, either by way of a substantial change in working conditions, or by collective agreement, as it implies a transformation of the contractual regime that affects the employee's personal sphere.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required** Required It depends

- **Given the individual and voluntary nature of Home Office, the working conditions should be set by the company and the worker concerned, unless there is a collective agreement with workers' representatives at some points, which should be respected.**
- **An assessment from the H&S external provider or responsible should be performed.**

Home Office - Legal Risks & Limitations



Legal risks

Compliance with the Law on Prevention of Occupational Risks.

- It is important to point out the risk on occupational risk prevention matters, because, in the case that the worker has an accident, it is difficult to determine whether or not it should be considered an occupational accident and whether this accident should determine the employer's liability, as well as the possible effect of the employer's insurance.
- It is also difficult for the employer to monitor the worker's compliance with safety measures.

Compliance with the Data Protection Act.

- Remote working intensifies this risk as it can be difficult for the employee and the organization to know when a security breach occurs, what consequences might result from it, as well as to identify how it happened.



Legal limitations

- Lack of a detailed defined legal regulation.
- Right to privacy and inviolability of the home.
- Inability to physically control the teleworker.
- Impossibility to control compliance with security measures.
- Poor time control.

Home Office - Duties & Rights



Employee duties and rights

- Remote workers will have the same rights as they had at the time of carrying out the services in the work center, except for those inherent in carrying out the service in the work center in person, which can be removed such as some social benefits (e.g. subsistence allowance, ticket restaurant). Since there are no differences in rights between workers, the legislator is providing guarantees for the remote worker, for example:
 - In terms of health and safety
 - Representation rights
 - Professional promotion
 - Training
- The duties are also the same as those of any other employee:
 - To comply the obligations arising from the job, and act in good faith with the company.
 - To comply responsibly with the corresponding health and safety measures.
 - Follow the orders and instructions of your superiors.
 - Do not compete with the company's activity, at least in the terms established by law.
 - To try to contribute, as far as possible, to the improvement of business productivity.
 - The duties arising from the employment contract itself.
 - The right to digital disconnection.



Employer duties and rights

- Right to privacy and inviolability of employee's home.
- Comply with the company's health and safety measures.
- Take all necessary cybersecurity measures to ensure that the devices and information we use in teleworking are protected against cyber risks.

Home Office - Compensation & Expenses



 **Compensation requirement**

Is there a need to adjust the salary?

Yes

No

The teleworker has the same rights as other workers. In particular, the legislator makes specific mention of the right of the teleworker to total remuneration established according to his professional group and functions.

 **Expenses**

Is there a need to adjust expenses regulation?

Yes

No

Which of the following elements must typically be compensated?

Internet

Electricity

Equipment for home office

Rental costs

Other:

All these issues must be set out in employment contracts and collective agreements, as Home Office is voluntary for both the company and the workers. There is no specific regulation, although in principle it is the company that should bear all the costs involved in teleworking for each employee.

 **Examples**

a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?

No, there is no obligation to compensate anything. The Home Office is voluntary for both the company and the employee, so they must agree to its conditions in writing. The employee has the right to apply for teleworking, and the employer must consider this application, but is not obliged to accept it.

b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation.

No, there is no obligation to compensate.

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- X Not legally required but common practice**
- Other:



Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A



Customary policy elements ("best practice")

- Companies are concerned about cyber-risk, which is why many are taking out cyber-risk insurance policies.

Home Office - Social Security & Tax



Domestic



Social security (domestic)

These workers are included, without any exception, in the Social Security system, regardless of the professional group, form and amount of remuneration.

The European Framework Agreement provides for access to the place of Home Office, within the limits of the legislation and national collective agreements of the employer, the workers' representatives and/or the competent authorities to verify the correct application of the rules on health and safety. Where the place of Home Office is the home, such access is subject to prior notification and consent, so as not to violate the right to privacy and inviolability of the home.

Remote workers have the right to adequate health and safety protection, and the provisions of the Law on the Prevention of Occupational Risks and its implementing regulations apply in all cases.



Tax (domestic)

Due to the fact that there are no effects on the salary, no tax consequences arise from home office.

Home Office - Social Security & Tax



International

 **Social security (international)**

N/A

 **Tax (international)**

N/A

Home Office - Data Protection



Data Protection

The European Framework Agreement on Home Office extends to remote workers the rights generally recognized to workers and establishes guarantees for the protection of their personal data and privacy.

With regard to their personal data, it states that the employer:

- a) Is responsible for taking appropriate measures, especially with regard to software, to ensure the protection of data used and processed by the remote worker for professional purposes;
- b) Must inform the employee:
 - of any legislation or regulations of the company concerning data protection being responsible for the compliance with these rules;
 - about any limitation in the use of the equipment or computer tools such as internet and the possible sanctions that will derive from the noncompliance of the same.

Home Office agreements incorporate clauses that emphasize the responsibility of the worker, who must comply with all the necessary measures established by the company in order not to disseminate, damage or misuse work-related data and documents.

For this reason, the company must insist that the worker comply with the duties of secrecy and of treating the information he or she accesses during the remote work as confidential.

In order to reinforce the worker's responsibility, the collective agreements require that, in the specific Home Office agreement, the worker declares that he/she knows his/her rights and duties in this matter.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if the employee reaches an agreement with the employer**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only in some certain cases like COVID-19 crisis that could imply danger for the employee in case of working at the office**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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Home Office in Sweden

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Home Office - Legal Requirements



Mandatory legal requirements

- Systematic work environment management and risk assessment are to be done by the employer. Main responsibility for safety and working environment lies with the employer, irrespective if the employee is working from home on his/her own initiative or the employer's initiative.
- In case working at the office entails a risk for safety and working environment of the employee or other employees (i.e. risk for spread of Corona-virus), for which the employer is responsible, the employer can decide that the employee must work from home, not the office. The employer's right to decide this is strengthened by Swedish state's and authorities' directives and recommendations (i.e. Public Health Authority).
- In other cases: voluntary agreement between employer and employee directly, regulation in the existing collective bargaining agreement or through home office policy regulating the specific terms and conditions of working from home



Employee consent

- Not required Required **It depends**

Form of consent:

Depending on what is stated in the employment agreement or the existing collective bargaining agreement (CBA) regarding the employee's place of work, a form of consent might be required (please refer to "voluntary agreement between employer and employee" in previous section). Not applicable if there is an imminent risk for safety and working environment.

What are the consequences if an employee does not agree with the home office:

Depends on the underlying reason for the home office, i.e. safety reasons. In the particular case of the Covid-19 pandemic, the reason for working from home is due to the employees' safety and minimizing the spread of the virus as well as recommendation from the Swedish state and authorities. Furthermore, the employer's right to direct and allocate work is of importance



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required **It depends**

In case of applicable CBA:

- **If there is no regulation regarding home office in the CBA nor in the employment agreement, there might an obligation for the employer to negotiate with the union. Not applicable if there is an imminent risk for safety and working environment.**

If CBA is not applicable:

- **If no CBA is in place at the work place, but the employees are members of trade unions, the employer might be obligated to negotiate with these unions prior to decision on home office. Not applicable if there is an imminent risk for safety and working environment.**

Home Office - Legal Risks & Limitations



Legal risks

- Non-compliance with employer's responsibility for safety and working environment due to lack of possibility to oversee and monitor this when the employee is working from home.
- Due to the potential need for extra overtime/additional hours in this situation, there is a risk for non-compliance with Working Hours Act and the Swedish Work Environment Authority's provisions, with particular focus on employees having the rest and recovery they need to execute their duties in a sustainable manner.
- Data protections risks



Legal limitations

- Potential client-related and confidentiality limitations and restrictions, i.e. unsecure VPN-tunnel or classified physical files.

Home Office - Duties & Rights



Employee duties and rights

- The employee must follow his/her duties in accordance with the employment agreement and/or existing CBA, as well as any applicable employment policies and legal requirements.



Employer duties and rights

- The employer must follow their duties in accordance with the employment agreement and/or existing CBA, as well as any applicable employment policies and legal requirements.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>It depends on whether the employee has additional costs for working from home, i.e work equipment, which the employer should carry (reasonable costs).</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>N/A</p> <p>Which of the following elements must typically be compensated?</p> <p>X Internet</p> <p>X Electricity (could be)</p> <p>X Equipment for home office</p> <p>X Rental costs</p> <p>X Other: Any cost that the employee has for working from home which go beyond the employee's normal costs.</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>This has to be agreed on between the employer and employee, unless already regulated in the employment agreement or CBA. As long as the employee is able to work in accordance with his working hours and obligations, the employer is not obliged to any compensation.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>The employer could be obliged to compensation for costs related to required work equipment, internet, part of the rent and other costs etc.</p>

Home Office - Policy



Policy Requirement

- Legally required
- Not legally required
- Not legally required but common practice**
- Other:

Mandatory policy elements

The following are the minimum items to be covered by a home office Policy:

N/A

Customary policy elements ("best practice")

N/A

Home Office - Social Security & Tax



Domestic



Social security (domestic)

Employer social security contributions are payable regardless of where work is performed.

Please note, employee contributions are included in withholding tax, not separated, and fully credited against income tax. In practice therefore employee contributions are nil.

Occupational health insurance is not applicable in all cases of injury in the home while working from the home office. The injury has to be directly related to the work being performed. When working from the office, the insurance covers all injuries at the office and most on the way to/from the office.



Tax (domestic)

General rules apply; no specific rules or guidelines due to the current COVID-19 situation.

Depending on the circumstances, the employer can provide office equipment for the home office as a non-taxable benefit. Cash compensation for individual purchases of office equipment or other expenses is taxable.

Depending on the circumstances, the employer may rent office space from the individual at market value (normally limited value). The rent income would be taxable as capital income rather than employment income for the employee, with no social fees.

Home Office - Data Protection



Data Protection

When an employee works from home, the employer as an entity remains the controller or processor of the personal data which the employee processes in his or her day-to-day work. Thus, the employer and the employee remains obligated to ensure that:

- Personal data collected or otherwise processed may only be processed for which purpose that the personal data have been collected.
- Personal data may only be stored for as long as it is necessary in order the fulfil the above stated purpose.
- That the employer and/or the client (depending on which party that is considered that Controller) has at least one documented legal basis for the processing of the personal data.
- Only personal data than are necessary to fulfil the purpose is collected or otherwise processed (and that non-essential personal data is not collected).
- That personal data are stored, transferred and otherwise processed only in secure environments.

In order to ensure that the above principles is fulfilled, the employee should:

- Not print documents including personal data on publicly available printers or on home networks without security.
- Not work with matters involving personal data (especially sensitive personal data) at home or public areas if there is a risk that a third party (including family members) might take part of information on the employee's computer screen, work phone or on printed paper documentation.
- Not perform work related internet searches on public networks without having enabled a secure VPN-connection.
- Only use USB-memories containing information related to the employer or the employer's clients if the USB-memory is encrypted with a high level av encryption technology.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if agreement is in place (employment agreement, addendum to employment contract, CBA)**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if agreement is in place (employment agreement, addendum to employment contract, CBA) or in exceptional cases and in cases of imminent risk for safety and working environment**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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Home Office in Switzerland

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Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

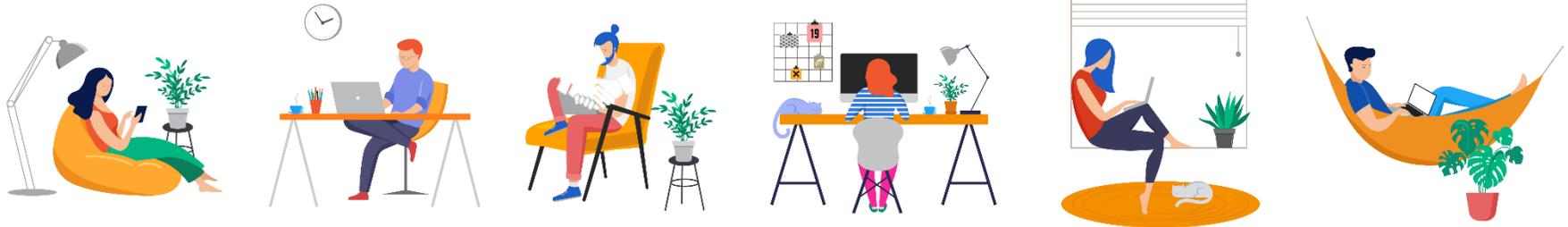
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other

Home Office - Legal Requirements



Mandatory legal requirements

- The employees performing home office are savvy and experienced with regard to their individual tasks and responsibilities that they shall perform from home, are able to use the technological tools and technical equipment required and have the required employer-specific know-how and thus are able to perform their work from home
- Health protection measures: The employer is obliged to protect the employee's health and has to take appropriate measures to ensure e.g. good ergonomic and hygienic working conditions
- Mandatory working conditions: Mandatory minimum working conditions (e.g. regarding maximum working hours, breaks, extra hours etc.) must be observed while working from home. Violation of such provisions may lead to sanctions



Employee consent

- Not required Required **X It depends**

Form of consent:

The required form is dependent upon the individual circumstances: In some cases an implied consent may be sufficient, in other cases a contract amendment may be required. Having at least a written acknowledgment or acceptance statement, is recommended in most situations

What are the consequences if an employee does not agree with the home office:

In exceptional situations (e.g. if safety of the employee at the usual workplace may not be guaranteed) it may be permissible to instruct the employee to work from home for a limited time period and the employee is obliged to do so due to his/her duty of loyalty, respectively. For long(er)-term home office the employee's consent would basically be required



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required **X It depends**

In general no third party involvement required unless specifically foreseen in a collective labour agreement

The employer, however, may be obliged to involve the employee representation (respectively, where there is no such, the employees) regarding the implementation of certain health protection measures

Home Office – Legal Risks & Limitations



Legal risks

- Sanctions resulting from violation of mandatory law (e.g. maximum working hours)
- Legal uncertainty in case of employees working from home in a cross-border context: risk of foreign law / jurisdiction being applicable
- Employee claims due to:
 - Insufficient health protection (both, physical and mental health)
 - Poor stress-management (“stress-liability-claims”)
- Data protection issues
- Social security or tax issues (in particular in the cross-border context)



Legal limitations

- Home office work is not permissible beyond the statutory maximum (daily/weekly/yearly) working hours
- Home office is not permissible for employees lacking the skills and experience to perform work from home and/or where health protection measures may not be sufficiently implemented

Home Office – Duties & Rights



Employee duties and rights

Duties

- The employees are obliged to act in accordance with the rules regarding health protection while working from home
- The employees must record their work time
- The employees must not work on Sundays and during night time (i.e. between 11 pm and 6 am) – exception: pre-approved by authorities (Sunday/night time work license)
- The employees must permit the employer or a competent labour control authority to check the work place of the employee regarding health/safety measure implementation
- The employees are obliged to comply with the applicable data protection provisions and to treat sensitive/documents, confidentially
- Equipment belonging to the employer must be treated with care and diligence

Rights

- In case the employees are instructed to work from home, they are entitled to receive the required equipment to carry out their work safely and adequately or to the reimbursement of certain expenses in this regard
- The employees have a right to their contractually agreed upon and/or statutorily owed salary



Employer duties and rights

Duties

- The employer must implement all required measures and precautions to protect the employees' health and safety (both, physical and mental health) – key issues to consider are typically: ergonomic work place, work time management, appropriate communication styles (e.g. videoconferences) to help maintain employee wellbeing
- The employer must ensure compliance with mandatory statutory minimum working conditions (e.g. maximum working hours, rest periods, overtime compensation etc.)
- Depending on the individual case, the employer may have to reimburse certain expenses (e.g. office equipment) or bear certain costs (e.g. communication means, lease, software etc.)

Rights

- The employer may conduct random visits/controls regarding safety, employee productivity and quality – provided the employees are being informed of such visits, upfront.
- The employer may ask for detailed work time recording/reporting

Home Office – Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Possibly (to be checked, individually)</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input checked="" type="checkbox"/> Telephonic communication</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>In general, there is no such obligation if the home office takes place upon the employee's request. In some exceptional situations, office equipment and other necessary equipment may have to be provided by the employer in order to comply with the health and safety provisions.</p> <p>b) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>In such situations the employer may be obliged to reimburse (an appropriate part of) outlays for electricity, internet, telephonic communication and, in certain situations, a contribution to rental costs.</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required <input type="checkbox"/> Not legally required X Not legally required but common practice <input type="checkbox"/> Other 	<p>The following are the minimum items to be covered by a home office Policy:</p> <p>N/A</p>	<ul style="list-style-type: none"> – General information on who may perform work from home (e.g. required skills, experience etc.) and if/under what circumstances the employee may claim home office – Maximum hours that are permitted to be performed in home office vs. regular office (if applicable) – in particular for cross-border situations, e.g. max. 25% (cf. slides on social security and taxes) – Requirement of additional, individual agreement with each employee to perform work from home – Time autonomy/flexibility vs. time limitations (if applicable) – Availability obligations of employees and response times – Work time recording – Sunday and night time work (prohibition) – Provisions regarding necessary equipment (furnishing of work place) and potential reimbursement of such equipment – Provisions on how to act in case of disturbances – Provisions regarding sensitive and confidential data and liability

Home Office – Social Security & Tax



Domestic



Social security (domestic)

Generally, every person working in Switzerland is subject to social security in Switzerland. However, if someone's residence state is not Switzerland, it is necessary to not exceed 25% of the working activity from home (residence state) to remain subject to social security as under normal circumstances.

Also, if a person is on a temporary international assignment from Switzerland to an EU/EFTA state or a state with a social security agreement he/she remains subject to social security in Switzerland.

If employees are working from home they are mandatory insured against work-related accidents through their employer. If the workload exceeds 8 hours per week, employees are also insured against non-work related accidents. The difficulties in relation to Home Office work relates to the nature of the accident since, it is more difficult to determine whether the accident was work- or non-work related.



Tax (domestic)

If a person is performing his/her work activity from home in Switzerland this situation is no different than for a person performing his/her work onsite. However, for an individual there is a possibility to make some additional deductions for business expenses in regard to the home office room.

Home Office – Social Security & Tax



International



Social security (international)

Home office work days in another country may have social security implications.

Within the EU/ EFTA states, employees of these member states employed with a Swiss employer and who perform more than 25% of their work activities in their foreign home office, and who earn more than 25% of their remuneration in the country of residence are obliged to pay social security contributions in their country of residence. As a consequence, the employer may have to pay higher social security contributions and the administrative effort typically would increase. Therefore, it is recommended to contractually (policy or individual agreement) agree that the work performed from home may not exceed 25%.

Under Covid-19 the authorities have communicated more flexibility until the Covid19 measures have been lifted. The Swiss federal government for social security has issued the following clarification in regards to the social security subordination:

The insurance status of persons to whom the Agreement on the Free Movement of Persons or the EFTA Convention applies and who are normally subject to Swiss Social Security will not be altered. Persons performing their work temporarily from home or are unable to start their employment contract in Switzerland remain subject to Swiss Social Security.

For non-EU /EFTA citizens other social security agreements may need to be considered. In many cases the consequence will be a split of social security contributions on a pro rata temporis basis. As a consequence, the social security contributions may increase and the administrative effort typically would increase.



Tax (international)

In general, Art. 15 of the double-tax treaties applies to Home Office workdays. Consequently, work days performed in the state or residency are taxed in the state of residency if certain conditions are met. Swiss work days will still be taxed in Switzerland.

The employee will need to source his employment income in the tax return to avoid double taxation.

Under Covid-19 according to the OECD (Publication from 4th of May 2020) the Art. 15 of the double-tax treaties still applies during the Covid-19 crisis. Considering Art. 15 it can be concluded that employment income is taxed where the employment is performed. However, some governments subsidise keeping an employee on a company's payroll during the Covid-19 crisis and in this case the income should be attributable to the place where the employment used to be exercised. The OECD has confirmed this position in a recent paper and stipulates that taxation should continue as if the employee continued to work based on her/his work pattern before Covid-19 measures were in place.

Under Covid19 or upto a fixed period of one year there should not be a risk of a Permanent Establishment (PE) due to the increased Home Office work activity as the required permanence is not given to meet the criteria.

If the Home Office work activity replaces the work space in an office wholly and over a certain amount of time it can be seen as a fixed business. However, this does not automatically mean that a Permanent Establishment (PE) exists. According to the OECD working from home occasionally can not lead to the assumption that the employer has an authority to dispose. If however no working space is provided through the employer a PE could be present and would lead to tax implications for the employer.

Home Office – Data Protection



Data Protection

From a data protection point of view, the company concerned is obliged under Article 7 FADP and Article 8 OFADP (and where applicable Article 32 of the GDPR) to take appropriate technical and organizational measures to ensure an appropriate level of protection for personal data. This regulation applies irrespective of whether the employee works at home or in the office.

A highly recommended organizational measure is the issuance of internal company guidelines regarding inter alia the use of IT systems by employees and the treatment of confidential data when working at home.

Home Office – Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No
- Only if foreseen in policy or individual employment agreement**

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if and to the extent that health and safety of the employee may be guaranteed**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes
- No
- Only if and to the extent that health and safety of the employee may be guaranteed**

Home office cross-border

Would home office be possible for employees living abroad?

- Yes, but consequences regarding social security, tax as well as foreign employment law should be considered**
- No
- Only if...

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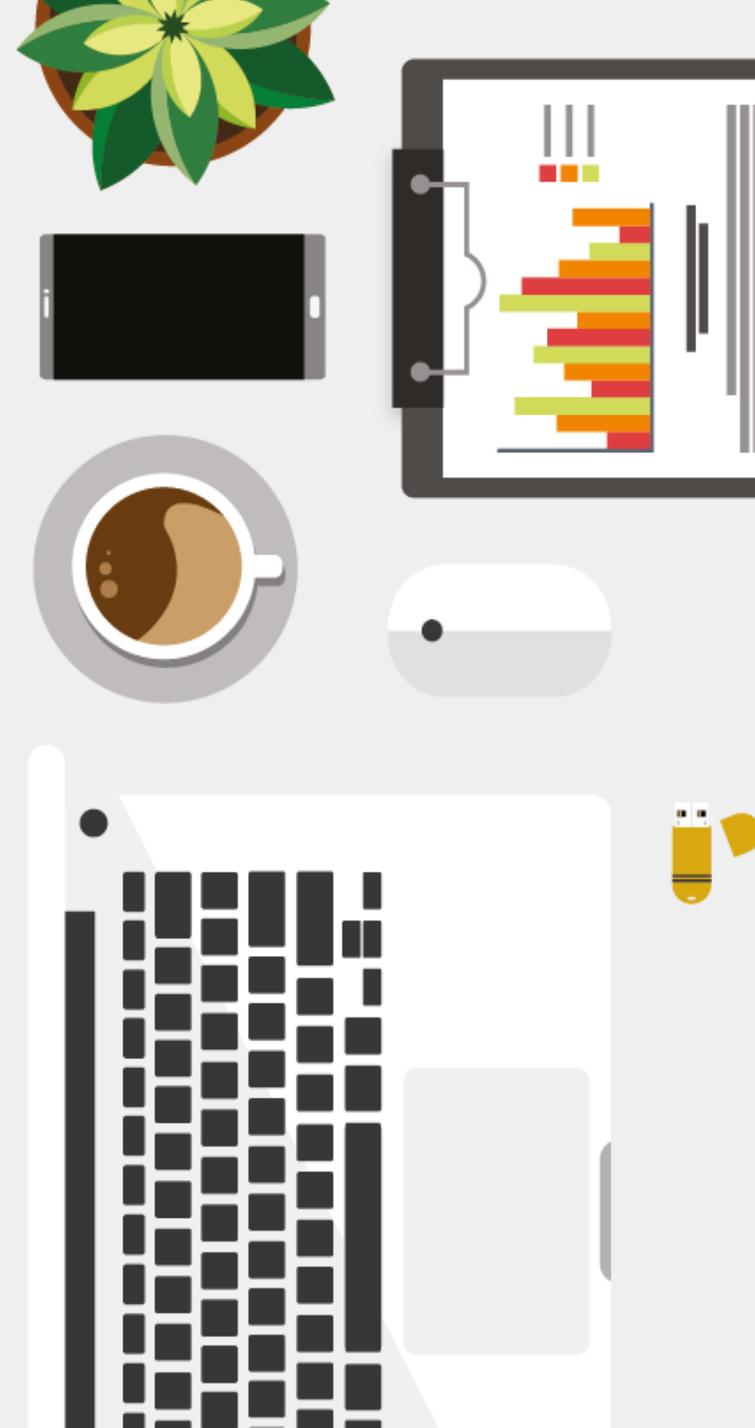
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Home Working in the United Kingdom

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Working



Popularity of home working

How popular is home office working among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home working

Going forward, will home office work be key for an employer to be attractive/competitive?

- Yes
- Possibly/not clear yet**
- No

Relevance of Home Working



Difficulty of home working implementation

How simple is it to implement home working?

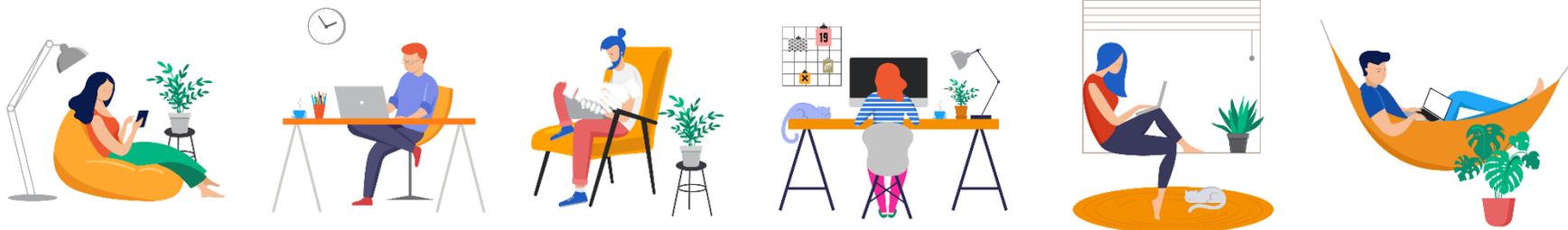
- Simple
- Moderate**
- Burdensome

Impact of Covid-19

How has Covid-19 impacted the acceptance of home working?

- Strong impact – it is expected that many more companies will introduce home working going forward**
- Medium impact
- No particular impact
- Other

Home Working - Legal Requirements



Mandatory legal requirements

- If working from home is a clear requirement of the contract at the outset, employees can be made to work from home without consent. If the employer wishes to impose homeworking at a later date, this would be a variation of the contract requiring employee consent.
- Some employment contract provisions should be tailored to fit the specific needs of homeworking (e.g. place of work, hours of work and confidentiality).
- Employees can request a homeworking arrangement (either informally or through a statutory flexible working request). Employers will need to consider such requests carefully but there is no automatic right to work from home.
- Homeworkers may need training on their obligations and those of the employer in relation to data protection and confidentiality. Employers should also carry out a data privacy impact assessment of the data protection.



Employee consent

- Not required Required **X It depends**

Form of consent:

Depending on the employment contract, consent can be oral but should, ideally, be in writing.

What are the consequences if an employee does not agree with home working:

If an employer cannot obtain employee consent, the employer may wish to unilaterally impose homeworking without consent. However, this is not without risk as the the employee may seek to bring a breach of contract claim or could resign and bring a claim for constructive unfair dismissal.



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required Required **X It depends**

Generally there is no need to involve third parties. However –

If the employer recognises a trade union and the location where employees work is subject to collective bargaining with trade union representatives, the trade union may need to agree to the change. That said, trade union recognition is relatively rare in UK private companies.

Home Working - Legal Risks & Limitations



Legal risks

- Employers should take care that the salary and benefits package provided to a homeworker is not less favourable than those provided to comparable employees. If they are treated less favourably and they have a protected characteristic, a homeworker may seek to bring a claim under discrimination legislation.
- Anecdotally more women than men seek flexible working arrangements. As a result, the rejection of a woman's homeworking request could potentially amount to indirect sex discrimination unless the treatment can be objectively justified
- A disabled employee may also have some protection in relation to a homeworking request. In particular, the employer's duty to make reasonable adjustments in relation to a disabled person is likely to be relevant. Permitting and facilitating homeworking may well amount to a reasonable adjustment, depending on all the circumstances.
- If several employees request a change to homeworking and not all can be accommodated, preference should be given to those employees who have statutory rights to be considered; for example, workers with disabilities, those eligible under the flexible working legislation and those who might have a sex discrimination claim (although this does not mean that the employer should automatically prioritise women, as this would in itself constitute sex discrimination against men).
- In the case of two competing requests under the flexible working legislation (or from two employees with no statutory rights) then, unless there is a good business reason to differentiate between the two, an employer can only be expected to deal with requests in order of receipt.
- Employers will need to ensure they comply with their health and safety obligations in relation to home workers.



Legal limitations

- There are no legal limitations as such but more practical considerations would be whether the employee's role is suitable for homeworking.

Home Working - Duties & Rights



Employee duties and rights

- Employees can request a homeworking arrangement (either informally or through a flexible working request) and, while employers will need to consider such requests carefully, there is no automatic right to work from home.
- The homeworker should be self-motivated, self-reliant, disciplined and able to complete work to scheduled deadlines. They may require greater than average initiative, flexibility, communication and time management skills and an ability to cope with reduced social contact.
- The homeworker must be able to cope with the extra pressures of working in the home where the demands of family life may be difficult to ignore. Before requiring or permitting any significant amount of homeworking, an employer should be satisfied that the worker has these characteristics.
- All employees have an implied duty not to disclose confidential information or use it for any purpose other than the employer's business. In practice, however, confidentiality is more difficult for an employer to police when the employee is working from home. Despite this, the homeworker should continue to keep confidential information secure.
- To this end, the employer may want to consider precautions for keeping confidential information secure such as: forbidding access by household members; passwords and encryption; and a secure filing cabinet and facilities for confidential disposal such as a shredder or confidential bin.



Employer duties and rights

- The employer should reserve the right to ask the employee to revert to normal working practices.
- The employer should continue to require the homeworker to keep confidential information secure.
- If a homeworker is to be using computer equipment supplied by the employer and will have access to the internet and/or email facilities, the employer will need to consider the application of any systems it has in place for policing the use to which the homeworker might put the facilities at their disposal. The employer will also need to satisfy itself that the risk of a data security breach is low, possibly by way of a data privacy impact assessment.
- The employer should reserve a right to enter the employee's home, for example, to install, maintain and service its equipment, to recover its property on termination and to carry out risk assessments for health and safety purposes
- An employer is responsible for an employee's welfare, health and safety so far as is reasonably practicable. Employers must conduct a suitable and sufficient risk assessment of all the work activities carried out by their employees, including homeworkers, to identify hazards and assess the degree of risk.
- There is no legal obligation on an employer to provide the equipment necessary for homeworking. Employers should look at each individual homeworker however, to ensure that they comply with any duties they may have towards that individual. For example, if a homeworker has a disability, the provision of equipment (or reimbursement of the employee's equipment expenses) may be required as a reasonable adjustment

Home Working - Compensation & Expenses



Compensation requirement

Is there a need to adjust the salary?

- Yes
 No

However –

When considering benefits provided with employment, such as a subsidised staff restaurant, an employer should ensure that homeworkers have access to those benefits or facilities (whatever the likelihood of the homemaker actually taking advantage of them). For example, an employer is probably not expected to compensate for on-site facilities (such as a gym or a workplace nursery), provided that the homemaker has access to them, even if they are never taken up.

If it appears that a homemaker will not be able to take advantage of some or all of those benefits because of their place of work, the employer should consider whether they should be compensated or provide an alternative arrangement.



Expenses

Is there a need to adjust expenses regulation?

- Yes
 No

Which of the following elements must typically be compensated?

- Internet
 Electricity
 Equipment for home office
 Rental costs
 Other: The contract should specify which expenses the employee can claim (if any), such as travel expenses to attend the office, telephone, heating and lighting costs, and any increased insurance premiums.



Examples

- a) An employee wishes to do occasional home working (1 day per week on average). Is the employer obliged to provide any compensation?

No, although this will depend on the employer's policy and the terms of the employment contract.

- a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to provide any compensation?

No, although this will depend on the employer's policy and the terms of the employment contract.

Home Working - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"> <input type="checkbox"/> Legally required X Not legally required <input type="checkbox"/> Not legally required but common practice <input type="checkbox"/> Other 	<p>The following are the minimum items to be covered by a home working Policy:</p> <p>N/A</p>	<ul style="list-style-type: none"> – A homeworking policy should cover the criteria for assessing whether or not a homeworking arrangement will be practical, effective and meet business needs. – The policy should include how homeworkers will be managed, and implications for matters ranging from taxation to security of the organisation's information. – A larger employer is likely to need a more extensive homeworking policy than a small employer. Small firms might agree individual homeworking arrangements in writing, but it would be advisable to have a policy covering key points to ensure consistency in the business. – Depending on the circumstances, it may be sensible to consult with employees or any employee or trade union representatives in relation to the policy. Alternatively, some of the provisions of the employment contract can, and should, be tailored to fit the specific needs of homeworking. However, this may require employee consent or consultation with employees.

Home Working - Social Security & Tax



Domestic



Social security (domestic)

N/A



Tax (domestic)

An employer will be required to deduct tax and national insurance contributions (NICs) under the PAYE system from salary and many expense payments for its employees.

A homemaker who is an employee may be entitled to claim a deduction against taxable income for certain household expenses and travel costs.

For a household expense to be tax deductible, the expense must be incurred wholly, exclusively and necessarily in the performance of the duties of employment. Employment tax advice should be sought.

Home Working - Social Security & Tax



International



Social security (international)

Social security consequences of an employee homeworking in a foreign jurisdiction should be considered.



Tax (international)

Tax implications of an employee homeworking in a foreign jurisdiction should be considered (e.g. permanent establishment risks).

Home Working - Data Protection



Data Protection

EU General Data Protection Regulation (**GDPR**) and the Data Protection Act 2018 (**DPA 2018**) (together the data protection legislation) require that personal data is processed in accordance with a number of principles set out in Article 5 of the GDPR.

The definition of personal data is broad, encompassing any data which alone, or in conjunction with other data, can be used to identify a living individual.

Homeworkers may need specific training on their obligations and those of the employer in relation to data protection and confidentiality, concerning the procedures which they must follow, and what is, and is not, an authorised use of data.

Employers should also carry out a data privacy impact assessment of the data protection implications of employees working from home.

The Information Commissioner ensures compliance with the GDPR and the DPA 2018. The Information Commissioner's Office has the power directly to impose significant fines on data controllers for serious breaches of the GDPR and the DPA 2018.

Home Working - Frequent Legal Questions



Employee right to claim home working

Employee right to claim home working	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Only if ...
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Employer right to instruct home working

Does the employer have an (exceptional) right to unilaterally instruct the employee to do homeworking?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Only if working from home is a clear requirement of the contract at the outset.
--	---

Full-time home working

Is it possible to hire employees to work at home full-time?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Only if ...
---	---

Home working cross-border

Would home working be possible for employees living abroad?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Only if tax, social security and immigration issues have been considered
---	--

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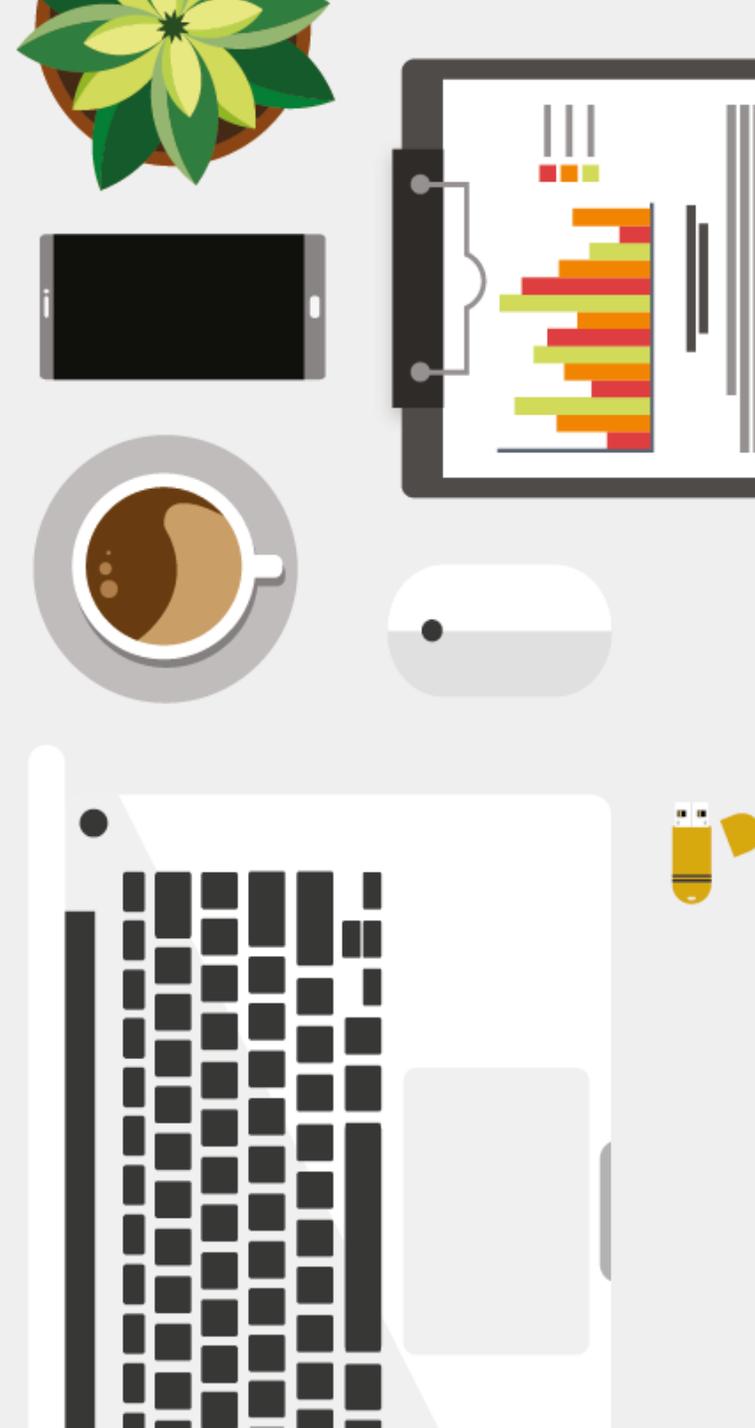
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Home Office in Uruguay

Assumptions: Unless explicitly highlighted this overview refers to domestic circumstances only: Thus the employee working in home office is a national of the country where she/he lives and is employed by an employer who is domiciled in this country.

Legal June 2020



Relevance of Home Office



Popularity of home office

How popular is home office work among employees in general?

- (Very) popular
- Moderate**
- Unpopular

Trend towards home office

Going forward, will home office work be key for an employer to be attractive / competitive?

- Yes
- Possibly / not clear yet**
- No

Relevance of Home Office



Difficulty of home office implementation

How simple is it to implement home office?

- Simple
- Moderate**
- Burdensome

Impact of Covid-19

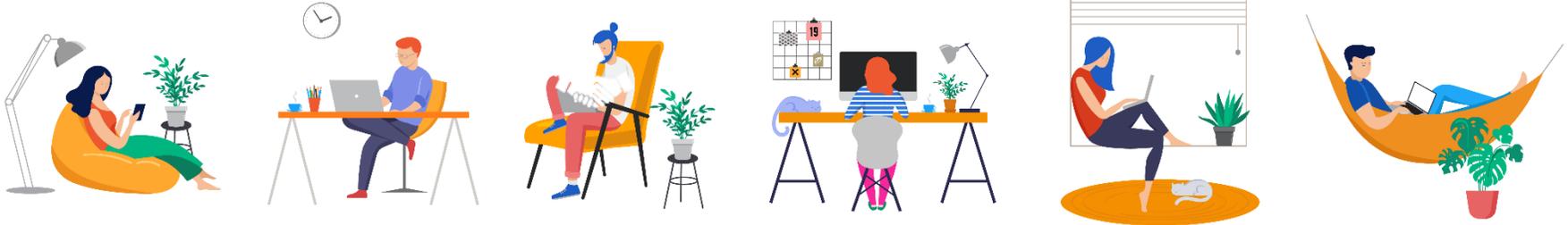
How has Covid-19 impacted the acceptance of home office?

- Strong impact – it is expected that much more companies will introduce home office going forward**
- Medium impact
- No particular impact
- Other

Home Office - Legal Requirements



Index Slide



Mandatory legal requirements

- Implementation of home office work must be communicated to the General Work Inspection.
- Employers must provide all the necessary tools and equipment to the employees.
- A home office law project is actually under consideration.



Employee consent

- Not required Required **It depends**
- **Employer cannot change the previous labor conditions (only the work place).**
 - **Home Office scheme cannot cause serious inconvenience to the employees.**
 - **There are no formalities for the employee consent; however an email or written document is advisable.**
 - **If an employee does not agree with the home office can claim for an indirect dismissal.**



Involvement of third parties

(authorities, trade unions, employee representations etc.)

- Not required **Required** It depends
- **It is mandatory to communicate the home office implementation to the General Work Inspection.**

Home Office - Legal Risks & Limitations



Legal risks

- Impossibility for the employer to control the compliance of safety obligations.
- Implementation of time control in order to avoid extra hours claims contingencies.



Legal limitations

- There are not legal limitations for home office.

Home Office - Duties & Rights



Employee duties and rights

- The employee has the right to receive from the employer all the necessary equipment to perform home office.



Employer duties and rights

- Regular employer duties and rights applies in the case of home office.

Home Office - Compensation & Expenses



 Compensation requirement	 Expenses	 Examples
<p>Is there a need to adjust the salary?</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p>Is there a need to adjust expenses regulation?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Which of the following elements must typically be compensated?</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Electricity</p> <p><input checked="" type="checkbox"/> Equipment for home office</p> <p><input type="checkbox"/> Rental costs</p> <p><input type="checkbox"/> Other</p>	<p>a) An employee wishes to do occasional home office (1 day per week on average). Is the employer obliged to any compensation?</p> <p>No</p> <p>a) An employer instructs an employee to work from home every other week due to lack of office space. Is the employer obliged to any compensation?</p> <p>No</p>

Home Office - Policy



 Policy Requirement	 Mandatory policy elements	 Customary policy elements ("best practice")
<ul style="list-style-type: none"><input type="checkbox"/> Legally required<input checked="" type="checkbox"/> Not legally required<input type="checkbox"/> Not legally required but common practice<input type="checkbox"/> Other	<p>N/A</p>	<ul style="list-style-type: none">- Time control regulations- Expenses policy- Rights and duties- Health and safety protection measures- Tools and equipment policy- "Right to disconnect"

Home Office - Social Security & Tax



Domestic



Social security (domestic)

General social security and health insurance scheme applies for home office.



Tax (domestic)

General tax scheme applies for home office.

Employees of free trade zones users companies must work inside the free trade zone area in order to the employer not to lose the tax benefits.

Home Office - Social Security & Tax



International



Social security (international)

General social security and health insurance scheme applies for home office. In principle, Social Security Contributions should be paid for the employees in Uruguay, except for employees covered by a temporary transfer scheme.



Tax (international)

General tax scheme applies for home office

Home Office - Data Protection



Data Protection

Although we have a personal data protection scheme that applies to employees personal information, we do not have special regulations for home office.

Home Office - Frequent Legal Questions



Employee right to claim home office

Employee right to claim home office

- Yes
- No**
- Only if ...

Employer right to instruct home office

Does the employer have an (exceptional) right to unilaterally instruct the employee to do home office?

- Yes
- No
- Only if the home office scheme do not generate serious inconvenience to the employee.**

Full-time home office

Is it possible to hire employees to work in home office full-time?

- Yes**
- No
- Only if ...

Home office cross-border

Would home office be possible for employees living abroad?

- Yes**
- No
- Only if...

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