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EMPLOYMENT AND LABOUR

Coronavirus: Mandatory remote working

Decree-Law 94-A/2020 of 3 November amends, among others, Decree-Law 79-A/2020 of 30 September, which established “exceptional, transitional arrangements for reorganisation of work”. Its aim was to minimise the spread of COVID-19.

The Decree-Law makes remote working mandatory for all workers whose place of work is located in a geographical area where the epidemiological situation justifies it. These areas are defined by the Government by a resolution of the Council of Ministers.

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I. Scope of applicability

The obligation to resort to remote working covers all companies located in the geographical areas where the epidemiological situation justifies it, irrespective of the number of workers each company employs.

The areas affected to date are in the 121 municipalities (concelhos) identified in Annex II to Council of Ministers Resolution 92-A/2020 of 2 November and any others in force from time to time. Under the terms of this law, the municipalities affected are those which register more than 240 cases per 100,000 inhabitants in the last 14 days.

These measures cover both people working and people living in these locations.

The remote working obligation also applies to temporary workers and independent workers, with the rules applying to them *mutatis mutandis*.

Remote working is excluded for workers in essential services covered by article 10 of Decree-Law no. 10-A/2020, of 13 March.

Workers in essential services are healthcare professionals, security and rescue forces and services, workers in essential public services, management and maintenance of essential infrastructures, as well as other essential services subject to mobilisation for service or readiness.

Also excluded from this scheme are school and pre-school workers.

II. Conditions and applicable procedure

Remote working in the 121 municipalities referred to in Annex II to Council of Ministers Resolution 92-A/2020 is compulsory subject to two conditions: the duties performed are compatible with remote working and the worker is in a position to perform them.

If the employer considers that the conditions laid down for the admissibility of remote working are not met, it must notify the workers of the decision in a written document, which must contain the reasons for reaching this conclusion.

It is up to the employer to demonstrate that the remote working scheme is incompatible with the duties performed by the employee or that there are no technical conditions for its implementation.

The employer's decision may be submitted to the Authority for Working Conditions at the worker's request, within 3 working days of the employer's communication.

Based on information such as the nature of the work done by the worker or the fact of previously having worked remotely, the Authority for Working Conditions will decide whether the decision of the employer is legal. The decision of the Authority for Working Conditions must be taken within 5 working days.

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In turn, if the worker considers that he or she is not in a position to work remotely, for example, because of their technical or home conditions, he or she must inform the employer in a written document which must contain the reasons for the decision.

III. Obligations of the company

- The employer must make available all work and communications equipment necessary for the worker to work remotely.
- If this is not possible, the work can be done using the worker's own equipment, provided the worker gives their consent. In any case, it is up to the employer to adapt the means at the worker's disposal to the specific characteristics inherent to the professional activity.
- The Decree-Law also makes it clear that workers working remotely retain all the rights and duties of other workers not subject to remote working, under the terms provided in the Employment Code or in any applicable collective regulation.

The legislature has also made it clear that workers:

- Must not suffer any reduction in pay (some conditional remuneration may no longer be paid – for example, shift bonuses);
- Must receive the meal allowance;
- Are not subject to any restriction on the right to compensation for loss or damage arising from work accidents or occupational diseases;
- Be subject to any modification of the limits on normal working hours and other working conditions and health and safety at work conditions.

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IV. Consequences of breach of remote working obligations

Non-compliance with the following remote working obligations, among others, constitutes a serious administrative offence:

- Failure to adopt the remote working regime for non-exception cases;
- The absence of communication by written document determining the in-person work;
- Failure to comply with the decision issued by the Authority for Working Conditions. ■