



Deloitte Legal Newsflash

Employment, Pensions & Benefits

Back to normal- Key points when introducing/increasing telework after COVID-19

During the COVID-19 pandemic, employees were required to work from home in large numbers. Even companies that did not necessarily intend to introduce telework, have been able to experience its effects.

According to the Ministerial Decree of 23 June 2021, it is however no longer required but only *recommended* to telework as of 27 June 2021.

In this newsflash we reflect on whether and how (i) employers can require employees to return to the office and (ii) employers can introduce/increase telework in a structural way.

(i) Return to the office

Since telework is no longer mandatory, employers can, in principle, require employees to work from their regular workplace (as determined in the employment contract), based on the general employer's authority.

However, employers can only impose this to the extent that:

- The appropriate preventive measures are maintained (Generic guide) and social distancing is guaranteed;
E.g. if social distancing can only be guaranteed when half of the employees are present at the office, the employer cannot impose that all employees work from the office on the same day;
- There is no conflict with individual/collective agreements that allow structural telework.

E.g. if the employment contract provides that employee can telework on Wednesdays, the employer cannot force the employee to work from the office that day, without prior notice.

The fact that telework remains *recommended*, has no real impact. Such terminology is not coercive and, therefore, cannot be enforced (let alone sanctioned). It is, however, an element to be taken into consideration when assessing and implementing preventive measures.

(ii) Telework implementation/increase

Principle of voluntarism

Now that the temporary measures on mandatory telework resulting from the COVID-19 pandemic no longer apply, employers cannot unilaterally impose telework. Both parties must agree.

Formalities

If an employer wishes to introduce telework or amend the current working conditions, the following required formalities must be taken into account:

- In case of collective implementation/modification: inform and consult the works council and trade union delegation;
- Introduce/amend an annex to the employment contract providing the required information.

Moreover, it is highly recommended to create a clear framework through a telework policy.

Reducing current office space

Some employers have already indicated that, after the COVID-19 pandemic, they will fully commit to and invest in telework and significantly reduce office space.

First of all, it is important that employees who did not agree to telework, can continue to work at the office, as the employer cannot oblige them to work from home.

Furthermore, a clear framework in the telework policy indicating when teleworkers can come to the office is crucial to avoid exceeding office capacity. This can be done via *e.g.* a schedule or reservation system or in mutual agreement with hierarchical superiors.

The qualification (and therefore also the formalities) of telework remain applicable even if the employer would opt for full time telework without offices.

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