



Deloitte Legal Newsflash

Employment, Pensions & Benefits

Mandatory registration for whom telework is impossible

Since the start of the COVID-19 crisis, mandatory telework has been a key measure in tackling the pandemic. The Ministerial Decree of 28 October 2020 (MD) only allows staff members (“personeelslid”/”membre du personnel”, defined as any person working in or for a company, association or service) to work at company premises if the nature of their function or the continuity of activities make teleworking impossible.

The government believes this measure has not been sufficiently observed and decided to enhance the monitoring of mandatory telework by amending the MD with a registration obligation (Ministerial Decree of 29 March 2021).

Registration obligation to monitor mandatory telework

Pursuant to the amended MD, all employers must now register:

- the total number of employees (“werknemers”/”travailleurs”, no further definition given) working at the company; and
- the number of employees in a function for which telework is impossible.

This registration reports on the number of employees the first working day of the month, which must be done **on a monthly basis and no later than the sixth calendar day of the month** (the first registration should be filed before 6 April 2021). Registration must be done through a dedicated tool accessible on the NSSO website ([Dutch](#) | [French](#) | [German](#)).

The MD does not further elaborate on registration obligations. NSSO instructions give further guidance.

Who has to register the data?

According to the NSSO, the obligation applies to all employers in both private and public sectors, except for those forced to close (which makes sense even though the exception is not mentioned in the MD).

The information must be shared per branch (if the branch has a separate branch number with the NSSO).

It is not required that one person within the company (or group) files all declarations for all branches at once. Local managers can also complete this task for their own branch.

For companies with more than 20 branches, the requested data can be uploaded in a structured Excel file through the registration tool.

What data must be registered?

Even though the MD only states that employers must share data about their own employees, the NSSO extends the registration obligation to persons other than employees. According to the NSSO, every employer must register (if applicable per branch):

1. The **total number of 'professionals'**, not only referring to employees but also to:
 - all employees with a contract (employment, apprenticeship, and so on). This includes employees on long-term absence, as well as those with a mobile function (couriers, sales representatives, and so on);
 - all 'persons' who are not personnel members but whose services the company uses in a structural manner, irrespective of whether they are interim agency workers, self-employed workers or personnel of subcontractors (security guards, cleaning personnel, and so on).
2. The **number of 'professionals'** (as defined under 1.) **whose function cannot – wholly or partially – be performed by telework.**

This means all functions that must be performed at company premises at all times, and – by the nature of the function – cannot be performed by telework (blue-collar workers in production, cleaning staff, and so on).

If professionals only need to be present at company premises for exceptional cases, they should not be included in this number.

The information to be shared is a 'snapshot' of the situation on the first working day of the month. It is possible to make amendments or rectifications if the situation changes in the course of the month.

Note: individuals' personal data and job details do not need to be registered. Only the two total figures must be transmitted to the NSSO.

The fight against COVID-19 concerns everyone regardless of social security status. Therefore, it makes sense to broaden the registration obligation to persons other than employees. However, it is questionable whether the NSSO has sufficient legal grounds to do so and is legally entitled to gather data on the structural usage of persons other than the employers' own employees.

What will be done with the data?

The registered data will be used by the Social Legislation Inspectorate as a starting point to check compliance with mandatory telework. It is therefore possible that inspections will occur at companies claiming that the majority of functions cannot be performed by telework (and for which the two registered figures are (almost) the same).

However, it should be noted that any professionals who can operate by telework can still be present at company premises, as long as their presence can be justified and they hold the required attestation confirming the need for their presence.

What are the consequences if no registrations are filed?

If employers do not comply with the registration obligation, they may face a criminal fine ranging from EUR 400 to EUR 4,000 or an administrative fine ranging from EUR 200 to EUR 2,000 to be multiplied by the number of employees involved (with a maximum of 100 persons).

Contacts

If you have any questions concerning the items in this newsflash, please get in touch with your usual Deloitte Legal - *Lawyers* contact at our office in Belgium or:

- Stijn Demeestere, partner, sdemeestere@deloitte.com + 32 2 800 71 42
- Karel De Schoenmaeker, senior associate, kdeschoenmaeker@deloitte.com, +32 2 800 71 69
- Nathan Rahier, junior associate, nrahier@deloitte.com, +32 2 800 71 13

For general inquiries, please contact:
bedeloittelegal@deloitte.com, + 32 2 800 70 00

Be sure to visit us at our website: <http://www.deloittelegal.be>

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