

Are employees allowed to return to the office? Yes, but under certain conditions!



As a reminder, in its meeting of 11 May 2021 the Consultative Committee decided that, if there were positive developments in the health situation, it would deploy a four-step "summer" plan, allowing various relaxation measures in the weeks to come and during the summer.

In particular, the plan provided that, as of 9 June 2021, telework would remain compulsory but it would be possible to organize, under certain conditions, returning to the office once per week (step 1 of the plan).

Thereafter, as of 1 July 2021, telework would, in principle, no longer be compulsory but only recommended (step 2 of the plan).

A Ministerial Decree of 4 June 2021, published on 4 June 2021 in the Belgian Official Gazette and coming into force on 9 June 2021, provides more details about step 1.

First, the Decree confirms that telework at home remains compulsory (unless it is impossible), including for private and public businesses and services that are necessary to protect the vital needs of the Nation and the needs of the population. The new Decree extends its scope to all persons working for companies/associations and services, regardless of the nature of their employment relationship.

In addition, the obligations of attestation/proof of presence at the workplace (except for authorized return times) and registration still apply. In this respect, the new Decree now specifies that the employer no longer has to make a new declaration if the situation remains unchanged from the previous month. Furthermore, it lists a number of cases in which this registration obligation does not apply (e.g. SMEs employing fewer than five people, regardless of the nature of their employment relationship, etc.).

With regard to time spent back in the workplace, the Decree provides that, as of 9 June 2021, companies may plan for a maximum of one working day per week per person. Per day, a maximum of 20% of the persons for whom telework at home is compulsory can be present simultaneously in the establishment unit. For SMEs employing fewer than 10 persons, the corresponding maximum will be five people.

Arrangements for returning to the workplace must comply with the appropriate prevention measures and according to the following conditions:

there must be a common agreement between the companies and the persons working for them, which ensures that these persons are not obliged to return to the workplace;

- the aim must be to promote the psychosocial well-being and team spirit of these persons;
- these persons must be given advance instructions on all measures being taken to ensure that returning to the workplace is safe;
- these persons must be informed that they cannot return to the workplace under any circumstances if they feel ill, have symptoms of illness or are self-isolating;
- there must be no consequences for employees as a result of their decisions;
- travel by public transport during peak hours and carpooling to and from the workplace should be avoided where possible;
- decisions regarding returning to the workplace must be taken in accordance with the rules of social consultation within the company, verifying all conditions.

As announced by the Government, some flexibility has therefore been provided, but certain specific conditions must be met beforehand.

It will be necessary to ensure that these conditions are met to avoid any inspection-related risks.

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