

New CLA on telework during the COVID-19 pandemic adopted by the National Labour Council



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On 26 January 2021, the social partners adopted Collective Labour Agreement no. 149 regarding recommended or mandatory telework due to the coronavirus crisis. It provides an auxiliary legal framework for employers who, so far, have not made any arrangements enabling (structural or occasional) telework, even though the practice of telework has meanwhile been implemented widely in the industry their company is operating in, as a result of the measures imposed by the government in light of COVID-19. Below we explain the new minimum guidelines to be complied with in this respect.

An auxiliary framework for telework during the COVID-19 pandemic

Which employers are within scope?

As you might recall, all companies that were required to apply telework during the COVID-19 pandemic could make use of the legal framework for 'occasional telework' as embedded in the Act of 5 March 2007 on feasible and manageable work. This legislation allowed companies to quickly set up the necessary agreements on telework, without being faced with a high administrative burden.

The new Collective Labour Agreement, with reference no. 149, therefore applies only to companies that, on 1 January 2021, have not yet introduced the necessary telework arrangements based on the rules for structural telework (CLA no. 85) or occasional telework (Act of 5 March 2007 on feasible and manageable work).

It is important to highlight that this new CLA does not interfere with existing arrangements, nor does it preclude the development of an instrument of indefinite duration such as the introduction of structural telework arrangements. In this case, the provisions of the new CLA do not apply.

A framework for developing company-specific agreements

CLA no. 149 provides a framework for the adoption of more specific agreements concerning telework as it states that the specific rules of its application should be detailed in a collective labour agreement concluded at company level, in the work regulations, in individual agreements with employees or in a company policy established in compliance with the rules on social dialogue.

For each teleworker, a written agreement must be concluded and cover what is agreed with regard to technical support, supervision and reimbursement of costs proper to the employer, as the case may be (among other things). If specific additional/alternative working conditions apply for the time of the telework arrangement, for example different working hours, they should also be included in the agreement.

Furthermore, CLA no. 149 allows for some latitude, stating that these agreements may be developed flexibly and communicated, although explicitly, using various channels such as the intranet, e-mail or a digital meeting.

Well-being at work takes on a key role

For a large part, CLA no. 149 repeats the general telework principles that also apply in the case of structural or occasional telework. The CLA reminds us that teleworkers have the same individual and collective rights and obligations regarding their working conditions.

CLA no. 149 provides a brief summary of the existing legal provisions on well-being at work, taking the specifics of telework into account. What is rather new is the clear focus on the psycho-social well-being of teleworkers and the responsibilities the employer has in this respect. The following principles imposing an information obligation on the employer have now been introduced:

1. The social partners insist on maintaining the social relations between colleagues. To achieve this, the employer is expected to take appropriate measures to maintain the teleworkers' contacts with colleagues and with the company in order to prevent employees feeling lonely or isolated.
2. The employer must ensure, in this case, that the work-life balance is respected. According to the unions, this includes a so-called 'right to disconnect' for teleworkers.
3. CLA no. 149 imposes an obligation to make a multidisciplinary risk analysis with a clear

focus on the psycho-social aspects of telework. Special attention should go to 'vulnerable teleworkers', defined by the CLA as workers who are facing additional pressure during the telework for instance because of their specific personal, family and/or housing situation.

To this end, teleworkers must be informed of the contact details of their hierarchical superior and the people responsible for occupational safety, health and well-being, so that they can contact them when needed.

Conclusion

The new CLA is applicable **until 31 December 2021**. If telework is no longer made mandatory or highly recommended in the fight against the spread of the COVID-19 virus, it would no longer be effective. Since many employers have already implemented a telework framework since the beginning of the pandemic, this new CLA will, in our view, only have a limited impact.

However, if your company has not set up a framework for telework yet, the CLA no. 149 will apply and you will need to take appropriate action.

Do not hesitate to contact us if you need assistance to ensure that you comply with the new obligations for teleworking during the COVID-19 pandemic!