

New rules on the teleworking regime and the right to disconnect

December 6, 2021

It was published on Official Gazette the [Law no 83/2021, of December 6](#), which modifies the teleworking regime and sets forth the right to disconnect. In the table below it is possible to compare the legal framework that takes effect from January 1st, 2022 onwards with the legal regime that is in force until December 31st, 2021.

Teleworking

	Until December 31 st , 2021	From January 1 st , 2022 onwards
What does it consist of	<p>Work performed under legal subordination, usually outside of the premises of the company, through the use of information and communication technologies.</p> <p>It is unclear whether hybrid or mixed regimes qualify as telework.</p>	<p>Work performed under legal subordination, in a place not determined by the company, and through the use of information and communication technologies.</p> <p>Hybrid or mixed regimes qualify as telework.</p>
Who is entitled to this right	<p>Teleworking activities can be carried out by someone who is already an employee or another individual specifically hired for that purpose, upon signing a contract for the performance of work under the teleworking regime.</p> <p>When teleworking is compatible with the activity performed and the company has the means for that purpose, employees in the following situations have the right to work under the teleworking regime, without the company being able to deny it:</p> <ol style="list-style-type: none"> 1. Victims of domestic violence. 2. With children up to 3 years old. 	<p>Teleworking activities can be carried out by someone who is already an employee or another individual specifically hired for that purpose:</p> <ol style="list-style-type: none"> a. If the proposal comes from the company – the employee can object, without justification. The employee's refusal gives no ground for dismissal or disciplinary action. b. If the proposal is presented by the employee and his/her activity is compatible with teleworking and there are resources/means for that purpose – it can only be refused, in writing, setting down the grounds in which it was based. <p>Employees whose activity is compatible with teleworking have the right to work in this regime, without the company being able to deny it, provided that they fall in one of the following situations:</p> <ol style="list-style-type: none"> 1. Victims of domestic violence. 2. With children up to 3 years old. 3. With children between 3 and 8 years old and the employer is not a micro-

		<p>company (with less than 10 employees):</p> <ul style="list-style-type: none"> i. If both parents meet the conditions for teleworking and provided it is performed by both parents, in successive periods of equal duration, within a maximum reference period of 12 months. ii. Single-parent families. iii. Situations where only one of the parents can prove that he/she meets the conditions for teleworking. <p>Employees with a status of a “non-main informal” caregiver are also entitled to telework for a maximum period of 4 consecutive or non-consecutive years – in the event of refusal of such condition by the company, the case must be forwarded to the CITE, the authority responsible for analyzing and assessing the reasons for the refusal.</p>
<p>Agreement</p>	<p>The agreement is subject to written form and must contain:</p> <ul style="list-style-type: none"> a. The identification, signatures and residence or registered office of the parties. b. Identification of the activity to be performed with express mention of the teleworking regime and corresponding remuneration. c. Indication of the normal work period. d. If the period foreseen for the teleworking is shorter than the foreseeable duration of the employment contract, the activity to be performed by the employee after the teleworking ends. e. Ownership of work tools and the person responsible for their installation and maintenance and for paying consumption and usage costs. f. Identification of the establishment or department of the company where the employee is based, as well as the employee’s point of contact in the company regarding work matters. 	<p>The implementation of the teleworking regime always depends on a written agreement, which may be included in the initial employment contract or in an amendment to it.</p> <p>The agreement must contain and define:</p> <ul style="list-style-type: none"> a. The identification, signatures and residence or registered office of the parties. b. The place where the employee will usually carry out his/her work, which will be considered, for all legal purposes, his/her workplace. c. The normal daily and weekly work period. d. The work schedule. e. The contracted activity and the corresponding category. f. The remuneration to which the employee will be entitled, including complementary and ancillary benefits. g. The ownership of the work tools, as well as the person responsible for their installation and maintenance. h. The regularity and the way of materializing the employee’s face-to-

		<p>face contacts with supervisors and other employees.</p> <ul style="list-style-type: none"> i. The permanence regime or the rotation between periods of remote work and face-to-face work. j. Whether the equipment and systems are supplied directly by the company or acquired by the employee, identifying, in the latter case, their characteristics and prices. k. If there are no internal regulations on the matter, the conditions applicable to the use of the equipment and systems used in teleworking and supplied by the employer, beyond the needs of the service.
<p>Duration and termination</p>	<p>In the case of an employee previously linked to the company (not subject to the teleworking regime), the initial duration of the contract for the provision of telework cannot exceed 3 years (unless the CBA sets forth a different duration).</p> <p>Either party may terminate the teleworking contract within the first 30 days of its execution.</p> <p>Upon termination of a teleworking contract, the employee is entitled to resume work under the terms agreed upon or set forth in the CBA.</p>	<p>The teleworking agreement can have a fixed-term or permanent duration:</p> <ul style="list-style-type: none"> a. Fixed-term – cannot exceed 6 months, being automatically renewed for equal periods, if none of the parties declares, in writing, up to 15 days before the end of the agreement, that they do not intend the renewal. b. Permanent duration – either party can terminate it, by written notice given 60 days in advance. <p>It is possible for either party to terminate the teleworking agreement during the first 30 days of its execution.</p> <p>Upon the termination of the teleworking agreement, the employee is entitled to resume his/her activity at the office, being entitled to the rights recognized to other employees with identical roles and work duration that have not been working remotely.</p>
<p>Working tools</p>	<p>In the absence of a stipulation between the parties, work tools relating to information and communication technologies used by the employee shall be presumed to belong to the employer.</p> <p>Employees should observe the rules of usage and operation of the work tools made available to them, and may not use them for purposes not related to the performance of their work.</p> <p>Employees shall be provided with appropriate training on the use of information and communication</p>	<p>The company is responsible for providing the employee with the equipment and systems necessary for carrying out the work and for employee-employer interaction.</p> <p>In the case where the employee acquires the equipment directly, he/she must obtain the company’s agreement as to its characteristics and prices.</p> <p>The company is responsible for correcting any faults in the equipment and systems used in teleworking, regardless of their ownership. The employee must report any malfunctions or defects promptly.</p>

	technologies inherent to the performance of their respective activity.	The employee must be provided with training, if necessary, on the proper and productive use of the equipment and systems to be used in teleworking.
Workplace	The law does not make any specific provisions on this issue.	<p>The place where the employee usually carries out his/her work will be considered, for all legal purposes, including for the purposes of accidents at work, to be his/her workplace.</p> <p>It may only be changed by a written agreement between the parties.</p>
Payment of expenses	<p>The parties may define that the responsibility for ensuring the installation and maintenance of the work instruments and the payment of the expenses lies with the employee.</p> <p>In the absence of such definition, this obligation shall be borne by the employer.</p>	<p>The employer is obliged to compensate, in full, the additional expenses that the employee has proved to have borne:</p> <ol style="list-style-type: none"> 1. As a direct consequence of the acquisition or use of the equipment and computer or telematics systems necessary for the performance of the work, which the employee did not have before the teleworking agreement was entered into. 2. Increased costs of energy and internet installed at the workplace to ensure that the speed is compatible with the service communication needs – determined by comparison with the employees' previous expenses in the same month of the last year prior to the implementation of the teleworking agreement. 3. Maintenance costs for equipment and systems. 4. Installation costs of equipment and systems – if not otherwise provided for in the agreement. <p>The payment of the referred expenses is due immediately after the employee incurs them.</p> <p>These expenses are considered, for tax purposes, a cost for the company and do not constitute any form of income for the employee.</p>
Food/meal allowance	The law does not specifically provide for the obligation of the company to pay for the food/meal allowance to employees when on teleworking. Even so, this should be analysed on a case-by-case manner.	The law does not specifically provide for the obligation of the company to pay for the food/meal allowance to employees when on teleworking. Even so, this should be analysed on a case-by-case manner.
Status of the employee	Employees under the teleworking regime have the same rights and duties as other employees in the company, namely	Teleworking employees have the same rights and duties as other employees in the company with the same category or

	<p>training and promotion or professional career, limits on normal working hours, compensation for damages arising from accidents at work, or occupational illnesses.</p>	<p>identical roles, namely training, career promotion, limits on working hours, rest periods, including paid holidays, health and safety protection in the workplace, compensation for accidents at work and occupational illnesses and access to information from employees' representative structures.</p>
<p>Privacy of the employee</p>	<p>The employer must respect the privacy, working hours, and the rest time of the employee and his/her family, as well as provide adequate physical and psychological working conditions.</p> <p>When teleworking is carried out at the employee's home, visits must only have the purpose of controlling the work activity, as well as the work instruments, and may only take place between 9 a.m. and 7 p.m., with the assistance of the employee or a person designated by the latter.</p>	<p>The employer must respect the privacy, working hours, and the rest time of the employee and his/her family, as well as provide adequate physical and psychological working conditions.</p> <p>When teleworking is carried out at the employee's home, the visit to this place can only have the purpose of controlling the work activity and the work instruments. It must be carried out with the agreement and in the presence of the employee, during his working hours and requested with a prior notice period of at least 24 hours.</p> <p>The capture and use of images, sound, writing, history, or other means of control that may affect an employee's right to privacy are prohibited.</p>
<p>Organisation, direction and work control</p>	<p>The law does not make any specific provision on this issue.</p>	<p>Remote work meetings, as well as tasks that, due to their nature, must be carried out at precise times and in conjunction with other employees, must take place within working hours and preferably be scheduled 24 hours in advance.</p> <p>Employees are obliged to be present at the company's premises or other locations designated by the company, for meetings, training sessions, and other situations requiring a physical presence, for which they have been summoned at least 24 hours in advance. The employer bears the costs of these journeys if they exceed the normal cost of transport between the employee's home and the place where he/she would carry out face-to-face work.</p> <p>Powers of direction and control over the performance of teleworking are used preferably by means of communication equipment and systems allocated to the employee's activity, in accordance with procedures known in advance and compatible with the employee's privacy.</p> <p>It is forbidden to impose the permanent connection of the employee.</p>

<p>Safety and health at work</p>	<p>Employees working from home have the same rights and duties as other employees in matters of health and safety at work.</p>	<p>The practice of teleworking in activities involving the use or contact with substances and materials hazardous to the health or physical integrity of the employee is forbidden, except if carried out in facilities certified for this purpose.</p> <p>The employer is obliged to comply with the minimum health and safety requirements regarding work and equipments with screen display.</p> <p>The employee is obliged to give access to the place where he/she works to the professionals designated by the employer, who are responsible for the evaluation and control of health and safety conditions at work, during a previously agreed period, between 9 a.m. and 7 p.m., always within working schedule.</p>
<p>Special duties of the employer</p>	<p>Avoid isolation of the employee through, for example, regular contact with the company and other employees.</p>	<p>Reduce the employee's isolation, promoting face-to-face contact between him/her and his/her superiors and other employees. If not stipulated differently in the teleworking agreement, these contacts must occur every two months.</p> <p>Inform the employee, when necessary, about the characteristics and method of use of all devices, programs, and systems used to remotely monitor their activity.</p> <p>Consult the employee, in writing, before introducing changes in the equipment and systems used in the performance of work, in the functions assigned, or in any characteristic of the contracted.</p>
<p>Internal regulation</p>	<p>The law does not make any specific provision on this issue.</p>	<p>It is possible to define, by internal regulation, the activities and conditions under which the implementation of the teleworking regime in the company may be accepted. In case the systems and equipment used under the teleworking regime are supplied directly by the company, the conditions of their use beyond the needs of the service may be established by internal regulation.</p>

Important:

Due to the evolution of the epidemiological situation in Portugal, the Government approved the [Resolution of the Council of Ministers no 157/2021, November 27th](#), that declared a state of calamity, from December 1st, 2021 until 23h59 of the March 20th, 2022.

According to the aforementioned Resolution, the teleworking regime is currently recommended provided it is compatible with the activities performed.

The adoption of the teleworking regime is compulsory, whenever the functions allow it and the employee has the conditions to perform them, without the need for a written agreement between the company or the employee, in the following situations:

- a) Employee who by medical certification is covered by the exceptional regime of protection of people with immunodepression conditions;
- b) Employees who are disabled, with a degree of incapacity equal to or greater than 60%;
- c) Employees who have a dependent children or other dependents, regardless of age, with a disability or chronic illness, who in accordance with the guidelines of the health authorities, are considered to be a patient at risk and is unable to attend face-to-face classes and training activities in a group or class context.

In the week of the 2nd – 9th of January of 2022, teleworking will be mandatory, for all employees and in all national territory, if compatible with the activity performed and the employees has the conditions to perform it.

Right to disconnect

	Until December 31 st , 2021	From January 1 st , 2022
What does it consist of	N/A	<p>An employer has a duty to refrain from contacting any employee, regardless of the place he/she works, during his/her rest period, except in cases of force <i>majeure</i>. Breach to comply with this obligation may be an administrative offense.</p> <p>Should the employee, after exercising his/her right to a rest period, be the target of less favorable treatment, namely regarding working conditions and career progression, that will be considered discriminatory action.</p>

