

**On December 8, 2023, the new Official Mexican Standard on occupational health and safety conditions for remote work will come into force**

December 2023

**Those individuals working remotely at least 40% of the week will be subject to specific rules related to their rights and obligations in connection with this employment modality.**

On June 8, 2023, was published in the Official Federal Gazette the Official Mexican Standard **NOM-037-STPS-2023. Remote work – Occupational health and safety conditions (NOM-037)** which sets out the occupational health and safety conditions for work performed under remote working arrangements. This Standard will come into force on December 8, 2023.

**NOM-037** is aimed at determining the occupational health and safety conditions applicable to workers who are effectively under remote working arrangements (meaning those individuals providing at least 40% of their services outside the employer’s workplace), and is supplemented with a few other standards, mainly with **NOM-030-STPS-200. “Preventive occupational health and safety services - Functions and activities”** and the Federal Labor Law.

The **NOM-037** sets out employers’ and employees obligations in relation to remote working arrangements, which are designed to protect health and rest periods, prevent accidents and illnesses, and promote a safe and healthy environment. It also seeks for them to be implemented with a gender perspective.

The key elements in **NOM-037** are:

- Obligations** for the employer and the remote worker:

Employer	Remote worker
Have an updated list of remote workers, which includes: name, gender, marital status, and job profile, activities to be carried out, time under the remote working arrangement (as a percentage), contact number, address, the place or places agreed for providing services remotely, company name and address of the workplace together with a list of the computer and ergonomic equipment provided to the worker.	Provide the <b>joint workers’ health and safety committee</b> with the necessary means to inspect the health and safety conditions at their place of work, the first time, and subsequently as often as will be determined.
The place of work must have an online connection for the use of IT and communication technology, an electricity installation in good condition, ventilation and ergonomic conditions, as well as lighting, and the employer may conduct a face-to-	Observe the <b>remote working policy</b> .

<p>face or online inspection of the place or places mentioned, through its <b>joint workers' health and safety committee</b>.</p>	
<p>Draw up in writing, have in place, and communicate a <b>remote working policy</b>, covering elements such as the worker's right to disconnect, elements relating to the gender perspective and elements associated with the type of relationship.</p>	<p>Inform the employer of any alteration to the occupational health and safety conditions, or where force majeure events prevent the performance of remote work, as well as of any damage or deterioration to <b>work tools</b>.</p>
<p>Inform the remote workers and the <b>joint workers' health and safety committee</b> at the company in relation to risks related to remote working, and to potential exposure to agents and factors of risk.</p>	<p>If any change is needed to the place where services are provided, the employer must be informed in a basic written statement that can be used to create the basic written form for a temporary change of place of work, which must contain the following: preparation date, worker's name, and description of the change of address.</p>
<p>Have a checklist of health and safety conditions for remote work, to ensure that the occupational health and safety conditions are fulfilled, with the worker's consent.</p>	<p>Store and keep the equipment, materials, tools and ergonomic furniture in good condition, provide any maintenance that the employer may request or provide training to be implemented.</p>
<p>Grant powers for the <b>joint workers' health and safety committee</b> to confirm the checklist of occupational health and safety conditions for remote work.</p>	<p>Observe the occupational health and safety provisions, and have the medical examinations, set out in <b>NOM-030-STPS-2009</b> (<i>the provisions in the Reference Guidelines II in the Standard itself may be taken as the basis</i>).</p>
<p>Draw up a second version of the checklist of occupational health and safety conditions for remote work to be applied periodically and confirm that the conditions in which the remote work is performed remain the same.</p>	<p>Fulfill the data protection policies and mechanisms required by the employer, as well as the restrictions on the use and storage of data.</p>
<p>Set out and document, if applicable, the remote work implementation process for the workplace, providing the specific characteristics to enable migration from in-person to remote work and vice versa. And ensure that arrangements may be reversible, where justified, or because it is in its interests.</p>	<p>Inform the employer in writing and in advance of any change to the permanent or temporary address, to enable the steps to be performed to confirm that the proposed new place of work fulfills the requirements for remote work to be performed there.</p>
<p>Provide tools for remote work to be carried out correctly, such as an ergonomic chair, supplies and additional elements needed for adequate performance of the workers' tasks.</p>	<p>Participate in the risk reporting processes related to their remote working and training activities that the employer provides to them,</p>

	as well as at face-to-face or online meetings to prevent social isolation.
Put in place programs specifying how maintenance is to be provided on work tools and any other additional elements that are delivered or are mandatory.	Notify the employer and the <b>joint workers' health and safety committee</b> of any occupational risks that they experience.
Provide training at least once a year to workers under remote working arrangements. The training or preparation process may be conducted remotely, in person or with a combination of the two. It must be documented by the <b>joint workers' training, preparation and productivity committee</b> , if the employer has one.	
Carry out the medical examinations required in <b>NOM-030-STPS-2009</b> , and follow up on notices of occupational accidents. The <b>joint workers' health and safety committee</b> must be involved and we also recommend including these matters in the <b>internal labor regulations</b> .	
Have support mechanisms in place for cases of family violence, which must include returning to in-person work. The <b>joint workers' health and safety committee</b> must be involved and we also recommend including these matters in the <b>internal labor regulations</b> .	
Share all documents produced by fulfilling the Standard with the <b>joint workers' health and safety committee</b> , such as the checklist, including any photographic evidence that is held and any lists evidencing the delivery of equipment. The confidentiality of information provided to the employer must also be assured.	
Provide support and the necessary means for remote workers to take part in the Joint Workers' Health and Safety Committee or in the <b>joint workers' training, preparation and productivity committee</b> .	
Include the union rights of the company's remote workers, as well as including, if it has a Collective Labor Agreement and/or Internal Labor Regulations, the company's	

rules under this heading and tie them in with the <b>remote working policy</b> .	
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2. **Health and hygiene committees** at workplaces will have a key role in applying and monitoring the application of **NOM-037**, so it is important to verify the fulfillment - as applicable - of **NOM-019-STPS-2011**. "Creation, integration, organization and procedures of health and hygiene committees"; **NOM-030-STPS-2009**. "Occupational health and safety preventive services - Functions and activities" and; **NOM-035-STPS-2018**. "Occupational psychosocial risk factors - Identification, assessment and prevention".
3. **Joint training, preparation and productivity committees** will provide training on recognizing hazards at the remote place of work. Training or preparation may be conducted remotely, in person or with a combination of the two, within working hours.
4. The definitions it contains lend clarity to the wording of the Federal Labor Law, by making important distinctions. The **workplace** is the physical place or space that is attended by individuals subject to an employment contract, the **place of work** is the fixed and private physical space, outside the workplace or separate from it, at which has been agreed with the employer that remote work will be performed.
5. **Two mechanisms** are provided for the safety and hygiene committee to determine whether a place of work has suitable conditions for the performance of remote work.
  - I. The first is a visit to the proposed place of work, after obtaining the worker's authorization.
  - II. The second is a tool prepared by that committee and to be used to validate whether the place of work has safe and healthy conditions for the performance of remote work. This tool is referred to as the *Checklist of health and safety conditions for remote work* and must be requested by the worker.

To confirm the information provided in the checklist mentioned above, the committee may request from the worker a remote inspection of the location of the work or photographic or video evidence of the place of work.
6. To conduct periodic monitoring of the continuing existence of suitable conditions at the place where the remote work is performed, a second, or a monitoring, version of the checklist of health and safety conditions for remote work must be completed.
7. Specific definition of **new rights and terms** included in the Federal Labor Law, such as:
  - a. **Right to disconnect:** Right to leave work behind (including digital disconnection from information and communication technology) and not to participate in any type of communication after the working day has ended, in non-working hours, while on vacation or leave, during meal times or breastfeeding times, and after the end of the working day. The workplace cannot communicate with remote workers during those breaks, except for supported force majeure reasons. For flexible working hour arrangements, the right to disconnect also applies in the breaks agreed between the worker under a remote working arrangement and the employer and accepted, as applicable, in the collective labor agreement or internal labor regulations.
  - b. **Ability to reverse remote working arrangements:** The right to change from a remote to an in-person working arrangement, under article 330-G of the Federal Labor Law.

- c. **Privacy:** The control mechanisms provided for workers under remote working arrangements must not infringe on the private sphere, and must not interfere with the balance between work and family life, and have to be proportionate to their aim.
  - d. **Equality:** The rights of workers under remote working arrangements cannot be inferior to those of workers working in person at the workplace.
  - e. **Worker under a remote working arrangement:** A paid and subordinate worker who provides personal services at a fixed location or at fixed locations other than the workplace, and uses information and communication technology to perform their remote work.
8. If the place proposed for remote work does not have appropriate occupational health and safety conditions, the worker cannot work remotely.
9. The employer will be able to choose to obtain the services of an inspection unit accredited and approved as required in the Law on Quality Infrastructure and its regulations, to assess fulfillment of the Official Mexican Standard. If the workplace fulfills the Standard, an opinion taking effect for two years will be issued, provided that the conditions on which it was based do not change.

Additionally, **NOM-037** proposes the following information forms and formats to help employers fulfill their obligations under the standard correctly:

- Appendix 1. Remote Working Policy.
- Appendix 2. Selection of candidates for remote work.
- Appendix 3. Checklist for health and safety conditions at the place of work.
- Appendix 4. Recommended preliminary activities before working remotely.
- Appendix 5. Recommendations for choosing an ergonomic chair.

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