

# Royal Decree-Law 28/2020 of 22 September on remote working

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The Government of Spain has approved the Royal Decree-Law 28/2020 of 22 September on remote working (the “[Royal Decree-Law 28/2020](#)”).

The Royal Decree-Law 28/2020 aims to fill the regulatory gap that exists in the area of teleworking: (i) equalising the legal treatment of the most important aspects of this form of work organisation, (ii) resorting as necessary to collective negotiation, which is considered an essential instrument to complete the regulations applicable in each of the specific sectors and (iii) establishing its own criteria.

In line with the above, the Royal Decree-Law differentiates, in order to avoid any kind of misunderstanding, between:

- a) Remote work: a type of work organisation or performance of the work activity under which it is carried out at the employee's home or at the place chosen by him/her, throughout his/her working day or part of it, on a regular basis.
- b) Teleworking: remote work carried out exclusively or predominantly using computer, telematics and telecommunication means and systems.
- c) Work in person: work carried out in the workplace or in the place determined by the company.

## **Limitations on remote work**

It is established that in the employment contracts concluded with minors and in the training and apprenticeship contracts, there will only be a remote working agreement that guarantees, at least, a percentage of fifty percent of services rendered in person.

## Characteristics of remote working

### Volunteerism and individual agreement

Royal Decree-Law 28/2020 establishes that remote work will be voluntary for both the employee and the employer and will require the signing of a specific agreement.

This individual agreement may become part of the initial contract or be made at a later time, without the application of Article 41 of the Workers' Statute being imposed, all without prejudice to the right to remote working that may be recognised by law or by collective negotiation.

In this respect, it is indicated that the following shall not be grounds for termination of the employment relationship or substantial modification of the working conditions:

- The refusal of the employee to work remotely.
- The exercise of reversibility to face-to-face work and
- The difficulties for the adequate development of the work activity remotely that are exclusively related to the change from a face-to-face service to another one that includes remote working.

### Reversibility

With regards to the reversibility of the decision to work remotely from a face-to-face mode, it is established that this will be reversible for the company or employee.

In addition, collective bargaining agreements may establish the mechanisms and criteria by which the person who performs face-to-face work may switch to remote working or vice versa.

## Formal requirements of the remote working agreement

The remote working agreement must:

**Be formalised in writing:** it can be incorporated into the initial employment contract or carried out at a later time and, in any case, must be formalised before the remote working begins.

Any modification of the remote working agreement will be made by agreement between the company and the employee, formalised in writing prior to its application, and must be communicated to the employees' legal representatives.

**Contain the mandatory aspects established by the Royal Decree-Law 28/2020 itself in its article 7** among others: inventory of resources, equipment and tools, list of expenses that the employee may have for providing remote services, working hours, availability rules and chosen place of work remotely.

**Communicate to the employees' legal representatives:** The company must provide the employees' legal representatives with a copy of all the remote working agreements that are made and their updates within a period of no more than 10 days from their formalisation and, subsequently, send it to the employment office even when there is no employees' legal representatives.

## Rights relating to the provision and maintenance of resources and the payment and compensation of expenses

**Inventory of resources:** People who work remotely will have the right to the adequate provision and maintenance by the company of all the resources, equipment and tools necessary for the development of the activity, in accordance with the inventory incorporated in the remote working agreement, and precise attention must be guaranteed in the event of technical difficulties, especially in the case of teleworking.

**Expenses derived from remote working:** Royal Decree-Law 28/2020 establishes that the development of remote working must be borne or compensated by the company, and may not involve the assumption by the employee of expenses related to equipment, tools and resources linked to the development of his or her employment activity.

## Rights with an impact on working time

The person who carries out remote working may make flexible the established schedule of provided services, observing the times of obligatory availability and the regulations on working and rest time, and must faithfully reflect the time that the employee who carries out remote working dedicates to the employment activity, indicating the moment of beginning and end of the day.

## Rights regarding the prevention of occupational risks

The risk evaluation should only reach the area enabled to provide services, not extending to the rest of the areas of the home or the place chosen for the development of remote working.

The company must obtain all the information about the risks to which the person working remotely is exposed by means of a methodology that offers confidence regarding its results, and foresees the protection measures that are most appropriate in each case.

However, if obtaining this information requires a visit by someone with responsibility for prevention to the place where the remote working takes place, a written report justifying this must be issued and given to the employee and the prevention delegates, and that, in any case, will require the consent of the employee, if it is his/her home or that of a third natural person.

If this authorisation is not granted, the development of the preventive activity by the company may be carried out based on the determination of the risks derived from the information collected from the employee according to the instructions of the prevention service.

## Rights related to the use of digital media

Royal Decree-Law 28/2020 establishes that the company may not demand the installation of programmes or applications on devices owned by the employee, nor the use of these devices in the development of remote work.

Likewise, the disconnection must be guaranteed, which implies a limitation on the use of technological means of business communication and work during rest periods, as well as ensuring compliance with the maximum length of the working day.

On the other hand, the company will develop an internal policy aimed at all employees, including those in management positions, in which they will define the methods for exercising the right to

disconnect and the actions for training and raising awareness among staff on the reasonable use of technological tools.

## **Organisational, management and business control faculties in remote working**

The Royal Decree-Law 28/2020 states that:

- Employees must comply with the conditions and instructions of use and conservation established in the company in relation to computer equipment or tools, and
- The company may adopt the measures it deems most appropriate for monitoring and control to verify compliance by the employee with his or her labour obligations and duties, including the use of telematic means, taking into account in their adoption and application the consideration due to his or her dignity and taking into account, where appropriate, the real capacity of disabled employees.

## **Role of collective bargaining agreements and collective agreements**

The first additional provision of Royal Decree-Law 28/2020 regulates that collective bargaining agreements or collective agreements may establish, in view of the specific nature of the activity in their field:

- The identification of the job positions and functions that can be carried out through remote working
- The conditions of access and development of the work activity through this form
- The maximum duration of remote working
- As many other issues as deemed necessary to regulate, among others, the minimum working day in distance work, the exercise of reversibility to work, etc.

## **Application of Royal Decree-Law 28/2020**

The first transitional provision of Royal Decree-Law 28/2020 states that the stipulations of Royal Decree-Law 28/2020 shall be fully applicable to employment relationships in force and which were regulated, prior to its publication, by collective agreements or arrangements on conditions for the provision of services remotely, from the moment that these lose their validity and that, in no case shall the application of this Royal Decree-Law result in the compensation, absorption or disappearance of any rights or more beneficial conditions that were enjoyed by persons who previously provided their services remotely.

Lastly, it is stated that the remote working agreement regulated by Royal Decree-Law 28/2020 must be formalised (or the adaptations or modifications of the agreements in force at the date of publication of the Royal Decree-Law) within three months from the date on which this Royal Decree-Law becomes applicable to the specific employment relationship.

However, the third transitional provision of Royal Decree-Law 28/2020 states that, in the case of remote working which has been exceptionally implemented pursuant to Article 5 of Royal Decree-Law 8/2020, of March 17, or as a result of the health control measures arising from COVID-19,

and for as long as these measures are maintained, ordinary labour regulations will continue to apply.

In any case, companies will be obliged to provide the resources, equipment, and tools required for the development of remote work, as well as the maintenance that is necessary. The collective negotiation, if necessary, will establish the manner of compensation for the expenses derived by the employee from this form of remote working, if they exist and have not already been compensated.

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