



EMPLOYMENT AND LABOUR

Changes to the rules on remote working

Law 83/2021 of December 6 has changed the legal rules on remote working by amending (i) article 8 of the Occupational Accidents and Professional Illnesses Reparation Rules, approved by Law 98/2009 of September 4; and (ii) the rules in articles 3, 165 to 171, 465 and 492 of the Employment Code, approved by Law 7/2009. Besides this, new articles 166-A, 169-A, 169-B, 170-B, and 199-A are added to that law. The new law also provides that the rules on remote working will apply, with the necessary adaptations, to the central, regional and local Public Administration (civil service). These amendments come into force on 1 January 2022.

"Law 83/2021 as changed the legal rules on remote working. These amendments come into force on 1 January 2022."

The main changes are described in the following table:

TOPIC	OLD RULES	NEW RULES
Concept of remote working	It involved working "habitually" "outside the company".	The adverb "habitually" disappears. The rules apply even when remote working occurs in a reduced proportion of the normal working hours. Instead, the narrower concept of "at a place not determined by the employer" is adopted.
Elements that must be included in the agreement	General requirements of: <ul style="list-style-type: none"> o Identification of the parties, the work to be done, pay, normal working hours and establishment to which the employee is assigned; o Ownership of work tools, responsibility for installation and maintenance of equipment, and consumption and use costs. 	In addition to the above requirements, it is mandatory to include: <ul style="list-style-type: none"> o The place where the employee will habitually work; o Frequency and form of face-to-face contact o Working hours; o Professional category; o Pay, including additional and incidental benefits. The employer becomes responsible for the equipment and related expenses.

Tiago Cortes
 Nuno Ferreira Morgado
 José Pedro Anacoreta
 Employment and Labour team

TOPIC	OLD RULES	NEW RULES
Refusal of remote working proposed by the employee	N/A	The employee may refuse the proposal to work remotely made by the employer and does not need to give reasons for the refusal. Any such refusal cannot be a proper ground for dismissal or the application of any other sanction. This rule was unnecessary, once the employee might in any case be penalised for not accepting an agreement.
Refusal of remote working proposed by the employer	N/A	Any employer's refusal of a proposal to work remotely made by the employee must be justified.
The right of the employee to work remotely	Provided that working remotely is compatible with the employee's role: <ul style="list-style-type: none"> o Employees who are victims of domestic violence; o Employees with children aged up to 3 years old, provided the employer has the resources and means for that purpose. 	Besides the situations previously established, employees in the following situations are now entitled to work remotely: <ul style="list-style-type: none"> o Employees who have a child aged up to 8 years old¹; o Employees who have been recognised as non-primary Informal caregivers for a maximum period of 4 consecutive or non-consecutive years. The employer may oppose this request when the applicable conditions are not met or on the grounds of overriding requirements for the operation of the company, and it must request an opinion from the Commission for Equality in Work and Employment (CITE).²
Duration of the remote working agreement	While a contract of employment is in force: maximum of 3 years. Initial agreement: no time limit set.	Agreement made for a fixed term: <ul style="list-style-type: none"> o 6 months with the possibility of automatic renewal. Agreement made for an indefinite period: <ul style="list-style-type: none"> o Possibility of terminating the agreement with 60 days' notice.
Expenses	The parties were free to agree on what they wanted.	Employees have the right to compensation for the additional expenses ³ they can prove they have incurred: costs of maintenance of equipment and systems, energy and internet at a speed compatible with the communication needs of the job.

1 a) in cases where both parents meet the conditions to work remotely, as long as this right is exercised by both parents in successive periods of equal duration, within a maximum reference period of 12 months;
b) single-parent families or situations in which only one of the parents can prove they meet the conditions to work from home;
c) not applicable to employees in micro-enterprises.

2 This interpretation of this rule is doubtful, because the protection of informal caregivers is not within the scope of the CITE's powers. This requirement possibly concerned the request by an employee with minor children and may be subject to rectification.

3 **Additional expenses** are considered to be those corresponding to the acquisition of goods or services that were not available to the employee prior to the conclusion of the agreement, as well as those determined by comparison with the employee's corresponding expenses in the same month of the last year prior to the application of that agreement. Although the law does not expressly state it, we believe that the comparison with the previous corresponding month should be understood as a rebuttable presumption.

TOPIC	OLD RULES	NEW RULES
Privacy of the remote worker	Any visit to the workplace could only be to check on the work activity and the work instruments, and could only take place between 9 am and 7 pm.	A visit to the workplace can only take place during working hours and it requires the agreement of the employee and prior notice of at least 24 hours.
Checking on the employee's activity	Applicability of general restrictions on the use of remote monitoring.	The imposition of a permanent connection during working hours by means of image or sound is expressly forbidden. The capture of images, sound, writing or history or other means that may violate the employee's privacy is also forbidden.
Collective Labour Regulation Instruments (IRCT)	Remote working was already covered by the material scope of the IRCTs.	Collective agreements must regulate the conditions for remote working. However, there is no sanction for the absence of an agreement.
Occupational health and safety at work	Application of the general rules.	<p>Remote working is forbidden for activities that involve the use of or contact with substances and materials hazardous to the health or physical well-being of the employee, except if carried out in facilities certified for that purpose.</p> <p>There is an obligation on the employer to organise the necessary means to fulfil its responsibilities in terms of health and safety at work, specifically as regards working with display screen equipment, including health examinations before the implementation of remote working and annual examinations to assess the employee's physical and mental aptitude, as well as the adoption of preventive measures as considered appropriate.</p>
Definition of the concept of accident at work	N/A	<p>It is expressly provided that, for the purposes of work accidents, the location is considered to be the one that appears in the remote working agreement.</p> <p>The importance of this rule has to do with the possible limitation of liability in the event of an accident occurring outside the place identified in the agreement.</p>
Remote working in the Public Administration (civil service)	There was already a reference to Employment Code rules in the General Law on Working in the Civil Service.	The legal rules on remote working apply, with the necessary adaptations, to the central, regional and local Public Administration.
Economically dependent workers	N/A	<p>The rules regarding:</p> <ul style="list-style-type: none"> o Responsibility for equipment and systems; o The provider's privacy; o Work organisation; o Refraining from contact during rest periods; o Duty to prevent isolation; o Health and safety at work.

A duty was also introduced to refrain from contacting employees during their rest period, except in situations of force majeure. This rule is included in the Portuguese Labour Code chapter on the duration and organisation of working time. Consequently, its application is not restricted to remote working situations.

Furthermore, the violation of this duty to abstain from contact constitutes a serious administrative offence. The law does not establish any criteria for the definition of contact, nor of the concept of employer for this purpose, and this may raise some doubts as to interpretation.

It is also established that any less favourable treatment given to the employee, specifically as regards working conditions and career progression, because of the fact that he/she exercises the established right, is considered to be discriminatory action. It should be noted that the rule was not established as a right of the employee but as a duty of the employer, which is a clear legislative oversight.

Given the generic scope of some of the rules introduced by this legislation, the adoption of internal policies and procedures regarding the use of technological and communication means, the use of remote working, the framework for matters of employee privacy, and the evaluation of the conditions for safety and health at work is recommended. ■

"A duty was also introduced to refrain from contacting employees during their rest period, except in situations of force majeure."