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# URÍA MENÉNDEZ

Remote working

23 September 2020

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## THE NEW REMOTE WORKING LEGISLATION

Royal Decree-Law 28/2020 of 22 of September on remote working (the “Remote Working Law”) is intended to meet the new demands of a labour market that is changing with the increased use of new technologies and the enormous challenges this poses for both businesses and employees.

# 1. Working remotely on a regular basis

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The Remote Working Law will apply to all forms of paid employment that is carried out remotely on a “regular” basis. Employees are considered to work remotely on a regular basis when they do so for at least 30% of their working time in a three-month reference period. Collective bargaining agreements may stipulate lower percentages or reference periods.

# 2. Remote working agreement

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## 2.1. VOLUNTARY

Remote working is voluntary for both the employer and employee and, when they agree to it, must be governed in a remote working agreement, which can form part of the initial employment contract or be signed at a later date. Under no circumstances can the employer require the employee to work remotely, not even by means of a substantial modification of working conditions.

## 2.2. IN WRITING

Remote working agreements must be formalized in writing and before the employee begins to work remotely. The failure to formalize a remote working agreement in accordance with the law and the applicable collective bargaining agreement is a serious administrative offence.

### **2.3. RESTRICTIONS APPLICABLE TO CONTRACTS WITH MINORS, INTERNSHIP CONTRACTS AND TRAINING AND APPRENTICESHIP CONTRACTS**

In these cases remote working agreements may only be entered into if they guarantee that at least 50% of the working time will be spent on-site. Collective bargaining agreements or arrangements may regulate a different percentage of on-site work for training contracts when they are not executed with minors.

### **2.4. MODIFICATION OF THE REMOTE WORKING AGREEMENT**

Modifications of agreed conditions, including on-site attendance percentages, must be: (i) agreed between the employer and the employee; (ii) formalised in writing prior to being applied; and (iii) disclosed to the employee representatives.

### **2.5. OBLIGATION TO DELIVER A COPY OF THE AGREEMENT AND ITS UPDATES TO THE EMPLOYEE REPRESENTATIVES AND THE PUBLIC EMPLOYMENT OFFICE**

## **3. Employment conditions**

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The Remote Working Law makes specific provision for employees working remotely in relation to the following:

#### **A) RIGHT TO A CAREER**

- The right to training.
- The right to promotion.
- The right to be provided with sufficient means, equipment and tools for remote work and for them to be maintained.
- The entitlement to be paid and reimbursed expenses.

**B) WORKING TIME RIGHTS**

- The right to flexible working hours in accordance with the remote working agreement and any applicable collective agreements.
- The right to have working hours properly recorded.

**C) RIGHT TO THE PREVENTION OF OCCUPATIONAL HAZARDS**

## 4. Employer surveillance, data protection and information security

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- **Right to privacy and data protection:** the use of telecommunication and IT equipment must respect the employee's rights in terms of data protection and guaranteeing digital rights. The employer may not force employees to use their personal devices for remote working or to install programs on them.
- **Right to digital disconnection:** the employer must guarantee the employee's right to digital disconnection, limiting the use of equipment allowing the employee to connect electronically with work during rest time and non-working hours, and respecting the employee's timetable.
- **Organizational and managerial powers:** employees must comply with employer guidelines and instructions regarding: (i) data protection and information security, including consulting or informing employee representatives in advance; and (ii) the use and maintenance of computer equipment, as per applicable collective agreements.
- **Employer monitoring and surveillance:** the employer's surveillance and monitoring of remote working must be carried out with due regard for the dignity of all employees.

## 5. Protection of collective rights

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The employer must provide the employee representatives with the necessary elements to perform their representation activities, including guaranteeing them access to communications and e-mail accounts and facilitating a virtual bulletin board, when this is compatible with how the remote work is being performed.

## 6. Remote working as a Covid-19 health containment measure

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The Remote Working Law does not apply to remote working arrangements put in place exceptionally during the COVID-19 outbreak. However, during this period employers must provide the means, equipment, tools and consumables (and maintain them) required for remote work.

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