

ITUC Legal Guide – Telework

More than 59 countries have introduced telework as a measure to ensure social distancing in order to contain the spread of COVID-19. Even countries that did not introduce lockdown measures have encouraged employers to allow working from home as a means to further physical distancing. Moreover, telework has been present as a new form of work arrangement prior to the pandemic, particularly for workers whose jobs are already enabled by the use of ICTs, driven by the digitalization of the workplace and the promise of more work-life balance. While a digital divide between developing and developed countries remains, the rapid growth in both imported low-cost devices and their development in developing countries has accelerated the global impact of technology on the lives of workers.

This guide provides an overview of the implications of teleworking arrangements for access to decent work and outlines the key principles for the effective regulation of telework through legislation and social dialogue.

The guide follows the usual definition of telework as work performed with ICTs from outside the employer's premises. This can involve traditional forms, such as working from home, or working from various alternative locations outside the employer's central office. The term excludes *home work*, which involves work performed under the instruction of an employer or intermediary without the use of ICTs.

Implications of telework for access to decent work

The introduction of telework arrangements in workplaces can have significant impacts on access to decent working conditions in the absence of adequate regulation.

The use of ICTs has extended the connection of workers to the workplace, including to supervisors and co-workers, which can result in work encroaching into times and places that were traditionally reserved for personal life, and as a result, there can be an intensification of unpaid work.

Owing to the nature of work with ICTs, ergonomic strains (for example, eyestrain, neck pain, and tendon pain in the wrists and fingers) have led to some concerns regarding the health and safety of workers. Moreover, the isolation from colleagues has also led to concerns over the emergence of psychosocial health and safety risks associated with telework. Where telework is not regulated, labour inspectorates may not have access to the place of telework, making the enforcement of labour laws more challenging.

Increased telework arrangements also raise issues related to workers' privacy given that the employers' ability to use electronic surveillance is enhanced. Unless workers have the ability to communicate with their co-workers without fear of surveillance from management, this may also have a limiting impact on trade union organizing.

Moreover, teleworking arrangements could limit the career advancement of workers, particularly women, unless management strategies are adapted so that the physical absence from the workplace is no longer associated with reduced productivity. In accordance with ILO Convention 190, prevention methods must also be put in place to ensure a workplace free from domestic violence.

Finally, teleworking arrangements introduced during the pandemic as an emergency measure have demonstrated how critical prior planning is. Workers have been required to perform work without the necessary infrastructure in their home, such as desks and internet access. Companies with relevant collective agreements setting out the framework for telework have been much more efficient and effective in adapting during the pandemic.

The separation of workers from each other may also raise concern about lower levels of innovation and creativity derived from the spontaneity of human interactions.

However, if adequately regulated and implemented, there can be potential benefits of telework arrangement for workers and management. Time and cost savings due to the lack of a commute can lead to decreased stress for workers. Where working time limits are respected, teleworking arrangements may provide workers with more autonomy and flexibility to balance work and family responsibility, which may lead to greater job satisfaction and productivity. Moreover, telework may give access to the labour market for workers with disabilities who may otherwise face challenges in commuting to a workplace.

There are also certain benefits for management from the improvement in work-life balance, which can lead to increased motivation and reduced turnover, as well as enhanced productivity and efficiency, and a reduction in the need for office space and associated costs. Moreover, employers who are willing to hire remote workers will also have access to a much larger talent pool than those who only recruit based on physical location.

Key principles for regulation and social dialogue

Teleworking arrangements are expanding rapidly, but given the clear risks to working conditions outlined above, regulation through legislation and social dialogue needs to be developed urgently in order to ensure that these working arrangements improve access to decent work rather than deteriorate it.

Regulatory approaches should therefore be guided by the following principles:

- ***Impact assessment and development of telework-place rules prior to the introduction and implementation of telework arrangements.***

Prior to the introduction of telework arrangements, employers should be required to document and develop workplace rules for teleworking arrangements in consultation with trade unions. Workers should have access to these regulations and all other necessary information relevant for performing telework. Employers should also complete a health and safety assessment and feasibility studies to ensure that teleworkers have adequate infrastructure, services, and workspace to perform their duties, in consultation with trade unions. Feasibility studies should address community impact from moving work from a physical workplace to a remote one, such as the impact of closures of bank branches on local customers or the employment effects on related services like cleaning or security when offices are closed.

- ***Telework should be voluntary for employees.***

Teleworking may not be suitable for all workers and for all types of work. Employers have also expressed that not every company or unit may be suited for teleworking. There should therefore not be an obligation to accept telework. Telework should be voluntary on the part of the employees, with the possibility for workers to reverse back into the workplace if they so wish. Where the introduction of teleworking arrangements may lead to the permanent closure of physical workplaces, employers should be required to enter into negotiations with trade unions about the terms of the restructuring process in order to mitigate any negative impacts with regard to the terms and conditions of employment for workers. Where possible, workers should be offered the option of transferring to another physical workplace location.

- ***Guarantee equal treatment of teleworkers.***

The same rights and conditions comparable to working at the employer's premises should apply to teleworkers. Telework arrangements should not be used to modify the employment status, pay, leave or other working conditions of employees working remotely. Remote work should not be used to shift employment status under long-term labour contracts to more precarious forms of contracting such as temporary contracts, agency contracts, or independent contracting arrangements, among others. Similarly, where a worker chooses not to telework, the terms and conditions of employment, including the employment status, should not be subject to changes. Employers introducing teleworking arrangements should particularly review their health insurance and sick leave policies to ensure that workers are sufficiently protected, including for crisis situations.

- ***Respect for regular working hours and the right to disconnect.***

Workers engaged in telework must be ensured rest periods, limits to maximum hours of work, and the right to disconnect. For workers with designated hours, telework should not be used to extend hours or to reduce rest periods between scheduled working times. This may require the development of new tools for setting goals and measuring outcomes as well as recording working time. A clear and realistic timeframe for the

performance of duties should be determined from the outset. Workers who are subject to overtime rules should be compensated in the same manner as if the extra work were performed in the workplace. Employers should provide fair systems for approving, measuring and compensating overtime hours.

- ***Work equipment and costs for remote workspace should be the employer's responsibility.***

The employer should be responsible for providing and maintaining equipment necessary for regular telework. Those workers wishing to use their own equipment should be entitled to receive adequate compensation. As owner of the equipment, the employer should be responsible for maintenance and replacement due to obsolescence, loss, or damage during the performance of work duties. Workers performing telework should be compensated for costs for spaces and services necessary to perform their duties, including but not limited to rent for workspace, insurance, electricity, internet, mobile phone service and others. All related questions and details should be clarified beforehand so that the rights and responsibilities of workers are well understood.

- ***Employers should remain responsible for the health and safety of workers.***

There should be no difference between telework and other forms of work organization when it comes to the employer's responsibility for occupational health and safety, including the responsibility for violence-free workplaces (C190). The employer has the responsibility for the protection of the teleworker and is obliged to undertake necessary risk assessments and provide relevant information on the company's health and safety policy to the workers as well as training with regard to the use of equipment. To reduce psychosocial risks related to the isolation of teleworkers, employers should provide the opportunity for direct contacts with co-workers on a regular basis. The adequate implementation of health and safety measures should, as necessary, be verified by the employer, trade union representatives (where they exist) and/or the labour inspectorate. Where telework is performed in the home of the worker, access should be subject to prior notification and consent.

- ***Equal access to training and career development.***

Teleworkers should receive equal treatment in career development opportunities and consideration for promotion to that of their workplace-based counterparts. This is particularly important for women teleworkers, who are often required to undertake unpaid care responsibilities and have less time and opportunity to engage in career-enhancing activities outside of their work schedules. It is critical that employers provide guidance and take active measures to promote access to training and career development, including through opportunities for regular face-to-face meetings for career development and mentorship to promote opportunities to grow and advance.

- ***The right to privacy must be safeguarded.***

Information and communication technologies can have a wide range of impacts on workers. While communication technologies are essential for facilitating work processes, monitoring and surveillance technologies can create excessive controls on workers, invade privacy, and undermine positive working relations. During the recent pandemic, there has been an increase in the use of worker surveillance tools, including extremely invasive software that takes a screenshot and/or a photo of each worker every few minutes through their webcam and software that tracks every keystroke and analyzes every email and chat message sent by workers. The introduction of safeguards that ensure respect for the privacy of workers is therefore critical. Before any technology that could potentially lead to the invasion of privacy is introduced, trade union representatives should be informed and consulted. The use of surveillance tools to monitor workers should be restricted.

- ***Ensure respect for the rights to freedom of association and collective bargaining for teleworkers.***

All workers without distinction must have the right to join and form trade unions and to enter into collective bargaining over their terms and conditions at work. Telework should not be used to diminish or obstruct workers' rights to form or join a union and engage in collective bargaining. To ensure that teleworkers are able to fully exercise their rights to freedom of association, employers who deploy telework arrangements must provide all teleworkers a statement clarifying that they have the right, without employer opposition, to participate in trade union activity if they choose. This communication should be easily accessible through electronic means to ensure that it reaches all remote workers. Upon request by a trade union organization, employers should disclose the number of teleworkers and percentage of the total workforce they represent. To allow for fair trade union representation of teleworkers, employers should provide, upon request from a trade union organization, the names and job titles of teleworkers to ensure that all have the opportunity to learn about

the union. The employer should also provide opportunities for communication between workers and trade union representatives without employer presence or oversight, during inductions, using electronic means, and during onsite or virtual meetings. Whatever technology the employer uses to communicate with the employees should be made available for workers to engage, free from management oversight and surveillance, in their own organizing activities. Similar to break room and cafeteria access in physical workplaces, employers should provide teleworkers secure digital meeting spaces in which to conduct trade union activities.

Employers should refrain from blocking digital spaces such as petitions, surveys, trade union websites, or email messages from trade union organizations. Teleworkers should not be excluded from the determination of bargaining thresholds and should have the means to participate in elections and voting with regard to collective action. Moreover, given their potential impact on terms and conditions of work, teleworking arrangements should be a subject to collective bargaining.

Regulation

Trade unions have for long been organizing and campaigning to ensure that teleworking arrangements are introduced in a manner that brings improvements to the rights and conditions for workers. Indeed, there are now several national, sectoral and company-level collective agreements regulating the introduction and implementation of teleworking arrangements. For example, the Italian national collective agreement for the banking sector now has detailed rules, including on the right to privacy and the right to disconnect. In the UK, the Confederation of British Industry and the Trade Union Congress agreed on guidance for teleworking. UNI Europa and ETNO, as the European social partners in the telecom sector, have agreed on a joint declaration on telework that includes important principles such as the voluntary nature of telework, access to training and career opportunities, working time, the right to disconnect, health and safety measures and access to trade unions. The European Framework Agreement on Telework dating back to 2002 also covers numerous important aspects, including by granting the same overall level of protection for telework offered to workers who carry out their activities at the employer's premises. In addition, the 2020 EU Social Partners Framework Agreement on Digitalisation provides a blueprint for negotiating a just transition in use of digital technologies, including methods to secure the right to disconnect.

While several governments have taken regulatory steps with regard to certain aspects related to telework, comprehensive legislative provisions remain rare. Examples of existing national legislation include Argentina (Telework Bill - does not cover OSH); Norway (Working Environment Act - leaves detail to ministerial decrees); Portugal (sec. 166 of Law No.120/2015); Belgium (Royal Order of 22 November 2006 provides for telework in the public sector); Ireland (Code of Practice on Telework guided by the 2002 European Framework Agreement); Australia (sec. 65 of the Fair Work Act on "right to request flexible arrangements,"); the Netherlands (Working Conditions Decree); the 1996 Finnish flexible work law, as well as the 2020 Finnish working time law that allows for up to 50% remote/flex work; and Swiss courts have ruled that employers are required to compensate workers for some of share of rent.

When it comes to the right to disconnect, France and Italy are two examples of countries that have developed relevant legislation. The legislation in France provides for what is known as "a right to disconnect", which requires all enterprises with a trade union representative to negotiate annually on the manner in which this right is exercised in the context of bargaining on occupational equality and the quality of life at work. In Italy, a law adopted in June 2017 regulates flexible working, which involves an agreement between an employer and an employee providing for the performance of work partly outside of the business premises. Such an agreement must address technological and organizational measures to ensure respect for minimum periods of rest (right to disconnect).

There is no international labour standard that specifically regulates teleworking arrangements. The Home Work Convention, 1996 (No. 177) and the Home Work Recommendation, 1996 (No. 184) refer to work performed in the home of the worker or the premises of his/her choice other than the workplace of the employer. However, the instruments do not address any challenges related to the use of ICTs. The Committee of Experts, in considering instruments related to OSH and Working Time, have highlighted concerns related to the gaps in coverage of teleworkers by national labour laws. The introduction of the right to disconnect has been highlighted as a way forward in addressing the blurring of the boundary between work and rest due to the growing use of ICTs by the Experts.

Concluding remarks

With the increased use of ICTs and the overall digitalization of the workplace, demand for teleworking arrangements is clearly going to increase in the future globally. To guarantee that such arrangements reconcile the need for flexibility (for both workers and employers) and safeguarding of labour rights and protections, the introduction and implementation of teleworking arrangements should be accompanied by key principles outlined in this discussion guide. While several collective agreements, at different levels, and some national jurisdictions have introduced some of these principles, there remain clear gaps in national and international law that need to be addressed before telework arrangements become more widespread and permanent.