

## Employment Update

# Employment News 2020: Royal Decree-Law 28/2020 of 22nd September on remote working

23rd September 2020

The present Royal Legislative Decree (RLD) has a general scope whatever the professional sector and its regulation revolves around four axes:

- 1.- It goes beyond the concept of distance working set out in Article 13 of the Workers' Statute Law approved by Royal Legislative Decree 2/2015 of 23rd October ("ET");
- 2.- The voluntary nature of this contractual provision is highlighted;
- 3.- In general, it is established that remote workers will benefit from the same working conditions and rights as staff who provide their services in person;
- 4.- A specific regulation is established for the control and organizational powers for companies.

SUMMARY TABLE AND MAIN NEWS	
General provisions - Chapter I -	
<p style="color: red;">Scope of application -art. 1 RLD-</p>	<p>To labour relations that meet the conditions described in Article 1.1 of the ET, if they are carried out remotely on a regular basis.</p> <p><b>Remote working is considered to be regular when, in a reference period of 3 months, a minimum of 30% of the working day, or the equivalent proportional percentage depending on the duration of the contract, is provided in this way.</b></p>
<p style="color: red;">Concept and definitions -art. 2 RLD-</p>	<p>A distinction is made between three modalities of service provision, which are duly defined:</p> <p><b>a.- Remote working</b> <b>b.- Teleworking</b> <b>c.- Face-to-face work</b></p>
<p style="color: red;">Equal opportunities and treatment and non-discrimination -art. 4 RLD-</p>	<p>Workers engaged in remote working: (i) shall have the same rights as if they were providing services in person, except for those inherent in the latter mode, avoiding any kind of direct or indirect discrimination; and (ii) <b>may not suffer any prejudice or change in the agreed conditions because of difficulties, technical or other not attributable to the worker.</b></p>

The remote working agreement - Chapter II		
<p><b>Voluntary nature of remote working</b> -section 1-</p>	<p>Voluntary remote working and remote working agreement -art. 5 RLD-</p>	<p>The voluntary nature of remote working is established for both parties, requiring the signing of an agreement, and providing for reversibility.</p> <p>The impossibility of imposing remote work through Article 41 of the ET is maintained.</p> <p>The remote working agreement will be <b>reversible for both parties.</b></p>
<p><b>The remote working agreement</b> -section 2-</p>	<p>Formal obligations of the remote working agreement -art. 6 RLD-</p>	<p>The remote work agreement must be made <b>in writing and before the start of the distance work</b>, establishing a series of obligations of information to the legal representation of the workers.</p>
	<p>Content of the remote working agreement -art. 7 RLD-</p>	<p>Relevant article that establishes the minimum obligatory content of the remote working agreement, highlighting, among others, the following matters:</p> <ul style="list-style-type: none"> <li>• Inventory of means, equipment and tools.</li> <li>• List of expenses and form of quantification of the compensation to be paid by the company.</li> <li>• Working hours and, where appropriate, rules of availability.</li> <li>• Percentage and distribution between face-to-face and remote work.</li> <li>• Work centre to which the remote worker is assigned.</li> <li>• Remote working place.</li> <li>• Prior notice for the reversibility exercise.</li> <li>• Means of control by business.</li> <li>• Duration of the agreement.</li> </ul>
	<p>Modification of the remote working agreement and prioritisation -art. 8 RLD-</p>	<p>It is envisaged, among other things: (i) that <b>changes in the conditions set out</b> in the remote working agreement <u>shall be agreed by the company and the individual worker</u>; and (ii) that persons engaged in remote working for the <b>whole of their working day shall have priority for jobs that are wholly or partly performed on a face-to-face basis.</b></p>
Rights of Remote Workers - Chapter III of the RLD		
<p><b>Right to a career</b> -section 1-</p>	<p>Right to education and vocational training -art. 9 and art. 10 RLD-</p>	<p>Both provisions regulate a series of rights of workers who provide their services at a distance, with the aim of putting them on an equal footing with workers who provide their services in person.</p>



<p><b>Rights relating to the provision and maintenance of facilities and to the payment and compensation of expenses</b> -section 2-</p>	<p>The right to adequate provision and maintenance of resources, equipment and tools -art. 11 RLD-</p>	<p>Remote workers <b>shall have the right to the adequate provision and maintenance by the company of all the means, equipment, and tools necessary for the development of the activity</b>, under the terms that may be agreed upon in the remote work agreement or, as the case may be, in the collective agreements or agreements, with the employer guaranteeing the attention required in each case in the event of technical difficulties.</p>
	<p>Entitlement to payment and compensation of expenses -art.12 RLD-</p>	<p><b>The company must compensate or cover the expenses related to the equipment, tools and means linked to the development of the work activity -</b></p> <p>The working person, therefore, should not bear any of these costs.</p> <p>The <b>system for the determination and compensation of expenses</b> may be fixed by means of a collective agreement and/or a company agreement.</p>
<p><b>Rights with implications for employment law</b> -section 3<sup>a</sup>-</p>	<p>Right to flextime under the terms of the agreement -art. 13 RLD-</p>	<p>The working person may <b>"flexibilize" the hours of service provision</b>, provided that (i) it is in accordance with the terms set out in the remote working agreement and collective bargaining; (ii) it respects mandatory availability times; and, (iii) finally, it is in accordance with working time and rest regulations.</p>
	<p>Right to proper time registration -art. 14 RLD-</p>	<p>Time recording will also apply to remote working.</p>
<p><b>Right to the prevention of work hazards</b> -section 4-</p>	<p>Application of preventive regulations in remote work and risk assessment and planning of preventive activity -art. 15 and art. 16 RLD-</p>	<p>The right to health and safety protection is recognised for people who work remotely.</p> <p>Risk assessment and planning of preventive activity should consider the risks of this form of work and should be limited to the area designated for the provision of services.</p> <p>If it is necessary to visit the home or place chosen for the provision of services by the remote worker: (i) a written report shall be prepared justifying the need for the visit, which shall be communicated to the workers' representative; and (ii) the worker's permission shall always be required.</p>



		If the worker does not grant such permission, the preventive activity of the enterprise shall be carried out based on the information collected by the worker in accordance with the instructions of the occupational risk prevention service.
<b>Rights related to the use of digital media</b> -section 5-	The right to privacy and data protection and the right to digital switch-off -art. 17 and art. 18 RLD-	A whole series of obligations and limitations are established for companies linked to the right to workers' privacy, as well as to data protection, and the right to digital disconnection is also recognised.
<b>Collective rights</b> -section 6-	Collective rights of people working remotely -art.19 RLD-	<p><b>Remote workers shall be entitled to exercise their rights of a collective nature with the same content and scope as the rest of the workers in the centre to which they are attached.</b></p> <p>To this end, the company must guarantee to the unitary and union representation the necessary elements for the development of its representative activity (e.g. access to communications and addresses for use in the company, implementation of a virtual notice board, etc.).</p> <p>Companies must also ensure that workers can effectively participate in activities organised and called by the legal representation or by other workers in defence of their interests (e.g. elections to the legal representatives of workers).</p>
<b>Organizational, managerial and supervisory powers in remote work - Chapter IV of the RLD</b>		
Conditions and instructions for use and upkeep of computer equipment or tools and powers of corporate control -art.21 RDL and art. 22 RLD-		<p>The duty of workers to comply with the instructions on the use and upkeep of computer equipment and/or tools established in the company is regulated, within the terms that, where applicable, are established in the collective bargaining agreement.</p> <p>Likewise, companies can adopt the measures they deem most appropriate to monitor and control compliance by remote workers with their work obligations and duties, respecting the dignity of workers in all cases.</p>
<b>Legislative changes and other issues of interest</b>		
Distance work in collective bargaining -First S.P.-		<p>Several issues are set out which may be established by collective agreements or arrangements, the most important of which are as follows:</p> <ul style="list-style-type: none"> <li>• The identification of jobs and functions that can be performed through remote working.</li> <li>• A maximum duration for remote work.</li> </ul>



	<ul style="list-style-type: none"> <li>• Minimum working hours.</li> <li>• Reversibility exercise</li> <li>• A percentage or period of reference lower than those set out in article 1 of this RLD for the purposes of qualifying as "regular" this way of carrying out the work activity.</li> </ul>
<p>Extension of the validity of Article 6 of RDL 8/2020 -Third S:P:-</p>	<p>Article 6 of RDL 8/2020, relating to the MECUIDA Plan, will remain in force until 31st January 2021.</p>
<p>Transitional application of the standard to remote working situations existing prior to the entry into force of this RLD -First T.P.-</p>	<p>The provisions of the RLD will be applicable to those employment relationships in force prior to the publication of the same, and which were regulated by agreements or collective bargaining agreements once they had ceased to be in force, with a maximum of three years from the publication of the regulation in the BOE (Official State Gazette), from which time the regulation will be applicable in its entirety.</p> <p>If the collective agreements or accords referred to do not provide for a period of validity or duration, this regulation will be fully applicable one year after its publication in the Official State Gazette, unless the parties agree to a longer period (which may not exceed three years).</p> <p>The application of the RLD shall not result in the compensation, absorption or disappearance of any rights or more beneficial conditions of workers who have already been working remotely.</p> <p>The remote working agreement provided for in the RLD must be formalised within three months of the RLD becoming applicable to the specific employment relationship under the terms provided for in the First Royal Decree, and within the same period of time, the appropriate adjustments must be made.</p>
<p>Remote working as a health containment measure derived from COVID-19 -Third T.P.-</p>	<p>When work has been implemented exceptionally in application of the preferential nature provided for in Article 5 of Royal Decree Law 8/2020, of 17th March, on extraordinary urgent measures to deal with the economic and social impact of the COVID-19 ("RDL 8/2020"), or as a result of health containment measures, ordinary labour regulations will continue to apply.</p> <p>In any case, companies will be obliged to provide the means, equipment, tools and consumables</p>



		<p>required for the development of remote work, as well as the necessary maintenance.</p> <p>Collective bargaining shall establish the form of compensation for the expenses incurred by the worker in this form of remote working.</p>
Legislative amendments to existing legislation	<p>Amendment of the revised text of the Law on Employment Offences and Penalties approved by Royal Legislative Decree 5/2000 of 4 August ("LISOS") -1ST F.P.-</p>	<p>It is established as a serious infringement of LISOS, not to formalize the distance working agreement in the terms and with the legal and conventional requirements. This infringement is punishable by a fine ranging from 626 to 6,250 Euros.</p>
	<p>Amendment of Law 36/2011 of 10 October regulating employment ("LRJS")-D.F. 2ND F.P.-</p>	<p><b>A new procedural rule</b> is established - included in a new art. 138 bis of the LRJS - by which complaints will be processed regarding access, reversion and modification to remote work.</p> <p>The most outstanding characteristics are as follows: (i) a time limit of 20 working days for the action to be taken; (ii) the urgency of the process; (iii) the possibility of obtaining a report from the ITSS (Labour and Social Security Inspectorate); and, (iv) the absence of an appeal against the ruling.</p>
	<p>Amendment of the Workers' Statute Law approved by Royal Legislative Decree 2/2015 of 23rd October ("ET") -3RD F.P.-</p>	<p>The following precepts are modified:</p> <p>1.- <b>Remote working</b> -art. 13 ET-: Reference to the present RLD is introduced.</p> <p>2.- <b>Promotion and professional training at work</b> -ex art. 23.1.a) ET-: The possibility of applying for remote work is established when studying regularly to obtain an academic or professional qualification.</p> <p>3.- <b>Working women who are victims of gender-based violence</b>, Art. 37.8 ET: Working women who are victims of gender-based violence shall have the right to carry out their work totally or partially at a distance, or even to stop doing so if this is the established system.</p> <p>In any case, this mode of service provision shall be compatible with the worker's position and functions.</p>
Other relevant modifications contained in the RLD in employment and social security matters	RD 6/2020, of 10th March, which adopts certain urgent measures in the economic field and for the protection of health, is modified, reinforcing the requirements that are necessary for the justification that a working person cannot provide telematic services	



and, consequently, can benefit from an exceptional benefit due to contagion and/or isolation -Tenth F:P:-.

Social Security benefits caused by personnel providing services in health or social-health centres due to the SARS-CoV2 virus will be considered as derived from occupational accidents, until the authorities lift all prevention measures -Fourth F:P:-

In the event of death, the cause shall be considered to be an accident at work within 5 years of the contagion -Fourth F:P:-.

The RLD, with certain exceptions, will enter into force 20 days after the publication of the RLD in the Official State Gazette, i.e. on 13th October 2020. Notwithstanding the above and regarding the matters contained in this warning, the following matters will come into force from the day of its publication:

- 1.- Extension of the MECUIDA plan -Third A.P.-.
- 2.- The consideration as a professional contingency derived from an accident at work of the illnesses suffered by the personnel who provide service in health centres or social health centres as a consequence of the contagion of the SARS-Cov-2 virus during the state of alert -Fourth A.P.-.

We hope that these comments are useful, and, in any case, the Andersen Employment Practise is at your disposal to clarify any doubts you may have in this regard.

The full Royal Decree can be read [here](#).

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