

European Guide to Support Employers
Teleworking in Europe



October 2020

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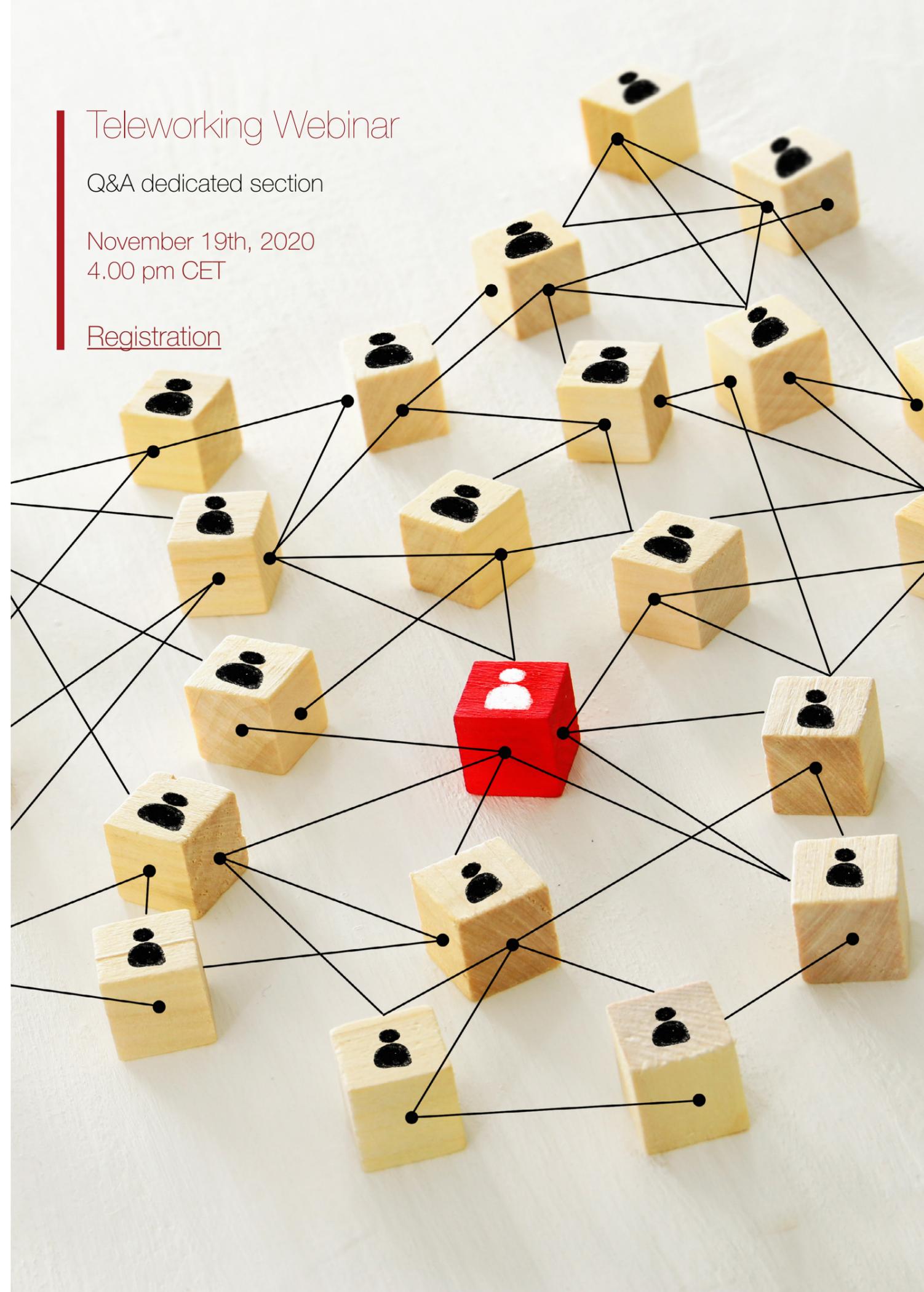
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Teleworking Webinar

Q&A dedicated section

November 19th, 2020
4.00 pm CET

[Registration](#)



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Implementation of telework

To reduce the risk of Covid-19 infection, the Albanian government has called on employers to make arrangements for the introduction of telework. Although individual agreements are permissible, it is expected that the legislator will issue a concrete set of rules for the introduction of telework soon. Until such a law is enacted, employers should establish internal work rules and regulations for telework. So far, the introduction of telework can only be agreed with the employee's consent. The unilateral ordering of telework by the employer is not permitted. Something else applies only if it is agreed upon in an original employment contract. Thereafter, no additional agreement is required if the employer and employee have already stipulated the possibility of teleworking in the original employment contract.

The employee has in principle no claim to the introduction of telework. However, in connection with the outbreak of Covid-19, every employer should promote the introduction of telework in order to comply with his legal obligation to ensure the health

and safety of his employees. A special regulation applies if the employer allows flexible work. This means that the employee can choose whether to work locally or remotely at another address not specified in the agreement. Under these conditions there is no case of telework and the parties do not need to sign a written agreement on telework. However, the employer must duly specify the relevant applicable rules in its internal policies.

Since telework is voluntary, the parties can negotiate the duration independently. Such an agreement can then not be unilaterally terminated by either party. However, the parties may agree on a provision to revoke the possibility of teleworking. Therefore, the duration of telework depends solely on the mutual agreement between employer and employee.

The working conditions for teleworkers must not be worse than those of other workers performing the same or similar work. By "same or similar work" is meant work performed by the same employee prior to telework on site.

The employer is obliged to provide all employees performing telework with the appropriate means and IT equipment (i.e. laptop, cell phone, etc.). This means that the employer must provide, install and maintain the computer equipment and tools used by the employee to perform the work, unless the teleworker uses his own equipment. As all work-related expenses/costs are in principle to be reimbursed by the employer, a monthly lump sum should be agreed in this respect.

According to the Constitution of the Republic of Albania, a person's home is inviolable and therefore the employer is not allowed to enter

the employee's home without his consent. In the light of the data protection legislation, the employer may only monitor the employee in order to control the performance of telework. In order to monitor the performance of work, it is advisable to request reports from the employee at regular intervals on the progress of the work.

Required involvement of employee representatives and public authorities

In companies with a works council, the employer must consult with the works council before introducing teleworking.

The works council is entitled to give its opinion and recommendations; however, the employer is not bound by such an opinion. In any case, the relevant clauses of the collective agreement, if any, or the company's articles of association regarding the involvement of employee representatives in the procedure must be consulted.

There is no obligation to notify the authorities of the introduction of telework.

Health and safety and data protections

The employer is responsible for the health

and safety in telework, since the same health and safety principles apply to teleworkers as to office workers. He must ensure that the teleworker's workplace meets the minimum health and safety requirements. He must also inform employees about the rules to be observed when teleworking, including the obligation to comply with health and safety regulations and internal company rules. The employee is then responsible for complying with the prescribed rules and standards for health and safety at work.

There is no legal regulation for the inspection of teleworking workplaces. Due to the constitutionally protected inviolability of the home, the employer is not allowed to enter the home of an employee without the employee's consent, so it is advisable to include a provision in the telework agreement.

The general provisions of the Albanian labor law regarding weekly working hours, breaks, days off, overtime, work during the night as well as on public holidays and weekends are not mandatory, so that they can be agreed upon separately in an individual agreement between the parties. Nevertheless, it is advisable to oblige the employee to document the hours worked daily.

Data protection legislation does not distinguish between telework and work on the employer's premises. The use of virtual private networks (VPNs) as well as other private communication channels (such as your personal e-mail addresses) to enable you to work at home or telework should be accompanied by technical-organizational measures and strict rules to ensure the inviolability and confidentiality of data in accordance with the legislation on personal data protection.



In this context, particular care should be taken when using various online communication platforms (e.g. video conferencing) to prevent unauthorized persons from accessing personal data (video images).

It is advisable that both technical and organizational measures (e.g., concrete instructions for data processing and confidentiality measures for teleworking) regarding data protection are laid down in the employer's internal guidelines and communicated to the employees.

Liability

The same regulations apply to accidents during teleworking as for an accident at work in the employer's company. In the event of an accident during telework, the competent authorities will, after notification by the employer and completion of the relevant protocol, investigate the case and determine whether it is an accident at work. The employer can be held liable for the accident if the employer has failed to clearly define the rules of technical safety at work and to train the employee in occupational safety. If the employee cannot work because of an accident at work, he will receive compensation from the Social Insurance Institute. However, the employer must pay the difference between the damage and the benefit the employee receives from the state social insurance if the accident is due to a serious fault of the employer. In order to limit the employer's liability for an accident suffered by the teleworking employee, it is advisable to specify the working hours in the telework agreement.

As a rule, the employer is also liable for damage caused by his employees to the property of third parties, if this act of the

employee was performed while performing the tasks assigned to him by the employer. If the employee has caused such damage intentionally or negligently, the employer may demand that the employee reimburse the damages paid to the third party.

However, the employer cannot be held liable if the damage was caused in connection with a non-work-related activity and the third party was aware of this. The employer is liable for damage to the employee's property caused by telework, unless the damage was caused by the employee's own intent or negligence. ■



Shirli Gorenca - Partner
Kalo & Associates **Albania**
Collaborating Firm of Andersen Global



Implementation of telework

During the current Covid-19 crisis, telework has become highly attractive and more progress has been made within the past few months than in many years before. However, a legal framework is still missing. As of Sept 18, 2020, the Ministry of Labor announced that it – together with so-called “social partners” – is forming working groups to incorporate best-practice examples from the last months into a legal framework. Results will be presented in March 2021.

For the moment, there is no unilateral right of the employer to impose telework. Agreements between the employee and the employer are necessary. Such agreements may be concluded by individual agreement or collectively by agreement between the workers' council and the employer. A unilateral order by the employer is further possible if an individual agreement is already in place and includes either the basic understanding that telework may be ordered or a so-called “transfer clause” according to which the employee may be transferred, unilaterally by the employer, to a place of work other than the one originally agreed.

There is no legal right to telework, with exemption of those for whom infection with Covid-19 poses a specific risk to life. In such cases, if telework is possible for the respective job, the employee is entitled to work remotely. As a precondition, based on their health data, employees need to produce a certificate stating that they belong to a Covid-19 risk-group. Upon receipt of such a certificate, an employer must consent to telework.

As an agreement needs to be concluded, it is highly advisable to include a period and a clause stating that the employer has the right to define the date when telework shall be terminated. As no specific legal framework exists (yet), general principles need to be created for telework. This includes a general obligation of the employer to equip the employee with all means necessary for performing the contractual task and to make sure that the corporal and mental health of the employee is safeguarded. “Tools and means” apply mainly to hard- and software (computers, printers, ink etc.). Pieces of furniture necessary for ergonomic reasons etc. are not legally required to be considered at present. There is no law or court ruling in

place yet regarding the coverage of costs for electricity etc. arising from the use of private infrastructure during working hours. But it is assumed that those costs, if documented, must be covered by the employer. To avoid unpleasant surprises, it is advisable to include within the individual teleworking agreement a lump sum to be paid to the employee to cover these costs.

There is no general right of supervision. The employer may not require an employee to continuously keep turned on the computer's video camera and may not use software that monitors keyboard or mouse movements. However, employees must participate in video conferences at the request of the employer provided that the employer takes care of the necessary technical means. Therefore, if telework is agreed, the agreement should also include the employer's right to be able to get in touch with the employee electronically (phone calls or video-chats) anytime during designated working hours.

Required involvement of employee representatives and public authorities

Agreements concluded between the workers' council and the employer (*Betriebsvereinbarung*, "Company Agreement") are the most effective way to find a solution for general questions of telework. If no workers' council exists, individual agreements suffice. Ideally, it is recommended to conclude a company agreement as a framework. Details for individual employees should then be regulated in the respective individual agreements.

If workers' representatives are elected (which is possible in companies with more than 5

employees), these council representatives have the right to request the conclusion of a company agreement regarding the introduction of telework. The same right applies to the employer. If no agreement can be reached, both parties may request action by an arbitration board. If the workers' council on the other hand does not wish to conclude such an agreement, there is no obligation for participation of the council in these matters and the employer may proceed by concluding individual agreements.

There is no mandatory notification to public authorities regarding the introduction of telework.

Health and safety and data protections

Basic responsibility lies with the employer. However, he is not obliged – at present – to control the circumstances in the personal area of employees if these agree to telework from home.

Employers need to equip their employees with the necessary technical means and to instruct them accordingly. These instructions should also include information regarding working hours, the necessity of effectively taking breaks and to take necessary measures to safeguard corporal and mental health.

General working hours and their legal or contractual limitations apply to telework accordingly. The same is the case for obligatory breaks.

Employers are generally responsible for the recording of working time, in most cases however, this task is delegated to the employee. Documentation in offices happens

mostly by electronical means when entering or leaving the building. For the time spent teleworking, no specific rules exist (yet). It is highly advisable to agree on the employee's responsibilities regarding documentation and daily/weekly transmission of worked hours to the employer for control and storage.

The employer has no right to access the employee's home. The employee's private sphere is constitutionally protected. If, however the employee should act against given and documented instructions (regarding health and safety-measures), the employer has no liability and the employee may lose social security-coverage in case of a work-related disease or accident.

There is no legal framework specifically dealing with an employer's precaution regarding data in the context of telework. However, as a general principle the employer needs to take care of the confidentiality, availability, and integrity of the data as well as the resilience of the systems used. He needs to provide the employees with an appropriately protected IT infrastructure for telework. It is his task to instruct (and even train) employees regarding secure data handling. This applies to possible data protection violations, for instance if the confidentiality of data is at risk, third parties have had unauthorized access to personal data or data has been lost. Employees need to immediately report these events to the employer or data protection officer

Liability

At present, there is a specific agreement in place which has been reached considering the Covid-19 pandemic (and limited to the time of its duration). For the time of the crisis, the *Chamber of Labor* and trade

unions were able to enforce comprehensive insurance coverage for accidents that occur in connection with telework. Accidents in direct relation to the work performed in the own premises are currently considered to be occupational accidents. This means that employees enjoy the same insurance protection they would have if a work accident occurred in the company or on their way to work in the company's premises. No additional insurance is necessary at present. It is expected that new legislation dealing with telework (announced on Sept 18, 2020, to be presented in March 2021) shall prominently deal with the coverage of damages occurring to individuals and economic values during telework.

If the company has provided the employee with means/technical equipment etc., a default of these pieces of equipment and damages caused by them lead to a liability on the employers' side. ■



Piroska Vargha - Head of Employment
Lansky, Ganzger + partner Austria
Collaborating Firm of Andersen Global

BOSNIA AND HERZEGOVINA



Implementation of telework

Telework is regulated in Bosnia and Herzegovina by the provisions of Article 44 of the *Labor Code of the Republic of Srpska* and Article 26 of the *Labor Code of the Federation of Bosnia and Herzegovina*. These articles stipulate that the employee and the employer can agree on telework only by mutual consent and only for workplaces that are not dangerous or harmful to the health of the employee. Collective agreements do not contain any provisions on telework, and for this reason all contractual provisions on the conditions of telework must be negotiated and agreed upon between employer and employee before the conclusion of the agreement.

An exception is made in cases of force majeure (such as a pandemic or other natural disaster) or other justifiable reasons. In such a case, the employer can offer the employee a contract amendment. The employee cannot be forced to agree to the contract amendment. However, the employer is then entitled to terminate the employment relationship. As an alternative to refusal, the employee can agree to the contract

amendment with reservations and have the legitimacy of the measure reviewed in court. The employee is not entitled to the introduction of telework in the event of force majeure or on other legal grounds. However, he may propose the introduction to the employer.

It is problematic, nevertheless, that neither the law nor a collective bargaining agreement define what is to be subsumed under a justifiable reason. There is also no established case law on this issue. This prevents the employer from unilaterally introducing telework. Therefore, the assessment of the justification of the reasons for the offer of the annex will be judged by the court in each individual case when a court case takes place.

In practice, in addition to general information, a detailed telework agreement must also contain the following clauses: i) the duration of working time, ii) the nature of the work and the way in which it is organized, iii) the working conditions and the way in which supervision of the employees' work is exercised, iv) the remuneration for the work performed and the payment terms, v)

the use of the equipment for the work and compensation for the use of the equipment, vi) compensation for other labor costs and the way in which they are determined, and vii) other rights and obligations.

In this respect, the parties shall negotiate on the assumption of costs or the provision of work equipment. There is no general obligation for the employer to bear the costs, as any burdens on the employee may be compensated by a higher wage or otherwise.

When supervising teleworkers, employers are obliged to respect their priority position guaranteed by the *Constitution* and the *Data Protection Act*. In this respect, any form of supervision of employees must be expressly authorized. This requires the written consent of the employee, as there is no legal regulation on unilateral supervision by the employer. Furthermore, the means of surveillance must be proportionate to its purpose.

Required involvement of employee representatives and public authorities

Employee representatives do not have to be involved in the introduction of telework, nor can they influence the introduction and organization of telework.

The employer is obliged to register the introduction of telework with the tax administration like any other employment contract, otherwise the law provides for a fine for the employer of EUR 1000.00 to EUR 6,000.00.

Health and safety and data protections

The employer is responsible for the health and safety of teleworking. Every employer must implement a series of organized measures



and activities, the main aim of which is to ensure the safety and protection of the health and working capacity of employees. In terms of working time, the teleworker is entitled to full-time work of 40 hours per week, a rest period of 30 minutes during the working day, an uninterrupted rest period of 12 hours between two consecutive working days or a weekly rest period of 24 hours. In any case, the employer and the employee should agree on the manner of monitoring working hours and the form of reporting on them.

There is no statutory regulation on the inspection of teleworking premises. Due to the constitutionally protected inviolability of the home, the employer is not allowed to enter the home of an employee without the employee's consent. However, the employer is not liable for any damage caused to the employee if the employee does not apply all the necessary safety measures for telework. This must be checked in each individual case.

In addition, the employer must make appropriate arrangements to regulate both data protection and privacy of the employee. On this basis, it is determined which activities the employer can carry out independently and which must be carried out with the consent of the teleworker as data subject. Care must be taken to ensure that interference with the employee's rights is as minimal as possible.

Liability

Liability in the context of teleworking usually depends on whether the violation of duty was committed by the employer or the employee. If the employee causes material damage to the employer during telework or

in connection with it, either intentionally or through gross negligence, the employee is liable for the damage incurred. He is obliged to compensate this damage. If a third party is harmed by the employee during telework, the employee and the employer are jointly and severally liable.

The employer is liable for damage caused by the employee during telework unless the damage was caused by the employee's fault or gross negligence. It should also be noted that it is very difficult to assess whether the business liability insurance covers damages caused by third parties. Such questions should in any case be clarified with the insurance company in advance. ■



Dragan Stijak - Senior Associate
Sajic Law Firm **Bosnia and Herzegovina**
Collaborating Firm of Andersen Global

BULGARIA



Implementation of telework

The implementation of telework is voluntary. Telework can be introduced by agreement with each individual employee or based on a collective bargaining agreement.

The employer may unilaterally introduce telework if the employee can perform his work from home and the state authorities have also declared an extraordinary epidemic situation. This is one of the measures introduced by the Bulgarian labor legislation during the Covid-19 pandemic. Telework was introduced only for the period of the extraordinary epidemic situation and it can be further extended only with the consent of the employee. On the other hand, the employee has no mandatory claim against the employer for the introduction of telework.

Teleworking is usually introduced by a supplementary agreement to the existing employment contract. The supplementary agreement regulates all conditions, rights, and obligations of the contracting parties in connection with telework. This also includes the concrete implementation of telework. The parties must establish an arrangement for the

recording of the work results regarding the accounting to be prepared. This includes, for example, the content and scope of the work performed.

Since the telework is introduced via mutual consent, any change in the terms and conditions of the performance of telework must be executed via additional agreement between the parties.

The teleworking employee shall designate a specific area in his home or in other premises chosen by him outside the enterprise to serve as a workplace. The issues related to the operational, technical and other equipment at the workplace, the obligations and costs pertaining to its maintenance, other conditions relating to the supply, replacement and maintenance of the equipment, as well as clauses relating to the acquisition of separate items of the equipment shall be laid down in the individual employment contract. The employer must provide the necessary equipment and the materials and software required for the operation of telework. This also includes the maintenance of the work equipment, such as the laptop or the necessary software.

The employee is responsible for the proper storage and operation of the equipment made available to him. In case of loss of the work equipment or in case of technical problems, he shall immediately notify the employer according to a procedure and in a manner agreed upon in advance. The parties may agree on the use of the employee's own equipment together with all rights and obligations arising therefrom, such as the type of equipment, conditions regarding maintenance costs, liability, etc.

The employer should prevent employees in telework from being isolated from the other employees. To this purpose, it is necessary to create meeting places, such as chat rooms or meeting points in the offices, so that the teleworking employees can continue to participate in the social life of the company.

Monitoring of the employee is allowed only with the employee's consent and only if such monitoring is necessary for objective reasons (e.g. use of personal data, work related to valuables). The personal space of the employee shall be respected in such cases. The necessary surveillance equipment is provided by the employer.

Required involvement of employee representatives and public authorities

The participation of employee representatives is very limited and only becomes necessary when telework is introduced through a collective agreement. The individual agreements between employer and employee are neither checked nor sanctioned by the representatives nor by the authorities. However, these organs do have powers regarding the control of health and safety regulations.

Health and safety and data protections

The same safety and health principles apply to teleworking employees as to office workers. The employer must ensure that the teleworker's workplace meets the minimum health and safety requirements. He must also inform the employees about the regulations to be observed while teleworking, including obligations to comply with health and safety regulations and internal company rules. The employee is then responsible for complying with the prescribed rules and standards of health and safety at work.

The teleworking employee distributes his working hours and takes breaks at his own discretion within the working hours, as established by the employer. The way in which the employee reports to the employer on his working time is to be agreed between the parties in an individual contract; a specific form is not prescribed by law.

Compliance with the requirements and standards for health and safety at work is monitored. Teleworking employees can request an inspection of their workplace by applying to the relevant directorate of the labor inspectorate. The employer, representatives of trade union organizations, employee representatives and the inspection authorities of the labor inspectorate have the right of access to the workplace of the teleworker within the limits specified in the individual employment contract and/or collective agreement, subject to prior notification of the employee and his consent. Teleworking employees do not have the right to deny access to the workplace within the established working hours and/or within the limits established in the individual employment agreement and/or collective

agreement without giving reasons (e.g. quarantine).

The employer is obliged to secure all the necessary organizational and technical measures in regard to the personal data protection as well as to inform the employee on the internal procedures and policies, which regulate the personal data processing and security.

Liability

The employer shall provide the worker or employee in advance with written information on the liability and sanctions in case of failure to observe the rules and requirements established, including those on the protection of business. An individual employment contract and/or collective agreement shall lay down the conditions for preventing the employee from abusing the equipment and the internet and other communication connections provided to him. Beyond his direct work, an employee may use those as far as it is reasonable and moral to do so.

The employer shall be liable before the third party for the actions of the employee and can seek the liability of the employee under the regulations of the *Labor Code* – full liability in cases of deliberate actions or gross negligence by the employee and limited liability in any other case.

The liability of the employer in case of occupational injuries and occupational illnesses does not differ in cases of telework in comparison to the employees performing work at the premises of the employer. Therefore, the employer shall be fully liable in case of damages endured by the employee due to occupational injuries. There is no

general obligation for insurance for the risk of occupational injury apart from employees occupying positions with higher risk of injuries. In all other cases such insurance is voluntary. There is no separate insurance for telework and therefore any insurance for the risk of occupational injury shall cover the telework as well. ■



Stefan Stefanov - Associate
Karambourov & Partners Bulgaria
Collaborating Firm of Andersen Global

CROATIA



Implementation of telework

Teleworking in Croatia is regulated by the provisions of article 17 of the Labor Act (Official Gazette No. 93/14127/17, 98/19, hereinafter: “Act”). Under the Act, teleworking is not compulsory, moreover it is voluntary as the employer and employee may introduce it only by supplement to the employment contract (hereinafter: supplement). It should be also noted that the hereabove mentioned supplement shall contain required information regarding working time, machines, tools, and equipment necessary for the performance of the work, reimbursement of expenses concerning the performance of work etc. The agreement must contain a provision on the health and safety of the employee. If the health and safety of the employee cannot be guaranteed, the employee may not telework.

At present, teleworking cannot be introduced unilaterally by the employer as teleworking shall be based solely on mutual agreement of the employer and the employee. Considering the situation caused by Covid-19, the teleworking arrangement is only recommended by national authorities and is not mandatory to protect the health of

the workers and to ensure the continuation of the business. The employees have no claim to the introduction of telework.

Since teleworking is voluntary, the parties can negotiate the duration independently. Such an agreement cannot then be unilaterally terminated by either party. However, the parties to the supplement may agree on a rule to revoke the possibility of teleworking. Therefore, the duration of telework depends solely on mutual agreement of the employer and the employee.

Under the Act, the employer shall provide the employee with the tools and equipment necessary for the performance of the work, and to reimburse the cost and expenses if they are necessary for the performance of work. Moreover, the employer is obliged to provide safe working conditions to the employee. The additional costs and reimbursement may be regulated by supplement agreement.

The monitoring of teleworking employees is limited. Under the *Constitution of the Republic of Croatia* (Article 34) a person’s home is inviolable, and as a result, the employer may not enter the employee’s

home without his consent. In addition, any kind of monitoring of teleworking employees must be in accordance with the principles laid down by the General Data Protection Regulation. Therefore, the employer may only monitor the employee for the purpose of monitoring teleworking performance. Any prolonged monitoring of teleworking cannot be justified as per the principle of proportionality.

Required involvement of employee representatives and public authorities

Even if teleworking is introduced subsequently based on a mutual agreement, the employer is obliged to inform the works council – if existing – about the number of teleworkers every three months in accordance with Article 149 (5) of the Act. The employer has only the duty to inform the work council on the number of teleworking employees. Under the current laws, the work council cannot influence an introduction and design of telework. Furthermore, in accordance with applicable laws there is no obligation for notification of the introduction of telework to specific public authorities.

Health and safety and data protections

In accordance with Article 17.5 of the Act, the employer is responsible for the health and safety in telework. Besides, the employer shall ensure safe working conditions while the employee shall comply with all safety and health measures imposed by the law.

According to the *Occupational Safety and Health Act* (Article 17), the employer is obliged to organize and implement health and safety protection at work, in particular

preventive measures, and risk assessment. Those regulations also apply to the teleworking arrangement. The employer shall take all appropriate measures to protect the health and safety of the employee, and those measures may include the care for an employee’s equipment and environment and taking protective measures for particularly vulnerable employees (minors, pregnant women, breastfeeding women etc.) and all the other necessary measures.

All regulations concerning breaks, maximum working hours and rest periods also apply to teleworking unless they are regulated by collective agreements, internal company rules or other laws. It must also be ensured that the amount of work does not prevent the worker from exercising his right to daily and weekly rest periods and annual leave. In addition, the law obliges the employer to keep records of its employees, which contain information about the employees and their working hours.

As stated above, the access to the employee’s home is limited and the Act or any other law does not provide or regulate any situation where the employer has a right of access to the employee’s home to control health and safety regulations. Thus, the employer will have a right to access the employee’s home to provide occupational safety and health only in case of prior notification to the employee and the latter’s prior acceptance and consent.

In addition, the employer must ensure that appropriate data protection measures are taken in teleworking. With regard to the employee’s personal data, Article 29 of the Act states that the employee’s personal data may be collected, processed, used and communicated to third parties only if

the law or another law provides for it or if it is necessary for the exercise of the rights and obligations arising from or related to the employment relationship. The employer must determine in advance by employment law regulations what information he will collect, process, use or transfer to third parties for this purpose. There are no specific provisions which regulate data protection during teleworking which means the employer must apply general provisions on data protection.

Liability

The employer is liable for accidents during teleworking in the same way as for accidents that occur at the actual workplace in the company.

As regards the need for supplementary insurance, there are no provisions requiring the employer to take out supplementary insurance during teleworking. Since the employer has the right to make an agreement with the insurance company, the insurance company is obliged to settle the claim in case of liability of the employer. However, since the employer is liable for accidents that occur during teleworking, it is recommended that the employer take out supplementary insurance for accidents that occur to the employee during teleworking.

If the employee's property is damaged during telework, Article 111 of the Act provides that any damage suffered by the employee during working hours, i.e. during telework, must be compensated by the employer.

If the property of a third party is involved, the employer is liable under the Civil Obligations Act (Article 1061) for damage caused to a third party by an employee during work or in connection with work during the period

of his employment with the employer, unless it is proved that there are grounds for excluding the employee from liability. However, the third party also has the right to claim compensation for the damage directly from the employee if the damage was caused intentionally by the employee. If the employee has caused the damage intentionally or through gross negligence and the employer has reimbursed the damage to third parties, the employer has a claim for reimbursement against the employee. ■



Ivan Matic - Partner
Kallay & Partners Croatia
Collaborating Firm of Andersen Global

CYPRUS



Implementation of telework

Due to Covid-19, the Cypriot government recommends the implementation of telework. The introduction of telework between employees and employers is voluntary. Neither the employer nor the employee can unilaterally introduce telework.

The possibility of teleworking can therefore be included in the employment contract from the beginning or introduced later. In such a case, the employer will be responsible for providing, installing and maintaining the equipment necessary for regular telework unless the employee uses his own equipment.

The employer also compensates or covers costs directly caused by the work of the employee (e.g. communication costs, internet connection) and provides the employee with an appropriate technical support facility. The employer is liable regarding costs for loss and damage to the equipment and data used by the employee.

On the other hand, the employee must take good care of the equipment provided to him

and is not allowed to collect or distribute illegal material via the internet.

According to the constitution of Cyprus, the rights of workers to privacy, respect and confidentiality and the inviolability of the worker's house/flat must be respected by the employer. If the employer requires access to the workplace, this can only be done after prior notice and with the employee's consent.

Required involvement of employee representatives and public authorities

Telework is introduced through an individual agreement between the employer and the employee so that the employee representatives do not need to be involved for it to be properly implemented. However, involvement of employee representatives is advisable to protect the rights and well-being of employees.

In the current situation it is also not necessary to register the introduction of telework with any public authority.



Health and safety and data protections

The responsibility for health and safety in teleworking lies with the employer. There are no special regulations for teleworking employees. Employers must therefore provide their employees with appropriate training in the use of work equipment, protective gear, etc. The employer is liable for damages in case of deviation from and failure to comply with the health and safety requirements. In addition, criminal proceedings may also be initiated.

Employers must minimize existing hazards, conduct regular risk assessments and safety inspections, maintain work equipment, and provide all employees with the necessary training, guidelines, and instructions.

The employer must ensure adequate data security when introducing telework. He must guarantee secure transmission paths and appropriate data protection-compliant handling. This also applies if the employee uses private means of telecommunication. Both technical and organizational measures should be specified in the telework agreement.

In particular, the telework agreement should contain provisions on the handling of data and/or the security measures to be observed by the employee. The monitoring of the employee (e.g. monitoring of e-mails and the history of the web browser) is only permitted if it is directly related to the employment relationship and if it is necessary to fulfill a legal obligation of the employee.

Liability

The employer is responsible for accidents that the employee suffers in the course of or in connection with the performance of his work duties, regardless of where the employee's work is located. He is obliged to take out employer's liability insurance to cover the costs, damages and compensation in case of accidents at work. ■



Nicky Xenofontos Fournia - Legal Advisor
Andersen in **Cyprus**
Member Firm of Andersen Global

GERMANY



Implementation of telework

Telework may be introduced by agreement with each individual employee or based on a collective agreement (e.g. collective bargaining agreement, works agreement). A unilateral arrangement of telework solely based on the employer's right to issue instructions is not possible. The constitutionally protected privacy and the inviolability of the employee's home, which is protected from the employer's possibilities of influence, stand against a unilateral right to introduce telework. Thus, the consent of the employee is always necessary. However, an exception may apply in extraordinary cases, such as the current Covid-19 pandemic.

Employees have no legal claim against the employer for teleworking at present. The German Minister of Labor intends to introduce a legal right for employees to work remotely. This is still in discussion. In practice, a detailed teleworking agreement is recommended, which can be concluded as a supplementary agreement to the existing employment contract. It should cover especially the following points: duration of telework / termination of

telework, compliance (health and safety, working time, data protection etc.), liability issues, reimbursement of expenses of the employee. The agreement should leave it up to the employer to terminate teleworking at any time. This is particularly necessary if it turns out that the employee does not provide services equivalent to those in the office. Nevertheless, the employer must always observe the limits of reasonable discretion ("Grenze billigen Ermessens") when exercising his right to terminate telework.

The employer is responsible for setting up teleworking space and, in principle, also bears the associated costs. This does not only mean the costs for the acquisition of furniture and computers, but also a share of the electricity and heating costs and rent payments. The employer is well advised to agree on a flat rate for these costs with the employee. If the teleworking employee is only working at his home, this also influences travel expenses. The employee goes on a business trip as soon as he leaves his home. This applies not only to visits to business partners which he makes from his home, but also to each individual trip to the seat of his employer, for example to attend meetings

there. In this case, a contractual cost arrangement is also advisable. In the case of alternating work (e.g. two weekdays at home and three weekdays in the company), on the other hand, the employee must in principle bear the travel costs to the company himself.

Monitoring teleworking employees is only possible within narrow limits due to the special constitutional protection of the private home and data protection law. The employer may not enter the employee's home without consent. Measures for (clandestine) surveillance, such as the use of keylogger software to track the keystrokes of employees or the taking of screenshots, are only permissible if the employer has a well-founded suspicion of a crime or a serious breach of duty (e.g. working time fraud) by the employee. However, to monitor the work performance, it is advisable to request reports from the employees at regular intervals on the progress of the work and, if necessary, partial work results. A contractual accessory obligation of the employee to provide evidence of work results is recognized by case law. The employer also has the possibility to demand the keeping and presentation of activity records.

Required involvement of employee representatives and public authorities

In companies with a works council, the employer must regularly involve the works council before introducing telework in a business. A right of co-determination of the works council exists if the employment constitutes a transfer to another place of work (*Versetzung*). Further, the works council has a right of co-determination in questions with a collective reference to all employees regarding work safety, the allocation of the

working time and in case a device/software for monitoring teleworking employees shall be introduced. If telework is granted not only in individual cases, but for several employees, a works agreement would have to be concluded.

If the employer violates a right of co-determination of the works council, the introduction of telework is legally ineffective. The works council can take legal action against the employer for injunction, especially by way of interim legal protection. Beyond the mandatory involvement of the works council, there is no obligation to inform official bodies about the introduction of telework.

Health and safety and data protections

The employer is responsible for the health and safety in telework. There is no change in his legal obligations under the German Labor Protection Act (*Arbeitsschutzgesetz*). The employer must ensure that risks to life as well as to the physical and mental health of his employees are avoided and that the remaining risks are kept to a minimum. Therefore, the employer shall carry out a concrete risk assessment and take measures based on his evaluation. The workplace must be equipped in a safe manner. In view of the fact that the employer has no legal right of access to the employee's home, the teleworking agreement requires a corresponding provision, so that the employer can meet his legal obligation to comply with occupational health and safety regulations.

The Working Hours Act (*Arbeitszeitgesetz*) does not contain any special provisions for telework either. Especially at home it can easily happen that the legal rest periods

are not observed. For instance, employees could decide to work mainly in the morning and the evening so that the statutory rest period of 11 consecutive hours would be violated. The teleworking agreement should therefore oblige the employee to comply with the Working Hours Act. Further, the agreement should oblige the employees to provide documentation of the working hours performed daily.

In terms of data protection law, the employer must ensure appropriate data security when introducing telework. The employer must ensure secure transmission channels and appropriate data protection-compliant handling. This applies if the employee uses private means of telecommunication. Both technical measures (e.g. setting up a VPN client) and organizational measures (e.g. concrete instructions on data handling and secrecy measures when teleworking) should be specified in the teleworking agreement. Especially, the teleworking agreement should stipulate regulations on data handling and/or safety precautions to be observed by the employee.

Liability

In case an accident at work (*Arbeitsunfall*) occurs, the same regulations apply as in the case of an accident at work in the company. The public accident insurance (*Gesetzliche Unfallversicherung*) compensates the employee for damages. Nonetheless, it should be noted that the public accident insurance carefully examines whether such an accident at work is given in case of telework. This depends on whether the accident occurred during a professional or private activity. For instance, if an employee fell down the stairs and injures him- or herself because he or she wanted to check

the interrupted internet connection on the ground floor, which he or she needed for business communication, this accident would be insured. If, on the other hand, the employee fell down the stairs on the way to the kitchen for getting a coffee, this would not be an accident at work.

In terms of liability, there are no special rules for teleworking employees. In case the property of an employee is damaged due to teleworking at home, the employer is liable and normally a company liability insurance would settle the claim. If necessary and where possible, such insurance coverage shall be extended to claims arising from the teleworking arrangement.

In case a third person (e.g. a family member) damaged a device of the employer (e.g. the employee's spouse poured water over the laptop), the third person is fully liable. The company liability insurance probably does not cover damages caused by third persons. Nevertheless, this should be clarified with the insurance company as well. The same applies if the property of a third party is damaged (e.g. if the equipment made available for the telework causes a fire in the employee's rented apartment). To reduce economic risks, it is advisable to clarify the scope of the already existing insurance coverage. ■



Cord Vernunft - Partner
Andersen in Germany
Member Firm of Andersen Global

GREECE



Implementation of telework

Telework in Greece is regulated by the provisions of article 5 of the law 3846/2010, in addition to the *National General Collective Agreement* of the year 2006 and 2007, which has incorporated the European Framework Agreement on Telework. The voluntary nature of teleworking implies that the employee and the employer may introduce it only by mutual agreement either from the beginning of the employment contract or afterwards through an insertion clause. Therefore, when teleworking is not part of the initial job offer, either of the interested parties may propose such an amendment to the agreement, while the other party can freely accept or decline the amendment without any obligation to do so. Thus, a legal basis and specifically a supplement to the employment contract is required for the proper introduction of telework.

As stated above, teleworking may not be unilaterally introduced as any such work should be agreed between the parties. Nonetheless, to prevent the spread of Covid-19 at the workplace, on March 11, 2020, an act of legislative content

(subsequently ratified with the Law 4682/2020) (hereinafter “Act”) was issued in Greece. The Act includes measures which are to be implemented at the workplace. The above-mentioned measures also include provisions regarding the implementation of teleworking policies by the employer. As per the provisions of article 4 of the Act, employers can unilaterally impose a system of teleworking. Any such system may include telework, which is implemented by the employer within his/her managerial right to do so. Thus, implementing teleworking policies in the above context, i.e. as a measure specifically provided during the Covid-19 crisis, may be introduced by a decision on behalf of the employer, without the prerequisite of the mutual decision for the implementation, as is the case for telework under regular circumstances. For the time being, the employer’s right to unilaterally introduce teleworking may be exercised until the end of September 2020. However, it has been announced by the authorities that it will be subsequently extended until the end of December of 2020.

Telework in Greece may only be introduced by a mutual decision of the parties, with

each being free to accept or decline such an offer. Notwithstanding the above, it has been recently decided that the employee may in fact have a legal right to request to work from home, provided that the conditions stipulated are met. Specifically in accordance with article 8 of the Act of legislative content that was issued on August 22, 2020, employees belonging to vulnerable groups in relation to Covid-19, may request by any appropriate means such as telephone, e-mail or text message to work from home. The employer must accept the request if the work can be provided remotely. If the employee cannot carry out his duties by working remotely, the employer is required to take measures to ensure that the said employee will not be providing any work which requires meeting others. Lastly, if the said protective measure cannot be taken, the employer can suspend the employee’s employment contract for a period until September 30, 2020. It has also been stipulated that if the employer does not implement this specific provision despite the employee’s proven request, a fine of 5.000,00 EUR can be imposed for each violation.

Should the employer and the employee decide that any regular working relationship will be amended as to include teleworking, there should be an adjustment period of three (3) months. During this period, any of the contracting parties may discontinue teleworking at any time without prejudice to the employment relationship and working conditions within a notice period of fifteen (15) days. Afterwards the employee can rejoin his/her employer’s on-site workforce. On the other hand, when telework is part of the initial job offer and it was agreed between the parties, limiting the time of telework or even revoking this possibility, must be agreed upon between the parties, thus amending

the employment contract. This cannot be unilaterally decided by the employer.

The employer is obliged to cover the expenses regarding the services provided by the employee, namely any expenses pertaining to telecommunications. Additionally, the employment contract stipulates the employee’s remuneration for the use of his/her residence as a working place. Furthermore, the employer provides the employee with the necessary technical support and pays for the repairs of the equipment used by the employee or the replacement of it, if any required, including of the equipment owned by the employee himself, unless otherwise agreed by the parties. In any case, the employee is expected to take care of the equipment given to him and under no circumstances is he/she allowed to collect or distribute any illegal material through the internet.

The employer is required to respect the privacy of the teleworker. If any kind of monitoring system is to be put in place, it needs to be proportionate to the objective and introduced in accordance with presidential decree No. 398/1994 on visual display units. In accordance with the guidelines of the Hellenic Data Protection Authority and the overall legal framework, the processing of employees’ personal data using monitoring tools and methods shall be limited to this data which is directly related to the employment relationship and shall not be extended to the employees’ private life.

The continuous and systematic monitoring of employees can hardly be justified because it opposes the respect to human dignity and private life of employees. Any continuous monitoring to be carried out by the employer must be justified by the nature and the

special working conditions applicable and only to the extent required for the protection of the employee's health and safety.

Required involvement of employee representatives and public authorities

As already stated, telework must be introduced by an agreement between the employer and the employee, thus employees' representatives are not required to be involved for the proper implementation. However, it should be stated that following the provisions of article 11 of the National General Collective Agreement of the year 2006 and 2007, teleworkers have the same collective rights as employees at the employer's premises and it must be ensured that their communication with their representatives will not be hindered in any way.

Employees' representatives are informed and consulted on the introduction of telework in accordance with the legislative framework regarding trade unions (Act No 1264/1982) and employees' councils (Act No 1767/1988). Considering the above, employees' representatives may in fact influence the introduction and design of telework through collective bargaining which includes making respective suggestions to the employer on the said issue, negotiating the terms and even signing should an agreement eventually be reached.

According to the legislative framework currently in force regulating telework in Greece, no participation of employees' representatives is required for the proper introduction of the said working system. Nonetheless, such participation may otherwise be provided by a collective



labor agreement or any other agreement between the employer and the employees' representatives (trade unions, council of employees etc.). In this context, the consequences of any lack of participation when such participation is in fact required, will be determined upon the evaluation of each case, and taking into consideration the specifics of any agreement reached between the parties.

Any employer drawing up an employment contract regarding teleworking is obligated to provide the employee in writing within eight (8) days with all the information regarding his/her working conditions and up to two (2) months from the signing of the contract with any information about the contact details of the employees' representatives in the company. The employer is required to inform the employee about his/her supervisors, duties, the calculation of his/her remuneration and working time, as well as the compensation given to him/her that covers the expenses for the services provided, i.e. telecommunications, equipment, malfunctions etcetera. Notification of the authorities is not mandatory for the time being for the introduction of a teleworking arrangement itself. However, it is recommended that the personnel list of the company clearly state the implementation of teleworking.

In the context of increasing measures to prevent the spread of Covid-19 at the workplace, as stated above, the employer is required to properly inform the authorities of the implemented measures by uploading information to the information system ERGANI in the form and within the deadlines the respective ministerial decrees stipulate. Even though amending the employment contracts currently in force is not required

in addition to informing the authorities, the safest approach for any employer to properly implement teleworking, is through an addendum to the existing employment contracts in addition to the required formal notification (as outlined above).

Health and safety and data protections

Following the provisions of the applicable legislative framework, the employer is responsible for health and safety measures at the teleworker's workplace. The legislative framework currently in force does not provide for any alternative.

To that effect, the employer is required to thoroughly inform the employee of the policy implemented by the company on occupational health and safety and take the appropriate measures for the protection of employee health and safety upon evaluation of each case.

The respective provisions of labor law regarding working time, such as overwork, overtime, break time etc., apply accordingly to teleworkers and must be implemented by the employer. There is no obligation regarding registering the beginning and the end of the working day. However, pursuant to employment law in Greece, the employer is still obliged to provide to the relevant labor inspection authorities the required information regarding the working program of his employees. Such a disclosure can be filed online through the IT system *ERGANI* by submitting the respective required form.

Regarding monitoring health and safety, the legislative framework stipulates that the employer, employee' representatives, or/and the relevant authorities have access to the

teleworker's workplace. If the workplace is at home, for any such action, prior notification of the employee is required, in addition to the consent of the teleworker before access can be gained. The teleworker has in turn the right to request a formal inspection at his/her workplace.

The employer is also responsible for taking the appropriate measures, notably with respect to software, to ensure the protection of data used and processed by the teleworker for professional purposes. The employer informs the teleworker of all relevant legislation and company rules concerning data protection. It is the teleworker's responsibility to comply with these rules. The employer informs the teleworker of any restrictions on the use of IT equipment or tools such as the internet, as well as sanctions in the case of non-compliance.

Liability

If any accident occurs while the employee works from home which brings about the interruption of his/her work, this may be perceived as an occupational accident and should be properly disclosed by the employer to the authorities following the procedure stipulated. Following this, the authorities shall investigate the matter to establish whether the employer is in fact liable and the extent of his liability. To that effect, if the accident is caused by an act or omission of the employer such as a violation of health and safety legislation, the employer shall be held responsible for said accident.

Following the respective provisions governing the said matter in Greece, any employee who has suffered an accident at work deemed an occupational accident is reimbursed by the public insurance institution. Therefore,

the employer is not required by law to be insured by a private insurance company for occupational accidents which may occur while the employee works from home. However, any employer may freely do so. Nonetheless, the need for additional private insurance should be determined upon evaluation of each case and depending on the nature of the work provided.

The employment contract stipulates the employee's remuneration for the use of his/her residence as a working place. The employer provides the employee with the necessary technical support and pays for the repairs of the equipment used by the employee or the replacement of it, if any required, including of the equipment owned by the employee himself, unless otherwise agreed by the parties. Unless otherwise specifically agreed, if any property of the employee is indeed used for the performance of his/her duties and is damaged, the employer is required to compensate the employee accordingly. Moreover, following the general principles of civil law, the employer bears liability for any damage caused to third parties' property by a negligent act of his/her employee. The extent of the liability is ultimately determined upon evaluating the specifics of each case. ■



Anastasios Triantafyllos - Partner
Andersen Legal in Greece
Member Firm of Andersen Global

HUNGARY



Implementation of telework

In general, telework may be introduced by agreement with each individual employee only. A unilateral arrangement of telework solely based on the employer's right to issue instructions is not possible (collective bargaining agreements or works council agreements cannot stipulate teleworking). However, an exception may apply for 44 working days per annum when the employer can unilaterally "redirect" the employee to work at another place than the designated workplace (e.g. at home). When a state of danger was declared in Hungary (until June 17, 2020) there was a specific decree in force which authorized employers to unilaterally impose teleworking. But that decree is no longer in force.

Furthermore, employees have no legal claim against the employer for telework. The Hungarian legislator has not yet issued regulations regarding the time regulation of telework. Therefore, in practice, a detailed teleworking agreement is recommended. This can be concluded as a supplementary agreement to the existing employment contract. It should cover especially the

following points: duration of telework / termination of telework, compliance (health and safety, working time, data protection etc.), liability issues, and reimbursement of the expenses of the employee. The agreement should leave it up to the employer to terminate teleworking at any time. This is particularly necessary if it turns out that the employee does not provide the equivalent services as in the office.

Unless differently agreed by the parties, the employer is responsible for setting up teleworking space and, in principle, also bears the associated costs. This does not only mean the costs for the acquisition of necessary furniture and computers (if these are not provided in kind by the employer), but also contribution to electricity- and the internet bills. The employer is advised to agree on a flat rate for these costs with the employee.

Monitoring teleworking employees is possible within the following limits:

The employers shall be allowed to monitor the activity of employees to the extent pertaining to the employment relationship. In

that context, the employer may use technical means with the provision that he should notify the employee thereof in writing in advance. In conducting an inspection, the employer shall be entitled to inspect any information stored on the computing equipment and related to the employment relationship used for the performance of work.

The employers shall be allowed to monitor the activity of employees to the extent pertaining to the employment relationship. In that context, the employer may use technical means with the provision that he should notify the employee thereof in writing in advance. In conducting an inspection, the employer shall be entitled to inspect any information stored on the computing equipment and related to the employment relationship used for the performance of work.

Unless there is an agreement to the contrary, the employer shall determine the type of physical inspection and the shortest period between the notification and commencement of the inspection if conducted at the place of work. The inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of work.

Required involvement of employee representatives and public authorities

In companies with a works council operating, the employer must consult with the work council before introducing telework. The work council is entitled to deliver its opinion and comments; however, the employer is not bound by such an opinion (i.e. there is no right of co-determination). The works-council has only a right to express its opinion. Thus, a lack of participation does not

affect the validity of the teleworking agreement.

There are no official notification obligations to employment supervision authority, tax and social security authority or other public authorities when introducing telework.

Health and safety and data protections

The employer is responsible for the health and safety in telework. There is no change in his legal obligations under the Hungarian Labor Protection Act. The employer must ensure that risks to the life as well as to the physical and mental health of his employees are avoided and that the remaining risks are kept to a minimum.

Therefore, the employer shall carry out a concrete risk assessment and take measures based on his evaluation. The workplace must be equipped in a safe manner. To do so, the employer has a legal right of access to the employee's home and to carry out an inspection. Through this, the employer can meet his legal obligation to comply with occupational health and safety regulations and the employee should cooperate to the necessary extent.

The *Hungarian Labor Code* has no special rules for telework, therefore the same rules and limits for breaks and maximum working hours apply as in the case of regular working on the employee's premises. There is only one difference: in the absence of an agreement to the contrary, the employee's working arrangement shall be flexible and recording working time is hence not mandatory. However, a necessity to document the actual working time must be expressly agreed between the parties.



In terms of data protection law, the employer must ensure appropriate data security when introducing telework. The employer must ensure secure transmission channels and appropriate data protection-compliant handling. This also applies if the employee uses private means of telecommunication. Both technical measures (e.g. setting up a VPN client) and organizational measures (e.g. concrete instructions on data handling and secrecy measures in the home office) should be specified in the teleworking agreement. Especially, the teleworking agreement should stipulate regulations on data handling and/or safety precautions to be observed by the employee.

Liability

In case an accident at work occurs, the same regulations apply as in the case of an accident at the premises of the employer. The Hungarian social security system provides sick leave payment in case of work accidents. Disbursement of such payments

depends on whether the accident occurred during a professional or private activity.

If an employee suffers damage which is not covered by the Hungarian social security system, he may claim compensation from the employer if it is not covered by social insurance. In case the employee or a third person (e.g. a family member) damaged a device of the employer, the employee and/or the third person are fully liable. In case the property of an employee or a third party is damaged due to teleworking at home, generally the employer is liable. To reduce economic risks, it is advisable to conclude insurance agreements regarding activities of teleworking employees. ■



Szilvia Fehérvári - Partner
Andersen in **Hungary**
Member Firm of Andersen Global



Implementation of telework

During the Covid-19 pandemic, the Italian government has encouraged many employers to introduce telework. It can be observed that this possibility is used especially by larger companies. The introduction of teleworking can be agreed between the parties through an individual contract adjustment, it cannot be implemented unilaterally by the employer. Until the end of the state of emergency (15 October 2020), only parents of children up to 14 years of age who are not allowed to go to school due to quarantine, employees with severe disabilities or employees caring for a disabled person in their household are entitled to telework as long as they can perform their work remotely.

The employer cannot unilaterally limit the time frame of telework. Both parties can terminate the telework agreement. In the case of fixed-term agreements, termination is only permissible if there is a justified reason for early termination. In the case of open-ended agreements, termination is permissible with a notice period of thirty days, although it is possible to terminate without observing this period if there is a justified reason.

The employer must provide the employees with the technological equipment necessary for the performance, which usually consists of a portable PC and access to the employer's integrated platform (company server). The costs of the technological equipment are fully borne by the employer.

The employer is not allowed to secretly monitor the teleworking employee. It is forbidden to monitor by means of keyloggers, webcams or other devices that record the employee's work behavior.

However, the employer can demand that teleworkers provide concrete reports on the duration and content of their working hours.

As a rule, the work equipment must be used exclusively for the performance of the work activity. In doing so, employees are obliged to report any damage, loss, theft or suspected impairment of the work equipment or information to the employer without delay. Where employees perform telework, they must ensure that they are available to the employer and ensure that the coordination and distribution of work orders is ensured.

Required involvement of employee representatives and public authorities

The employer is not legally obliged to involve the trade union representative in telework agreements, but it is common practice to sign collective agreements with local trade unions or trade union representatives of an individual company (so-called second level agreements), which regulate the way in which telework is carried out in accordance with mandatory legal requirements.

However, the employer is obliged to inform the Ministry of Labor about the beginning of an employment relationship involving telework. Lack of notification is sanctioned with an administrative fine between EUR 100 and EUR 500 per employee.

Health and safety and data protections

Usually, each employee receives specific training at the beginning of the teleworking activity. The training provides the use of technological equipment, information on general and specific risks, health risks to be avoided and the handling of confidential information, as well as the safety rules to be observed during teleworking. In accordance with the provision 22 of Law No. 81/2017, employees must be adequately informed on health risks related to teleworking. The employer is responsible only for work-related accidents that occur in the performance of work, not for accidents related to different reasons (e.g. a home accident).

The teleworking employees are therefore obliged to cooperate in the implementation of the preventive and protective measures

and are requested to inform the employees' safety representatives or the human resources managers of any problems that may arise, particularly with regard to health and safety aspects. The introduction of teleworking does not change the amount of working time required. The employees must continue to work the contractually agreed working time, which is defined by individual or collective agreements.

The employer has no right to inspect the employee's home for compliance with safety and health regulations. Particular attention is paid to avoiding the risks associated with so-called "technostress". This word refers to the work-related stress associated with the use of the digital technologies, i.e. a psychosomatic disorder caused by the incorrect and excessive use of computers and digital devices, affecting those who work in highly computerized environments. To avoid the above-mentioned risk, employees are obliged to comply with the rules on rest periods and breaks established by law and collective agreements. During breaks and rest periods, employees must switch off the equipment they use to perform their work.

With regard to data protection regulations, the employer is obliged to provide the teleworker with adequate data communication and data storage systems and to verify that the worker is equipped with his own secure connection system (wi-fi or cable). If not, the employer must provide one.

Liability

The same regulations apply to accidents during teleworking as for accidents at the normal workplace. The *INAIL* (National Institute for Occupational Accidents Insurance) compensates employees for any

damage occurred during working time and caused by the performance of work's tasks. It is up to *INAIL* alone to assess whether the reported accident falls under the insurance cover, i.e. a statement from the employer is not required. Reporting an employee's accident is obligatory for the employer, failure to report the accident will be sanctioned with a fine of up to EUR 4,932.00.

If an employee's property is damaged due to teleworking at home, the employer is liable according to the general rules of civil liability.

It is the employer's responsibility to contact *INAIL* to apply for telework insurance cover for the employee. He must submit a report in the same way as for accidents at the office or at another workplace. Italian companies usually have insurance policies that cover civil liability for damages caused to the employee in case of non-compliance with safety and prevention regulations.

Failure by the employer to comply with the regulations for the prevention of occupational accidents may result in the employer being held liable under criminal and civil law for

the damage caused by the accident during teleworking. In any case, work-related accidents occurring to the employee during teleworking have the same treatment and legal consequences as if the employee were providing services at the usual workplace and also cover the employee's or third party's property. ■



Francesca Capoferri - Partner
Matteo Amici - Senior Advisor
Andersen in **Italy**
Member Firm of Andersen Global

LUXEMBOURG



Implementation of telework

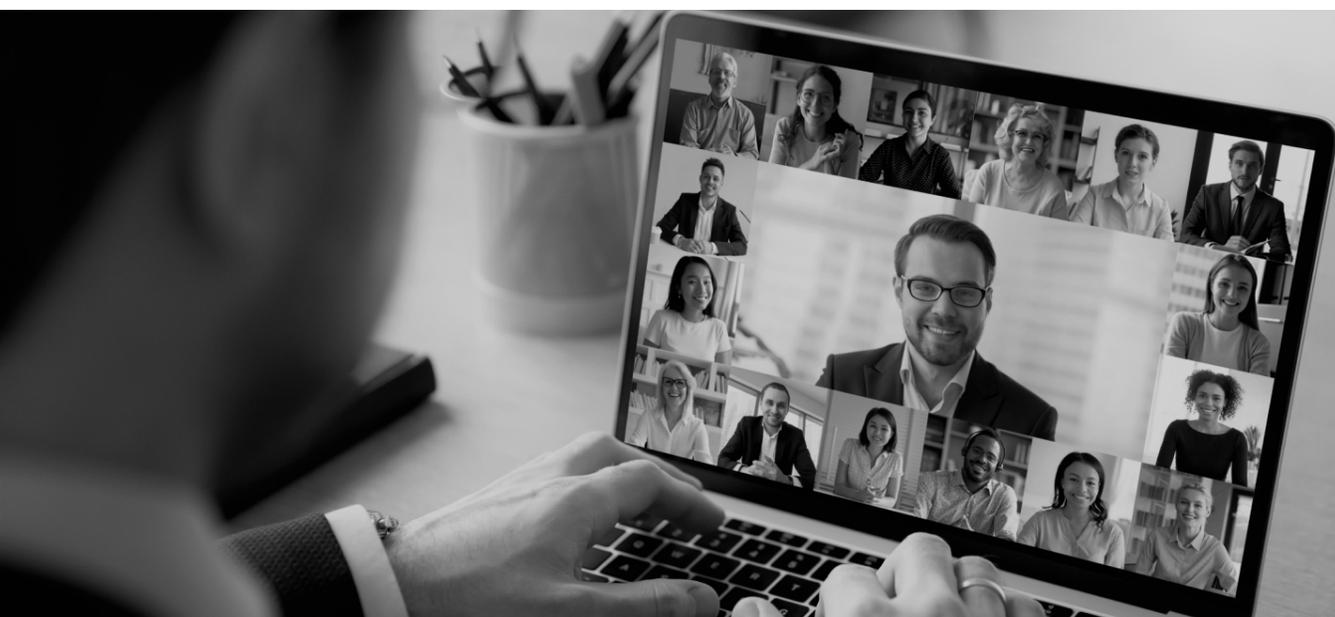
Telework is mainly governed by an agreement concluded in 2006 between the Union of Luxembourg Businesses and the trade unions as well as a Grand Ducal Regulation dated 15 March 2016. The provisions of the Labor Code must however also be applied.

Telework may be provided, on the basis of a mutual agreement, either in the initial employment contract concluded between the employer and the employee or in a subsequent amendment during the course of the employment relationship. The following specific points must be included: the place from which the employee performs the telework; a detailed description of work and tasks to be performed by the teleworker; the hours and days of the week during which the teleworker must be reachable by the employer not exceeding the normal working hours applicable to an employee working in the premises of the company; the exact description of the teleworker's working equipment made available to him and installed by the employer in the place where the telework is carried out.

In the case where an addendum is required, the parties to the employment contract must also set a period of adjustment in order to (i) give the employee the opportunity to make sure that the therein stipulated methods of organizing and/or carrying out work is satisfactory and (ii) to give the employer the opportunity to ensure that the method of organizing and/or carrying out work is appropriate for the tasks the employee has been entrusted with.

The period of adjustment must be comprised of between 3 and 12 months. During the first two (2) weeks, it is not possible to return to a traditional type of work. After this period, each party may end the teleworking scheme and may ask to return to a traditional type of work subject to a notice period comprised of between fifteen (15) days and one (1) month.

In the context of the Covid-19 pandemic and in order to prevent the spread of the virus, the implementation of telework is however facilitated and there is no obligation to provide for an adjustment period whereas telework may be considered as a temporary measure.



The employer shall provide the employee with the necessary equipment for telework (e.g. laptop, mobile phone, VPN, etc.) in the place where the teleworker undertakes to perform his/her work and ensure the conformity of electrical installations and workplace. If the employee exceptionally uses his/her own equipment, the employer must adapt to such personal equipment.

The employer shall bear all direct costs related to the execution of telework, in particular the communication costs based on the conditions agreed to between the employer and the employee. The employee undertakes to take care of the equipment entrusted to him/her. If there is a breakdown or faulty operation of the work equipment, the employee must immediately inform the employer who will take any useful decision to reduce the time of unavailability of the system as soon as possible.

Monitoring of employees, in particular teleworkers, is possible, but must comply with the employee's rights to privacy, the *EU General Data Protection Regulation (GDPR)*, the *Luxembourg data protection law* of 1st August 2018 as well as the provisions of the *Labor Code*.

The concerned employees as well as the staff delegation or in the absence of staff delegates the *Inspectorate of Labor and Mines* must be informed of any monitoring measure implemented. In addition, employers as data controllers must keep a register of personal data processing operations (notably including processing that relates to the surveillance of activities).

Required involvement of employee representatives and public authorities



The employee representatives must be informed and consulted on the introduction of telework, in particular regarding the modalities related to working methods, including the rights and obligations of each party, the number of concerned employees and any modification of the teleworking agreement, if any.

The employer is obliged to provide the employee representatives with a copy of employment contracts or addenda to the employment contracts that have been concluded with employees providing telework, if any.

Health and safety and data protections

As a general rule, the employer is responsible for health and safety. On a regular basis, the employer informs the employee of the

provisions relating to hygiene, health, and safety at work, in particular concerning working with screen equipment.

The Inspectorate of Labor and Mines ("*l'Inspection du Travail et des Mines*") and the security delegate may have access to the employee's workspace at home in order to verify that this workspace and the employee's working conditions comply with existing legislation. Such a verification must, however, be carried out with respect for the employee's privacy, by scheduling an appointment in advance with the employee and by limiting the access to only the room where the teleworking equipment is installed. The standard legal provisions relating to working hours are applicable and not changed by switching to telework. For instance, normal working hours must not exceed eight (8) hours per day and forty (40) hours per week (without prejudice to any collective bargaining agreement which may reduce the number of normal working hours).

In any case, the working time including overtime cannot exceed ten (10) hours per day and 48 hours per week.

The employer must record in a special register the starting, ending, and daily working hours of each employee, as well as, in particular, all extensions of normal working hours.

The employer must take all the necessary measures, in particular with respect to software, VPNs, and other IT resources and communication systems to protect the data used and processed by the teleworker for professional purposes. The employer is obliged to inform the teleworker of all applicable laws (including GDPR) and any internal policy, if any, regarding data protection and the teleworker is obliged to comply with these rules. The teleworker must be informed respectively about i) the safety precautions and any potential restrictions regarding the use of IT equipment put at his /her disposal in connection with the

employment contract as well as the personal devices used for accessing organization systems and resources, when applicable, and ii) the applicable sanctions in case of non-compliance.

Liability

In terms of liability, there are no special rules for teleworking employees. The employer has a general responsibility to ensure the health and safety of employees in all work-related matters.

The employee must notify his employer of any accident that occurs in the course of work and the employer must report the accident to the Accident Insurance Association (“l’Association d’Assurance Accident” – “AAA”).

AAA will indemnify the damage suffered by the employee provided that telework is provided for in the initial employment contract or an addendum. Any accident/damage occurring to the employee who provides services through teleworking implies the same treatment, rights and legal consequences as if the employee were providing services on the employer’s premises.

In the context of the Covid-19 pandemic, the AAA already accepts covering the compensation for accidents suffered at home on the sole condition that the employer confirms that the relevant employee is authorized to telework.

If the damage results from a fault committed by the employee in connection with the performance of his/her work duties due to teleworking at home, the employer is liable and a company liability insurance would (normally) settle the existing business liability insurance.

If the damage is not caused during the performance of work duties or it results from a deliberate act or gross negligence of the employee, the latter is personally liable for this damage.

If a third person (e.g. a family member) damages the equipment provided by the employer, the liability shall be borne by this concerned third person. The company liability insurance does not cover damages caused by third persons.

Conversely, if the property of a third party is damaged (e.g. if the equipment used for the telework causes damage in the employee's rented apartment) and this results in a violation of the employer’s obligations in terms of health and safety at work, the employer will be liable. This includes criminal penalties that may include a fine between two hundred and fifty-one euros (EUR 251) and two hundred and fifty thousand euros (EUR 250,000) and/or penalty of imprisonment between eight (8) days and six (6) months. ■



Catherine Graff - Partner
CM Law, Luxembourg
Collaborating Firm of Andersen Global



Implementation of telework

The *Moldovan Labor Code* was amended with provisions on telework in May 2020 in order to secure the labor of employees in the context of the Covid-19 pandemic. The new provisions are general rules to be considered by the employer and the employee when implementing telework while particular issues raised by this special work arrangement should be settled by the parties on a case-by-case basis.

As a rule, implementation of telework requires the written agreement of the employer and the employee. Only during exceptional situations such as a state of emergency, siege, war, or a state of emergency in public health, the employer has the right to change the workplace of the employee without amending the employment contract. This unilateral and temporary change can be made based on an employer’s decision and must be communicated to the teleworking employee in due course.

The mandatory clauses to be included in an agreement on teleworking govern: (1) the conditions on telework execution, including

the IT resources and communication systems to be used (e.g. computer, notebook, smartphone, email); (2) the schedule and methods to be used by the employer to monitor the activity of the employee during telework; (3) the way of keeping track of working hours of the teleworking employee; (4) the obligations pertaining to telework-related costs.

All costs related to telework are the duty of the employer unless otherwise agreed by the parties. Employees using their own devices and equipment for the purpose of telework are entitled to compensation paid by the employer for their wear and tear.

Existing labor laws contain no specific requirements with respect to monitoring, supervision or management of teleworking employees. It is up to the employer and the employee to stipulate in their agreement when and how the employer will monitor the activity of a teleworking employee. In all cases, the monitoring mechanism used by the employer must not infringe upon the employee’s privacy or inviolability of home and correspondence. Common practice are things such as TeamViewer, an external

server unit, clear deadlines for reports and deliverables, or a periodic check-in by the supervisor.

Under the general labor law rules, it is the employer's obligation to keep track of working hours of all its employees. However, the employer and the employee are not required to agree upon the (daily, weekly, or monthly) timesheets submitted by the employee for her/his remote work. In all cases, the practice of recording working time is intended to prevent a scenario in which the legal limits for overtime are exceeded and ensures that teleworking employees are correctly remunerated for their work, including at special rates for overtime or work performed during holidays, rest days, or at night.

The employer has the right to implement additional teleworking conditions by internal regulations and collective bargaining agreements, if any.

Employees working by using IT resources and communication systems in other places than the place of work provided by the employer must be treated equally to employees working on the site of the employer. In particular, teleworking employees must benefit from protection against discrimination, a safe work environment, equal remuneration for work of equal value, legal protection of social security, and protection of maternity, etc.

Required involvement of employee representatives and public authorities

Telework resolved unilaterally by the employer does not involve the employee representatives.

Employee representatives should be involved in the implementation of telework when the agreement of the employee is required. This formality comes from the general obligation of the employer to inform and consult the employee representatives about any measures through which new working conditions, technologies, work health and security rules are to be introduced.

Information about teleworking conditions must be provided by the employer at least 30 calendar days before teleworking is implemented. Based on this information, employees are entitled to formulate objections and to expect reasoned responses from their employer. Employees should be given the opportunity to negotiate and to reach a mutual agreement with the employer on the main teleworking conditions before these are implemented.

The above procedure is executed by the employer through the labor union at the company's level, if any, or the elected (permanent or ad-hoc) representatives of the employees. If there is no labor union or elected representative of the employees, the relevant information is to be displayed on the notice board of the company at its registered office and in all its branches, if any, as well as via an intranet platform, a company website and by means of emails to the employees.

Teleworking is not subject to any notification of or authorization by the public authorities.

Health and safety and data protections

The employer is obligated to ensure the health and safety of teleworking employees in all aspects related to their work, including: risk assessment and mitigation, monitoring

of employee health, and permanent periodic trainings delivered to employees. The employees, after being properly informed by the employer, must also comply with internal regulations and rules on employment health and security related to their activity.

In response to the Covid-19 pandemic, the Moldovan Ministry of Health and Social Protection approved a practical guide on key measures to prevent Covid-19 at the workplace. Irrespective of the place where the employee works, these measures will have to be implemented by both the employer and the employee in the context of telework.

Additional work health and safety requirements apply for employees working in front of a screen or display. There is a mandatory level of protection to be assured by the employer for such types of work such as the enforcement of adherence to permissible noise and electromagnetic radiation levels, the performance of ophthalmological exams, or the monitoring of screen and keyboard parameters.

From the perspective of data protection law, telework requires the employer to adapt its security policies and regulations to clearly and efficiently ensure the data protection of the employees working remotely, as well as the data of involved third parties, if any (e.g. clients, customers).

The employers must also evaluate the protection level of the information made available to the teleworking employees and ensure that these employees comply with data protection rules.

Liability

If a work accident occurs during the performance of work obligations, the employer is held liable, regardless of the place where the teleworking employee was working at the time of the accident. The *Moldovan Labor Code* obligates the employer to entirely indemnify the employee for pecuniary damage and moral loss suffered in connection with work performance or discrimination.

As a general rule, the employee's liability for damage caused to the employer is limited to the amount of one monthly wage. The full pecuniary liability of the employee is allowed only in certain cases. If the teleworking employee uses the devices of the employer, the agreement between them should provision the full pecuniary liability of the employee.

For the damage caused to a third party by the employee performing telework, the employer bears the liability as per the general rule of the *Moldovan Civil Code*. If the damage is deliberately caused by the employee, the employer and the employee will be held jointly liable. The employer is entitled to pursue the employee in a recourse action except for the case in which the employee proves that she/he exactly complied with the instructions of the employer. ■



Iulia Furtuna - Partner
Turcan Cazac Law Firm, **Moldova**
Collaborating Firm of Andersen Global

NORTH MACEDONIA



Implementation of telework

Telework in North Macedonia is regulated with Article 50 of the *Law on Labor Relations* (hereinafter: “Law”) and is defined as work that the employee performs in his home or on premises of his choice that are outside the business premises of the employer.

In accordance with the Law, the employee and the employer may introduce telework only by mutual agreement either from the beginning of the employment within the employment contract or afterwards with amendments to the employment contract. Therefore, in cases where telework is not part of the initial employment agreement, both parties are free to propose amendments to the contract and the other party is free to decide whether to accept or decline the proposal.

Throughout the course of the Covid-19 pandemic, the government has advised to allow teleworking to prevent the spread of the virus. Moreover, employers were obliged to provide particularly vulnerable employees with the opportunity to telework.

Since telework must be agreed between the contracting parties, limiting the time of telework or revoking it can only occur based on an agreement between the parties. Telework cannot be unilaterally imposed or changed by the employer. If telework is agreed upon between the parties, the employee is entitled to compensation for the use of his means for telework. The specific amount of the compensation must be outlined in the agreement. The employer is obliged to provide safe conditions for protection during telework, but there is no explicit obligation to equip the employee for telework.

The rights, obligations and conditions that depend on the nature of the telework, are regulated between the employer and the employee within the employment contract.

The employer is entitled to monitor the working hours of the employee or the quantity of the daily performed work only if there is a previously established online system in which the employees are obliged to log in to and through which they perform their work.

Required involvement of employee representatives and public authorities

The employee representatives cannot be involved in the introduction of telework because telework can only be introduced through individual employment contract.

The employees’ representatives may indirectly influence the introduction and the design of the telework, mostly through collective bargaining. As one of the parties that participate in the conclusion of collective agreements, they are free to give suggestions, to negotiate terms and conditions and to influence the content of the telework through the collective agreements that they will reach. As it is not obligatory for the employee’s representatives to be consulted or to be involved in the process of introduction of teleworking, the law does not stipulate any explicit legal consequences if they are omitted from the whole process.

After concluding an employment contract with a teleworking agreement, the employer is obliged to submit the employment contract to the labor inspector within three days from the day of concluding. This obligation prevails even if telework itself is to be performed only later during the employment relationship. If previously agreed telework is later revoked, the employer is obliged to inform the state labor inspectorate for the cancelation of telework too. According to the *Law on Labor Relations*, the employer who fails to notify the labor inspectorate for the introduction of telework may be fined in the amount of EUR 1000, the responsible person may be fined with 30% of the estimated fine, and if the employer is a natural person the fine can be in the range of EUR 100 to EUR 150.

Health and safety and data protections

The right of protection at work is a constitutionally guaranteed right for every citizen and is exercised through a series of laws and bylaws in various fields with the sole purpose to provide the highest possible degree of safety at work, to eliminate and/or minimize the specific occupational risk and to enable the promotion of health at work. The leading legal act that realizes this right of the employees is the Law on Safety and Health at Work. However, it does not contain any specific regulation regarding health and safety in telework. On the other hand, as explained, the law explicitly states that the employer is obliged to provide safe conditions for protection during telework. Hence, in terms of teleworking, the employer is responsible for health and safety measures. Therefore, the employer shall carry out a concrete risk assessment and take measures based on his evaluation.

The employer is obliged to take appropriate measures for safety and health at work, including: protection from occupational risks at work, provision of accurate and timely information on safety and health at work, training and coaching for work according to the identified risk at work with emphasis on protective measures, including the use of personal protective equipment and appropriate work organization. At the same time, the employer must adapt the work process to the workers’ abilities, and the working environment and equipment must be safe and harmless to the health of workers.

In addition, the introduction of telework can be prohibited by the state inspector if he determines that the work environment is not

suitable for telework and the employee is therefore at risk.

There are no special rules regulating the working time when teleworking. Considering this fact, the teleworking contract should contain provisions on whether it is full-time or part-time employment and provisions for daily or weekly regular working hours and scheduling of working hours.

Generally, the employer does not have a right to access the employee's home without consent of the employee. The constitution guarantees the right of inviolability of the home and telework cannot be grounds for an exception to this right. If the employer wants to monitor the working process, he should do that online.

In accordance with the Law on Personal data protection, which does not differentiate telework from the work on the employer's premises, the data collection should aim at legitimate and specific purposes and data may not be processed to achieve objectives incompatible with the purpose that initially justified it. Therefore, the obligations of the employer as a supervisor remain the same. The supervisor is obliged to apply appropriate technical and organizational measures which are developed to effectively implement the principles of personal data protection and the requirements and to ensure protection of personal data. Both technical measures and organizational measures for data protection should be specified in the teleworking agreement.

Liability

Since the law does not differentiate between employees who work from the employer's premises and the employees who telework,

the employer is liable for accidents during telework. However, it is more difficult to prove in court that the accident was connected or happened because of the telework and there is no case law regarding this question.

The company accident insurance is considered liable for accidents at telework. Legally, there is no need for supplementary insurance, and we cannot say that this is recommended or even useful. This is mostly because teleworking is not widespread in North Macedonia and is very vaguely regulated with the *Law on Labor Relations*, so most questions are left to the discretion of the employer.

The employer is considered responsible for all the damages that occur during teleworking. However, if the damage occurred due to the fault of the employee, after the compensation of the damage, the employer is entitled to ask for retribution from the employee. ■



Ana Pepeljgoska - Partner
Pepeljgoski Law Office, North Macedonia
Collaborating Firm of Andersen Global

POLAND



Implementation of telework

Teleworking can be introduced based on new legislation introduced in response to Covid-19. This legislation can be applied during the pandemic and for a maximum of three months afterwards.

According to the Covid-19 Anti-Crisis Act, telework can only be ordered if an employee has the skills, technical facilities, and premises necessary to perform work properly. In principle, the employer must provide the work equipment and is also responsible for installation, maintenance, and insurance. However, the employee may use his own work equipment if the employer does not face any data protection risks and if the parties agree to it by contract. In this case, the teleworker is entitled to monetary compensation in the amount specified in the agreement or in workplace regulations - the amount depends on the degree of wear and tear of the equipment, the certified market prices of the equipment and the amount of material used for an employer's needs and the market prices of the material.

The employer shall request teleworking

employees to keep records of the activities performed, their content and the required working time. In addition, it must be determined during which period he must perform his daily work.

Pursuant to the Labor Code, telework is defined as work that can be performed regularly outside the employer's premises using information and communication technologies. Employers and employees can agree on telework in the employment contract. In this case the specific rights and obligations of the parties should be specified in the agreement. If teleworking is to be subsequently enabled by contract, this must be done through an additional agreement between the parties.

The unilateral introduction of telework is not possible without the consent of the other party to the employment contract. Neither of the parties has therefore a legal claim. Furthermore, the employee's refusal does not constitute a permissible reason for the employer to terminate the employment contract. Although telework has been introduced, it can be revoked by the employer.

Each party may, within 3 months after the start of teleworking, file an application for termination of teleworking and reinstatement of the previous working conditions. The parties should indicate the date from which the reintroduction of the previous working conditions should take place, but no later than 30 days after receipt of the application. If the employer wishes to revoke the possibility of teleworking after the 30-day period has expired, this can be done either by an agreement between the parties or, if unilaterally, by a notification of change to the employee.

However, if an employee does not accept the working conditions proposed in the notification of change, the employment relationship is terminated in accordance with the notice period.

The employer has the right to supervise the teleworking employee. In addition to the

work, he can inspect the assigned equipment (for the purpose of inventory, maintenance, servicing or repair and its installation) and check its compliance with health and safety regulations in the workplace.

However, the inspection can only be carried out with the prior written or electronic consent of the employee. The inspection procedure must be adapted to the place where the work is carried out and to the characteristics of the work. The inspection must not violate the privacy of an employee and his family, nor prevent the appropriate use of living space.

In addition, the employer must ensure that the teleworker, in accordance with the rules adopted for all employees, has access to the premises of the employing company, can make contact with other employees, use the employer's offices, technical equipment and social facilities.



Required involvement of employee representatives and public authorities

The employer must reach an agreement with the company union if he wants to introduce telework. If there are several company unions and an agreement cannot be reached with all of them, the employer must reach an agreement with each union representing at least 5% of the employees. If the employer does not have a company union, the introduction of telework must be determined by the employer in the company regulations after prior consultation with the employee representatives. If the employer fails to ensure the necessary involvement of the company union or employee representatives, the telework agreement will become ineffective.

Furthermore, a telework agreement can also be negotiated individually with the employer by each employee.

Health and safety and data protections

In general, an employer remains responsible for the health and safety of teleworking. However, some adjustments have been made when an employee works from home. In such a case, the employer must fulfil the usual health and safety obligations towards a teleworker with regard to the nature and conditions of the work carried out, with the exception of the obligation to ensure health and safety at work, to provide adequate hygiene and sanitary facilities and to arrange for the construction or modification of the work equipment.

Regarding the obligation to protect data, the

employer shall establish the data protection rules for data transmitted to the teleworker and, if possible, the employer should provide instructions and training for this purpose. A teleworker must confirm in writing that he/she has been informed of the data protection rules established by an employer and that he/she is obliged to comply with them.

Liability

No separate regulation has been made for accidents that occur during teleworking so that the same regulations apply in the case of an accident at telework as for an accident at work in the employer's premises. The state accident insurance compensates an employee for damages if all necessary conditions are met. However, entitlement to accident insurance depends on whether the accident occurred during a professional or private activity.

There are also no special rules on liability for teleworkers. According to the general provisions, an employee who has suffered an accident at work, is entitled to compensation from the employer for any loss or damage in connection with damage to his or her personal belongings, or those necessary for the performance of work, with the exception of loss or damage to vehicles and money. ■



Katarzyna Komulainen - Partner
Andersen in **Poland**
Member Firm of Andersen Global



PORTUGAL



Implementation of telework

Telework may be introduced by agreement with each individual employee. A unilateral implementation of telework arranged by the employer is not possible. However, due to Covid-19, the individual employee may have the right to telework if certain requirements are verified. This right applies to employees with correct medical certification, and therefore covered by the exceptional regime for the protection of immunosuppressed and chronically ill patients and employees with a disability degree of 60 % or more. It should also be noted that if certain conditions are verified (in particular, in the case of an employee who is a victim of domestic violence and employees with a child under three years of age), the employee is entitled to telework, so long as the work can be completed in that way.

The application of the teleworking regime may be limited temporally in the agreement between the parties. This agreement may be revoked at the will of both parties. This means that the employer has no right to unilaterally terminate the teleworking arrangement, if this has not been agreed upon in advance.

In any case, the teleworking agreement must regulate the equipment of the workplace. The regulation must include mention of the ownership of the working materials and the person responsible for their installation and maintenance and the payment of the inherent consumption and use costs.

In the absence of a specific regulation, it is presumed that the working instruments relating to information and communication technologies used by the employee belong to the employer who shall ensure the respective installation and maintenance and payment of the inherent expenses. Regardless of ownership of the working instruments, in the teleworking arrangement the employer retains the rights of direction and supervision of employee performance.

There is no legal provision governing teleworking, so the general rule prohibiting the use of remote surveillance applies to the context of controlling the employee's professional performance in the context of teleworking. Consequently, principles of proportionality should be applied to minimize restriction of the employee's private life. For this reason, technological solutions for

remote control of employee performance are not allowed. Examples include software that tracks working time and breaks, real-time terminal location, uses of peripheral devices (mice and keyboards), or software that records visited web pages, captures desktop images, observes and records when access to an application starts, controls the document that the employee is working on, or records his/her time spent on each task. Such tools clearly over-collect employees' personal data, exerting labor control to a much more detailed degree than is possible through legitimate means on the employer's premises.

Required involvement of employee representatives and public authorities

The representatives of the employees do not have to be involved and there is no obligation to notify any specific public authority.

However, although the employee is not performing his activity in the company, he continues to be considered in the employee representation structure (which also represents him). As a teleworking arrangement means that the employee is not physically present in the company to participate in potential meetings, he can use the means he uses to telework to actively participate in all communications and meetings of those representative structures.

For the purpose of the structure that represents the employee, the employee working in the teleworking arrangement has the exact same rights as the employee who works on the company premises (see article 171 of the Portuguese Labor Code).

Health and safety and data protections

The employer remains responsible for the health and safety of an employee in a teleworking arrangement. The employer must ensure that risks to the life as well as to the physical and mental health of the employee are avoided and that the remaining risks are kept to a minimum.

There are no special measures that the employer must carry out. The employer must provide the employee with accident insurance.

One of the mandatory elements to be included in the teleworking agreement is the precise working period with no specific limitation of the working time. Work in this regime is subject to the general limitations imposed on employment contracts. The employer shall keep records of working time, including employees who are exempt from working hours, in an accessible place and in a way that allows them to be contacted immediately. The employer shall ensure that the employee in a teleworking arrangement registers immediately upon his return to the company or sends the same duly endorsed, so that the company has the duly endorsed register within 15 days.

When telework is carried out by the employee at home, the workplace visit shall only be carried out for the control of the work activity and the working instruments and may only be carried out between 9 a.m. and 7 p.m., with the assistance of the employee or person designated by him/her. However, this is not applicable for control compliance with health and safety regulations.

In terms of data protection law (see Law. 58/2019, of August 8), the employer must ensure appropriate data security when introducing telework. The employer must ensure secure transmission channels and appropriate data protection.

Furthermore, data collection should aim at legitimate and specific purposes and data cannot be processed to achieve objectives incompatible with the purpose (or purposes) that initially justified it. This means that the Company has no legitimacy to use this data for other purposes.

The personal data of employees collected through the use of these means may only be kept for the period necessary for the pursuit of the purposes of the intended use and shall be destroyed at the time of the transfer of the employee to another place of work or termination of the employment contract.

Liability

For accidents that happen during telework, the same regulations apply as in the case of an accident at work on company premises, as the teleworking employee has the same rights and duties as the other employees. The entity liable for the accident is the insurance company of the employer.

It should be noted, however, that the employer must inform the insurer of the situation of the teleworking employee indicating the place where the work will be provided as well as the normal working period.

In case the property of an employee is damaged due to telework, the employer is liable. A company liability insurance would (normally) settle the claim. The same applies if the property of a third party is damaged

(e.g. if the equipment made available for telework causes a fire in the employee's rented apartment). To reduce economic risks, it is advisable to clarify the scope of the already existing business liability insurance and, if necessary, to extend the insurance to include teleworking employees.

In case a third person (e.g. a family member) damages a device of the employer (e.g. the employee's spouse poured water over the laptop), the third person is fully liable. The company liability insurance probably does not cover damages caused by third persons. Nevertheless, this should be clarified with the insurance company as well. ■



José Mota Soares - Partner
Andersen in **Portugal**
Member Firm of Andersen Global

ROMANIA



Implementation of telework

Teleworking can be introduced with the consent of both employer and employee, that can agree on either by concluding an addendum to the individual employment contract or by agreeing on the possibility of teleworking from the beginning of the contract. Due to Covid-19, employers were able to unilaterally order telework for a certain period, but this possibility no longer exists.

The Romanian legislator has laid down extensive regulations which must be observed when introducing telework. A violation of these regulations can result in a fine of up to EUR 2,000. If teleworking is agreed upon, the place of work, the owed working time, and supervision of the owed working time must be contractually agreed upon.

The introduction of teleworking must therefore be well planned and executed.

Since the employee is not necessarily entitled to the introduction of telework, employers are advised to establish an internal process for the application. This can

reduce administrative effort and speed up the process.

The employer has a legal obligation to provide equipment necessary for teleworking – i.e. laptops, desktop computers, monitors, phones, printers, chargers, office supplies, desks, chairs and similar, unless the parties agree otherwise. Moreover, the employer shall install, check, and maintain all equipment used in the performance of telework activity, unless otherwise agreed by the parties.

Teleworkers must be granted with the same benefits as the employees working on-site. It is possible, however, that implementing telework will affect employees benefit packages such as medical packages, gym memberships, fruit or similar. In this case, the employer should either grant access to these benefits or give comparable benefits.

Finally, the employer is entitled to monitor the activity of the teleworker under the conditions agreed in the addendum by, for example, tracking working time or by otherwise making sure the employee is available to the manager when needed etc.

Required involvement of employee representatives and public authorities

Neither the employee representatives nor the trade union need to be involved in the agreement. However, the employee representatives can be involved in the development of the internal process. This usually increases the acceptance of such an arrangement among employees.

The employer must enter the changes in the employment contract in the general register of employees.

Health and safety and data protections

The employer is responsible for the health and safety of workers and carries out risk assessments in all work activities, including teleworking. In this regard, the employer should implement a specific policy that defines the respective health and safety obligations of the parties, including guidelines for the establishment and maintenance of safe working environments. The employer should demand that the employee inspect his home workstation for health and safety issues to verify its suitability. In addition, the employer should inform the worker of any questions or concerns regarding appropriate risk prevention.

The employee has a right to be assisted by the health and safety officer in implementing the regulations.

If a personal assessment is not available for everyone, this may result in the employer failing to meet its health and safety obligations. Failure to comply with health and

safety obligations can be punished with fines of approximately EUR 550 to EUR 2,000. The employer is obliged to record the hours worked by the employee in the telework arrangement. For this purpose, electronic time sheets and registration and deregistration systems may be used. Teleworkers probably tend to work overtime or forget to take necessary breaks on the screen.

According to labor legislation, an employee may work an average of 48 hours per week, including overtime. If the employee works overtime, the employer must compensate for the overtime by granting an appropriate amount of free time or, if this is not possible, the employer must pay for the overtime. Failure to comply with the above obligation is sanctioned with an administrative fine of EUR 350 to EUR 650 for each identified employee who works overtime.

The employer may enter the employee's home and check compliance with health and safety regulations only if he has notified the employee in advance and the employee agrees to the inspection.

The employer should ensure that there is an explicit confidentiality clause in the employment contract or in the supplementary agreement to the employment contract on telework. The employer should also consider arrangements such as passwords and encryption to protect knowledge of competitive value, such as intellectual property, documents, and customer data, and provide a secure filing cabinet and shredding container.

To avoid any risk of inappropriate use of IT equipment, the employer should review its IT and telecommunications policy to ensure

that it clearly outlines the extent to which IT systems or equipment may be used privately. The policy should clearly specify the types of monitoring the employer will undertake - i.e. recording hours worked, providing updates of the remote registration system. Employers must prevent data breaches by implementing a secure information management process that includes home and remote working.

Such monitoring may require regular training of employees on company policies and guidelines. The company should review them frequently to ensure that practices are up to date, with the goal of making employees aware of their data protection obligations.

Liability

In the event of an accident while teleworking, the competent authorities, upon notification by the employer, will investigate the case and determine whether it is an accident at work. The employer may be held liable for the accident if the employer has failed to train the employee in occupational health and safety.

The public insurance company is liable for damages suffered by the employee during telework. Nevertheless, the employer can conclude an insurance agreement with a private insurance company and check whether the insurance covers potential claims in case of occupational accidents.

If the parties have agreed in the telework arrangement that the employee will use his own equipment when performing telework, the employer may be obliged to provide for the maintenance or replacement of damaged equipment. It is assumed that any damage was caused by the employee performing his duties.

As a rule, the employer is also liable for damage caused by his employees to the property of third parties if this act of the employee relates to the tasks assigned to him by the employer. However, the employer cannot be held liable if the damage was caused in connection with an activity that was not work-related, and the third party was aware of this. ■



Șerban Pâslaru - Partner
Țuca Zbârcea & Asociații, Poland
Collaborating Firm of Andersen Global

SERBIA



Implementation of telework

Serbian labor law provides for the possibility of teleworking. Telework can be contracted from the beginning of an employment contract or can be introduced later.

An employment contract that allows telework must contain various regulations. In particular, the working hours and the possibility of monitoring the quality of work must be regulated. It is also necessary to regulate which work equipment the employer provides, and which costs the employee will be reimbursed if he uses his own work equipment.

The basic salary of a teleworking employee may not be lower than the basic salary of an employee who works at the same workplace at the employer. The provisions of the Labor Code on working hours, overtime work, redistribution of working hours, night work, vacation and absences shall also apply to the employment contract on telework, unless otherwise provided by a general law (e.g. collective agreement or work regulations) or an employment contract. Working time must be determined in such a way that the

employee can observe the daily and weekly rest periods and can also use his annual leave.

If telework was not contractually agreed upon when the employment relationship was established, the employee and the employer may subsequently agree that the employee performs work from home within the agreed working hours. The employee's refusal to perform telework is not a valid reason for termination of employment. In practice, it makes no difference whether the employee performs telework in whole or in part. The conditions remain the same.

However, due to the Covid-19 pandemic, the Serbian government has obliged employers to allow teleworking if the respective employer can telework. According to the decree, employers are obliged to let each affected employee decide individually whether he or she wants to perform telework, if this is not already contractually regulated. The decision must specify the duration of working hours and the way in which telework is monitored. Furthermore, the employer must keep records of the teleworking employees.

The employer is responsible for setting up teleworking space and, in principle, also bears the associated costs.

The employer is responsible for setting up teleworking jobs and, in principle, also bears the associated costs. For telework, the employee must have certain work equipment at his disposal, which is provided, installed, and maintained by the employer in the employee's home. In addition, the parties should reach an agreement on the reimbursement of costs incurred by the employee if he uses his own equipment for telework. This includes costs based on the use of electricity, water, gas, etc. For these costs it is useful to agree on a lump sum. The compensation of expenses paid by the employer to the teleworking employee is subject to salary tax at the rate of 10%.

The surveillance of teleworkers is only permissible within narrow limits due to the special constitutional protection of private homes and data protection. The employment contract or its supplementary agreement should precisely regulate the way in which the work is monitored. The employer may not enter the employee's home without consent. To monitor the work performance, it is advisable to request work reports from the employees at regular intervals on the progress of work and, if necessary, partial results of the work. The employer can also order this unilaterally.

Required involvement of employee representatives and public authorities

The representatives of the employees do not have to be involved and there is no obligation to notify any specific public authority apart from the duty to register work from home

before the social security fund.

However, although the employee is not performing his activity in the company, he continues to be counted for the purposes of the employee representation structure (which also represents him).

Health and safety and data protections

The employer is responsible for the health and safety of teleworking employees. His legal obligations do not change when teleworking. Teleworking employees are entitled to health protection in the same way as employees working on the employer's premises. The provisions of the Labor Code on working hours, overtime work, redistribution of working hours, night work, vacation and absences shall also apply to the employment contract on telework, unless otherwise provided by a general law (collective agreement or work regulations) or an employment contract.

The extent of working time must be determined in such a way that the employee can observe the daily and weekly rest periods and can also use his annual leave. In our opinion, the telework agreement should oblige the employee to comply with the working time rules. Furthermore, the agreement should oblige the employee to provide a documentation of the hours worked per day.

In terms of data protection law, the employer must ensure appropriate data security when introducing telework. The employer must ensure secure transmission channels and appropriate data protection-compliant handling. This applies if the employee uses private means of telecommunication. Both

technical measures (e.g. setting up a VPN client) and organizational measures (e.g. concrete instructions on data handling and secrecy measures in the home office) should be specified in the teleworking agreement. Especially, the teleworking agreement should stipulate regulations on data handling and/or safety precautions to be observed by the employee.

Liability

In case an accident at work is given, the same regulations apply as in the case of an accident at work on the employer's premises. The employer is obliged to notify the state social security fund about the accident on a special application form. Nonetheless, it should be noted that the state social security fund could examine whether such an accident at work is given in case of telework.

This depends on whether the accident occurred during a professional or private activity. For instance, if an employee fell down the stairs and injures himself because he wanted to check the interrupted internet connection on the ground floor, which he needed for business communication, this accident would be insured. If, on the other hand, the employee fell down the stairs on the way to the kitchen getting a coffee, this would not be an accident at work.

In terms of liability, there are no special rules for teleworking employees. In case the property of an employee is damaged due to home office work, the employer is liable so that a company liability insurance would (normally) settle the claim. The same applies if the property of a third party is damaged (e.g. if the equipment made available for the home office causes a fire in the employee's rented apartment).

To reduce economic risks, it is advisable to clarify the scope of the already existing business liability insurance and, if necessary, to extend the insurance regarding activities of employees in the home office.

In case a third person (e.g. a family member) damaged a device of the employer (e.g. the employee's spouse poured water over the laptop), the third person is fully liable. The company liability insurance probably does not cover damages caused by third persons. Nevertheless, this should be clarified with the insurance company as well. ■



Milica Vesic - Partner
JSP Law, Serbia
Collaborating Firm of Andersen Global

SLOVENIA



Implementation of telework

Under Slovenian legislation teleworking may be introduced either contractually or by unilateral decision of the employer due to exceptional circumstances. On a contractual basis, telework may be introduced by agreement with the employee, i.e. by a new employment contract concluded specifically for telework if the current employment agreement did not already include such provisions. Article 69 of the *Slovenian Employment Relationship Act* requires for telework to be agreed to by a written employment agreement and for the labor inspectorate to be informed about such planned telework. On a unilateral basis, in case of natural or other disasters, or in other exceptional circumstances that endanger human life and health or the property of the employer, the type or place of work specified in the employment contract may be temporarily changed without the consent of the employee, but only as long as such circumstances persist.

According to the current epidemiological picture of the Republic of Slovenia the

employer can still unilaterally order the employee to telework based on his/her obligation to provide health and safety at work. A written order to telework should include a justification for such safety measures. Under current legislation (September 2020), employees do not have the right to telework unless so agreed with the employer in the employment agreement.

The employer can unilaterally limit the time frame or revoke teleworking only if telework was introduced by the employer's unilateral order. If telework was introduced with the employment agreement and the timeframe was not already defined within the contract, then a new contract will need to be concluded with the employee.

An employee who teleworks has the same rights as an employee who works at the employer's premises. Rights, obligations, and conditions of a teleworking arrangement are regulated in an employment contract. The employee is entitled to compensation for the use of his/her resources while teleworking. The compensation for use of own equipment must be determined with the employment contract for telework. The

amount of such compensation is subject to negotiations between the parties, however at least the incurred costs must be covered by the employer.

In-person monitoring of teleworking employees is only possible within narrow limits due to the special constitutional protection of the private home and data protection law. The employer may not enter the employee's home without consent. However, to monitor the work performance, the employer has the right to request reports from the employees on the progress of the work and, if necessary, partial work results at regular intervals.

Required involvement of employee representatives and public authorities

The employer is obligated to provide safe and healthy work conditions, regardless of the actual place of work. If telework is agreed to not only for individual but for a variety of employees, the employer must inform and consult with employees or with employee representatives regarding all measures and issues related to the health and work safety of employees prior to the beginning of the telework arrangement. If employee representatives are not organized at the employer, the employer shall inform employees in a manner which is typical for the employer.

The purpose of consultations between the employer and employees is to harmonize the positions of both parties. However, employees or their representatives cannot prevent a decision of the employer regarding the telework.

If the employer violates his obligation to

inform employees or their representatives regarding the measures and issues related to the health and work safety of employees prior to the introduction of telework, employees or their representatives have a right to temporarily block the introduction of telework. At the same time, employees or their representatives must initiate the procedure to resolve the dispute. Until the dispute is resolved, telework cannot be introduced.

Prior to the introduction of telework, the employer must notify the Labor Inspectorate about each teleworking employee. Failure to inform the Labor Inspectorate of the intention to institute telework prior to the commencement of the telework is subject to a fine in the amount ranging from EUR 750 to EUR 2,000.

Health and safety and data protections

The employer is responsible for the health and safety in telework. Under the *Slovenian Employment Relationship Act* the employer is expressly obliged to ensure and provide safe conditions for teleworking. This means that the employer bears the same level of responsibility for telework as if the employee worked on the employer's premises. In particular, the working environment, work equipment, stress and mental well-being, the fact that the employee works alone (in case of an accident) and other risks of telework (manual lifting of loads, risk of electric shock, etc.) must be taken into account.

The employer must take measures to ensure safety and health at the workplace that include prevention, removal, and containment of risks, informing and training of employees, and adjusting and organizing the work



process accordingly. For this purpose, the employers shall carry out a concrete risk assessment and take measures based on such evaluation.

Teleworking is exempted from statutory provisions if working hours cannot be planned or if the employee can plan his/her own working hours, under the condition that health and safety at work are provided to the employee. In this regard the employer must organize teleworking so that regular short and long breaks during work are ensured. This means that 10 to 15 minute breaks after every hour of continuous work with the computer must be granted. If that is not possible, then at least 1-2 minutes of break once or twice per hour must be granted. The employer is also obliged to keep daily records of performed working hours for each employee. To comply with this obligation, it is advised that either the employment

agreement or internal acts of the employer oblige the employee to report on daily use of working hours.

Slovenian legislation pertaining to health and safety at work does not contain any provisions on how to enforce and control whether the conditions for health and safety in a teleworking arrangement have been met. Therefore it is up to the employer to decide on how to supervise if adequate measures are being implemented for example by sending a qualified person to review and examine the work station, or by having the employee fill out a questionnaire. When sending a supervisor to review the workstation at the employee's home, the employer will need to obtain prior consent from the employee to access his/her home.

In terms of data protection law, the employer must ensure appropriate data security



when introducing telework. The employer must ensure secure transmission channels and appropriate data protection-compliant handling. Both technical measures (e.g. setting up a VPN client) and organizational measures (e.g. concrete instructions on data handling and secrecy measures in the home office) should be specified either in the teleworking agreement or in an internal act of the employer, including regulations on data handling and/or safety precautions to be observed by the employee.

Liability

The employer is responsible for accidents that the employee suffers during or in connection with the performance of his work duties, regardless of where the place of the employee's work is located. If the employer's business activity is considered a dangerous activity, the employer is liable according to the rules of objective (no-fault) liability. This means that the employer can claim that the employee contributed to the incurrance of damage. In all other cases rules of liability based on fault apply, meaning that the employer shall be liable only if he has been found guilty of causing the incurred damage.

According to Slovenian law there are no specificities regarding telework. All employees are subject to obligatory insurance for injuries at work. The public insurance company (Health Insurance Institute of Slovenia, HIIS) covers the medical costs for treatment of injuries that the employees suffer at or in connection to their work. HIIS can however claim reimbursement of medical costs from the employer to the extend for which the employer is responsible for the occurrence of the accident. HIIS on the other hand reimburses the employers for the paid-out salary reimbursements for the period

of employee's absence from work due to endured work injuries.

Due to increasing numbers of claims of the HIIS against employers for reimbursement of medical costs, employers are increasingly forced to conclude supplementary insurance contracts that cover their liability in case of employees' accidents at work. Employees are often additionally insured by their employers for work injuries within collective additional accident insurance schemes.

Slovenian legislation does not have special provisions relating to liability for material damages incurred during teleworking. In accordance with general damage liability principles the employers are liable for damages caused by their employees to the property of third parties. If the employee caused such damage intentionally or in negligence, the employer could claim reimbursement from the employee of damages paid to the third party. The employer is liable for damage incurred to the property of the employee due to teleworking unless the damage is caused through the employee's own intent or negligence. ■



Maja Stojko - Associate
Miro Senica and Attorneys Slovenia
Collaborating Firm of Andersen Global



Implementation of telework

Since October 13, 2020, a specific *Remote Working Law* has been in force in Spain. Until that date, there was no specific regulation of teleworking beyond the one contained in Article 13 of the *Spanish Workers' Statute*.

Teleworking is currently not compulsory in Spain. Nevertheless, in the face of rising Covid-19 infection rates, it is advisable to institute teleworking so far as conditions permit in order to guarantee both the continuation of business activity and to avoid resorting to measures such as temporary cessation or reduction of activity. It is also necessary to ensure safety and reduce health risks.

Under Spanish labor law, teleworking cannot be imposed unilaterally by the employer except for the situation caused by Covid-19. Teleworking requires a formalized written agreement with the employee incorporated as an annex to the employment contract. Teleworking can be agreed upon either at the time of the initial contract or later. An employee is not entitled to the introduction of telework.

Regarding material resources and the assumption of costs (Wi-Fi, electricity, etc.), the *Remote Working Law* establishes that the agreement signed with the employee must include a list of the expenses that the employ-ee may have as a teleworker, as well as a way of quantifying the compensation that the company must pay and the time and manner in which this compensation must be paid, which will correspond, if it exists, to the provision contained in the collective agreement or in the agreement entered into with the employee.

The agreement should also contain an inventory of the means, equipment and tools required for the execution of telework, including consumables and movable elements, as well as their useful life or maximum period for renewal.

The percentage of time of the working day in which the employee is allowed to telework is subject to no limitations. This should be in accordance with the terms of the agreement signed with the employee, with the distribution of working time being left to the discretion of the parties.



The possibility of revocation is regulated by the terms of the agreement with the employee, the collective bargaining agreement, or the collective agreement.

In order for the *Remote Working Law* to apply, it is necessary that teleworking be carried out on a regular basis with a minimum of thirty per cent of the total working time and depending on the duration of the employment contract.

With respect to the possibility of monitoring the activity of teleworking employees, the *Remote Working Law* establishes that the company may take the measures it deems most appropriate for monitoring and control to verify compliance with its obligations and work duties by the teleworker, including the use of telematic means, keeping in mind in their adoption and application due

regard to the employee's dignity and taking into account, where appropriate, the real capacity of employees with disabilities.

The *Remote Working Law* expressly stipulates that monitoring does not require the installation of programs or applications on the employee's personal devices.

Required involvement of employee representatives and public authorities

According to the *Remote Working Law*, the company and the legal representatives of the employees may negotiate the regulation of multiple aspects and specific conditions of teleworking in the company, without forgetting the voluntary nature of this type of work.

The employer is obliged to provide the employee representatives with a copy of all agreements that have been made with employees providing services through telework within a period not exceeding ten days from formalization. This copy must then be registered at the employment office.

The teleworkers may exercise the rights of collective representation provided for in the *Workers' Statute*. It is compulsory for each teleworker to be assigned to a specific work center in the company.

In addition, the *Remote Working Law* stipulates that the company must implement a virtual forum for employees' legal representatives to carry out their representative activity, if this is compatible with the form of teleworking.

The law stipulates that employers must ensure that teleworkers can participate effectively in the activities organized or convened by their representative bodies or by other employees in defense of their labor interests, in particular, their effective participation in the exercise of voting rights in the elections of legal representatives.

Health and safety and data protections

In accordance with the *Remote Working Law*, employees who provide services through teleworking are entitled to adequate health and safety protection. The provisions of *Law 31/1995, of 8 November, on the Prevention of Occupational Risks, and its implementing regulations ("LPRL")* shall apply in all cases.

In order to ensure the safety of employees when providing services while teleworking, the employer is obliged to carry out a risk assessment of the place of telework (e.g. residence or other place selected by the teleworker), and to inform the employee of the risks existing in his/her place of telework. The employer must also take protective measures against particularly sensitive employees, such as pregnant employees.

In accordance with the *Remote Working Law*, the risk assessment must only be performed for the area designated for the provision of services, and this obligation cannot be extended to the rest of the areas of the dwelling or place chosen for the execution of telework.

To obtain information about occupational risks, the company may, and only with permission of the teleworker, visit the place of work chosen by the teleworker. If such

permission is not granted, the development of the preventive activity may be carried out on the basis of an assessment of the risks arising from the information collected from the teleworker in accordance with the operating instructions of prevention.

In the scenario of the Covid-19 pandemic, the occupational risk prevention evaluation must be carried out by means of a self-check or evaluation carried out by the employee him/herself through an option that the occupational risk prevention service may propose.

The same rules on working hours continue to apply to teleworking employees. It is compulsory for companies to record the daily working hours of these employees, and to apply to them the maximum number of overtime hours in accordance with Spanish labor regulations.

As far as data protection is concerned, the company must define a data protection policy indicating the forms of teleworking that are permitted. The company must always use applications that do not put its security and confidential data at risk, discourage employees from downloading files that do not come from secure pages, and it must establish communication channels that allow employees to inform the company of any security breach that may have occurred.

The *Remote Working Law* stipulates that collective agreements or employment agreements may specify the terms within which teleworkers can use the equipment (i.e. computer systems) made available by the company for the development of teleworking for personal reasons, taking into account the social uses of

the equipment and the particularities of teleworking.

Liability

Under Spanish law, it is presumed, in the absence of proof to the contrary, that injuries suffered by the employee during the time and in the place of work constitute an accident at work. This rule is applicable to an accident that the teleworking employee might suffer.

In order to release the employer from the liability for an accident suffered by the employee, it is however a mandatory requirement to disprove that the accident occurred during teleworking hours by providing proof, for example in form of the employee's daily work records.

In any case, occupational accidents occurring to the employee who is providing services by means of teleworking are treated in the same way and have the same legal consequences as if the employee were providing services on the premises of the employer, since no differentiation is made or additional requirement is stipulated by the law in this respect. ■



Alfredo Aspra - Partner
Andersen in Spain
Member Firm of Andersen Global

SWITZERLAND



Implementation of telework

Since teleworking is not regulated in Switzerland, its introduction is recommended by agreement or by creating a supplementary instruction which complements the employment agreement. The State Secretariat for Economic Affairs issued a brochure with some helpful guidelines for employers; in any case the same rules established by Swiss labor law and the Swiss Code of Obligations apply to teleworking.

Without a specific agreement between the parties, the employer has no legal right to unilaterally introduce telework and, at the same time, the employee has no legal claim to telework. However, the employer can oblige the employee to telework in two specific cases: 1) The place of work is not mentioned in the employment agreement; 2) The need of teleworking prevails when temporary special circumstances arise (e.g. current Covid-19 pandemic).

The telework agreement or supplementary agreement should cover especially the following points: duration (hours/days per week), reachability period and reaction time,

recording of working time, prohibition to work on Sundays and at night (between 23:00 and 6:00), instructions for the working location's setup and in case of technical problems, devices and expenses reimbursement, data protection, liability.

Unless otherwise provided by agreement or custom, the employer provides the employee with the tools and materials that the work requires; where the employee himself supplies such tools and materials with the employer's consent, he is entitled to appropriate compensation.

The employer must reimburse the employee for all the expenses incurred in the performance of the work and for his necessary living expenses if the work is done off the employer's premises. Any agreement whereby the employee must bear all, or part of such expenses is void.

The above-mentioned rules are applicable to teleworking. This means that the employer is responsible for setting up teleworking space and, in principle, also bears the associated costs.

It is forbidden to introduce surveillance systems to control the employee's behavior in the workplace (inside or outside the office). However, upon agreement with the employee, it is possible to organize inspections to check if the safety instructions and the quality/productivity criteria are being met. In this respect, the employer can also demand the keeping and presentation of activity records.

Required involvement of employee representatives and public authorities

On the one hand, the employee representatives have the right to be informed in time and thoroughly about all the issues that are crucial to carry out their tasks correctly. The employer must inform them, at least once a year, about the consequences of the company's business on the employment and the employees themselves.

On the other hand, the employee representatives cannot influence the introduction of telework or any other company decision, except from the following areas: safety, company transfer, mass redundancies, pension fund affiliation.

In any case, the introduction of teleworking beyond emergency situations involves an amendment of the employment conditions, which needs to be agreed in advance within a reasonable timeframe by the parties either by employee representatives or the employees themselves if there are no employee representatives.

There are no official notification obligations to social security offices or other public authorities when introducing telework.

Health and safety and data protections

The employer is responsible for the health and safety during the time of telework. There is no change in his legal obligations under the *Swiss Labor Law*. The employer must ensure that risks to the life as well as to the physical and mental health of his employees are avoided and that the remaining risks are kept to a minimum. Therefore, the workplace must be equipped in a safe manner and the employer must organize work to protect employees from health risks. The employer makes them cooperate with each other so that they respect the measures.

Since teleworkers spend most of the working time sitting in front of PCs, concerns exist from an ergonomic point of view. Therefore, it is very important that the employer informs employees about the risks related to this manner of working and that he gives them instructions and information about how to ensure an appropriate workplace (e.g. adjustable chair, enough space around the desk, good illumination, outside view etc.).

Independent from the place of work, the rules about working time and rest periods are unchanged. The working week cannot exceed 45 hours for office work, even in case of telework. The minimum rest period between two working days must be at least 11 hours. It is forbidden to work on Sundays or at night (23:00-6:00) without special authorization.

There is the obligation to record working and rest time regularly. Upon agreement between the parties, it is possible to introduce a simplified recording or to waive the recording under specific conditions.



Upon agreement with the employee, it is possible to organize inspections to check if the safety instructions and the quality/productivity criteria are being met. In this respect, the employer can also demand the keeping and presentation of activity records.

The employer is still liable for appropriate data treatment and protection when introducing telework. The employer must ensure secure transmission channels and appropriate data protection-compliant handling.

Both technical measures and organizational measures should be specified in the teleworking agreement, for instance: automatic screen lock, safekeeping of confidential paper documents, rules for the destruction of documents, VPN to ensure encrypted data transfer.

Liability

In case an accident at telework is given, the same regulations apply as in the case of an accident at work in the company.

The employer's accident insurance compensates the employee for the incurred health expenses (e.g. drugs) and compensates the employer with an accident indemnity covering at least 80% of the salary. There is no need for supplementary insurance in case of teleworking.

The employee is not only obliged to carry out the work with due care, but he is also liable in case of damages caused to the employer; during teleworking this kind of damage can include data loss or breach. It is recommended to inform employees about the consequences of these damages, for instance by adding a specific section within the teleworking agreement. ■



Donatella Cicognani - Partner
Andersen in Switzerland
Member Firm of Andersen Global

UKRAINE



Implementation of telework

In response to the Covid-19 pandemic, a teleworking clause was added to Ukrainian labor law in March 2020. Nevertheless, the teleworking clause raises more questions than it answers. Recommendations are therefore to be made only with reservations.

In general, the introduction of telework shall be agreed between the employee and the employer in a written employment contract. However, in cases such as a pandemic, the employer shall be able to unilaterally order telework, whereas the employee does not have a unilateral right to introduce telework. Special time limits apply only if the employer unilaterally orders telework. As soon as the conditions for the unilateral order cease to apply (the pandemic is over), telework must be terminated. If the introduction of telework is contractually agreed between the parties, it is recommended that the actual duration of telework be recorded in writing.

According to the general rules of the Labor Code, the employer is obliged to ensure appropriate working conditions for the employee, to provide him with work

equipment and to reimburse the costs incurred by the employee in connection with the performance of his work tasks. In addition, to protect privacy, the employer may monitor the employee only with the employee's consent. Such an arrangement should be agreed between the parties, provided the employee agrees.

Required involvement of employee representatives and public authorities

There is no obligation to involve employee representatives in the introduction of telework, as it is introduced either as part of a written employment agreement between an employee and an employer or by the order of an employer (in the event of a pandemic/epidemic).

However, the employee can seek assistance from the employee representatives in negotiations with the employer on the introduction of telework. There is also no obligation to inform state authorities about the introduction of telework.

Health and safety and data protections

The employer is obliged to ensure safety and health, appropriate working conditions and a suitable environment. In the absence of a special regulation, this also applies to telework. There are no guidelines on how this can be guaranteed from a practical point of view. In this context it is problematic that an employer is forbidden to enter the home of an employee without the employee's consent for whatever reason.

Employers should consider in each individual case what they can do to meet the health and safety requirements during teleworking and how they can provide evidence of this. However, during the current Covid-19 pandemic, all government inspections and fines have been suspended, so it may be assumed that employers are not at risk of not having complied with health and safety requirements when teleworking.

Teleworking employees can decide within the framework of the laws on working hours at what time they perform their work. Even if the employees are not obliged to document their working time, the employer should make an agreement with the employee. In this way he can prove that he has taken care of the compliance with the working time regulations.

Liability

Accidents during teleworking are not specifically regulated. According to the general regulations, the employer is liable for accidents that occur during the performance of work tasks. Those principles shall also apply for telework. Accident insurance is

compulsory and is provided by the state. However, the employer can additionally sign for an optional private insurance.

Liability for damages caused to employees, employers and third parties during telework is considered from an employment or civil law perspective, depending on the circumstances. Lastly, the employee's material liability is limited to an average monthly salary. ■



Iryna Bakina - Counsel
Sayenko Kharenko Ukraine
Collaborating Firm of Andersen Global



This guide provides an overview of the response to Covid-19 in terms of Teleworking by each country as it relates to Employment and Labor Law provisions implemented by local governments. This guide includes information as it pertains to specific countries on general Employment measures, in specific countries as provided by the member and collaborating firms of Andersen Global.

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