



# BETTERWORK



WELL-BEING  
AND HEALTH  
AT WORK

## TELEWORK NEEDS COLLECTIVE RULES

Teleworking has become widespread with the coronavirus pandemic, and many workers would like to keep this form of work in the future, at least for part of the working week. Companies could also see that telework has worked well overall.

8 out of 10 employees who have already teleworked would like to continue having telework days. 4 out of 10 even prefer to work from home than in the office, 3 out of 10 are open to a hybrid solution (alternating days in the home office and days in the office) and a third prefer to work in the office. The abolition of telework without an alternative would therefore be a severe blow to the motivation of most of the workers concerned, especially in a post-pandemic period when more and more workers are considering a career change (one in four according to the Quality of Work Index 2021).



## 1. Well-regulated telework must remain

But instead of leaving it at a situation created in the company under time pressure and partly improvised to respond to the coronavirus pandemic, it is preferable to establish and set some collective rules for both the employee and the employer. This can defuse possible inequalities and avoid future potentially conflictual situations.

The agreement between the social partners on telework of 20 October 2020, which has been declared generally binding, provides for the establishment of regular telework by drawing up an addendum to the employee's employment contract. This stipulates the following elements, established by mutual agreement between the employee and the employer:

- the location of the telework or the modalities for determining this location;
- the hours and days of the week during which the teleworker must telework and be available to the employer, or the modalities for determining these times;
- the modalities for possible compensation in kind;
- the monthly flat rate for the payment of connection and communication costs;
- the modalities for transition or return to the classical form of work.

## 2. Equal rules for all

In this case, the rules would therefore be agreed individually between employer and employee. In this context, unequal agreements can quickly be perceived as unfair by some workers and the working climate can deteriorate, unless these differences are in line with the collective rules in place in the company.

While the national agreement on telework provides that teleworkers must have the same rights and be subject to the same obligations as comparable workers working on the company's premises, it leaves the door open for different treatment of teleworkers if it is justified by objective reasons. All the more reason to define and lay down rules for telework within the company.

## 3. The collective agreement on telework takes the form of a company or sectoral agreement

This issue can be regulated by an agreement at company or sectoral level and included in the collective agreement. This agreement may specify which categories of workers are excluded from telework, which locations or types of locations are permitted, the rules on health and safety at work, the rules on the protection of personal data and who is to be contacted in the context of telework in accordance with the cross-industry agreement on telework.

An enterprise or sectoral agreement shall be introduced in enterprises with less than 150 employees after informing and consulting the staff representatives within the meaning of Article L. 414-1 of the Labour Code and in enterprises with more than 150 employees by mutual agreement between the employer and the staff representatives within the meaning of Article L. 414-9 of the Labour Code.

## 4. Employees in companies where there is an agreement on telework are more satisfied with their work

According to a study conducted by the Hans Böckler Foundation in 2021, employee satisfaction is also higher when company agreements on telework are in place. The Economic and Social Research Institute (WSI) and the Hans Böckler Foundation from Germany have analysed which contents of company agreements have a positive impact on the work, motivation and health of teleworkers. Inspired by this

analysis and the experiences of company staff representatives in Luxembourg, a brief description of several important fields of action for agreements on telework follows.

How the topics are then fleshed out depends, of course, on the practical conditions on site, e.g. the size of the company and the concrete goals of the interlocutors.

## 5. Action points for agreements on telework

### a. Determine which workplaces are suitable for teleworking

The agreement between the social partners on telework of 20 October 2020 states, on the one hand, that both the employer and the employee have the right to freely decide whether or not they want to use telework at their respective workplace. There is therefore neither a right nor an obligation for employees to telework, and it is up to the employer to determine who may and who may not telework in the company, while respecting the rights of the staff representation as set out above.

In order to be fair and to avoid that some workers feel unfairly treated and thus the working atmosphere is affected, it is advisable to carry out an internal analysis, e.g. through a survey. This would record per organizational unit the workplaces whose tasks require presence on the company premises at fixed times, the workplaces that are partially flexible in terms of place and time of work, and the workplaces that can perform their work in a completely flexible and mobile manner. This inventory can be used to determine the potential number of workplaces that are suitable for telework.

In this way, employees are also included in the plans. Then the company's decision-makers, together with the staff representatives, determine in a collective agreement on telework in the company which jobs are suitable for telework and which are not. Within this framework, it can be decided and specified, for example, that new employees are not allowed to telework for a certain period of time to ensure that they become as familiar as possible with their new working environment and colleagues.

### b. Rules on equipment and connectivity

Uncertainties in the company usually have a negative impact on job satisfaction. Uncertainties can be eliminated through clear rules. Regulated provision of mobile work equipment and access to internal databases and networks enable employees to continue their work from home in the same way as they would in the office. The assumption of connection and communication costs by the employer must also be taken into account and can take the form of a monthly lump sum.

### c. Voluntariness

According to the agreement on telework of 20 October 2020, there is neither a right nor an obligation to telework. Employees must be able to decide whether and (as far as possible) when they want to telework in order to improve the reconciliation of private and professional interests (e.g. saving time by not commuting). An employer's refusal of a telework request must be justified on the basis of clear official needs requiring on-site presence, with reference to the collective rules defining

workplaces eligible for telework. The employee's refusal of an offer of telework by the employer does not in itself constitute grounds for termination of the employment contract. Nor can the refusal justify the use of Article L. 121-7 of the Labour Code to impose this form of work.

### d. Hybrid working

In order to reap the benefits of telework, such as avoiding commuting or making work easier for workers with disabilities, and minimize the disadvantages, such as social isolation, two work locations (telework and office) should be alternated. For example, alternate two days per week in the telework place and three days in the office.

### e. Modalities of the transition from office work to telework

According to the telework agreement, in the case of regular telework, the modalities of transition or return to the traditional form of work shall be agreed in writing between the employer and the employee at the time the employee starts telework. In order to ensure fair treatment of all workers in the company, it is advisable to define the modalities of the transition from office work to telework, e.g. through a trial period for telework (e.g. one month), during which both parties have the possibility to stop the experiment immediately or otherwise continue telework within the defined framework. In this way, a worker who has never teleworked before, or a worker who has previously teleworked very little and wants to spend more of his or her working time in the home office in the future, can try out this new way of working before committing to keep it as it is.

### f. Organisation of working time

To ensure that the boundary between work and leisure is not blurred and excessive working hours are prevented, the times of availability should be regulated or it should be stipulated that the teams coordinate and regulate this fairly. In this context, the right to disconnect, the regulations of the Working Hours Act including the maximum working hours and the uninterrupted rest period of at least eleven hours per day as well as any applicable collective agreement working time regulations should be observed.

### g. Recording of the working time

In order for the flexibilisation of working time to be beneficial to the health of employees, it is important, among other things, that the recording of working time is transparent and regulated by the company (in companies with at least 150 employees in co-determination with the staff representatives). For this purpose, for example, the time clock, as known from the company, can be placed in digital form on

the mobile work device of teleworkers, so that they can also clock out from home at the beginning and end of work on their telework days.

#### **h. Training**

During the coronavirus pandemic, telework was often enforced for health reasons and to maintain business operations without a formal or written agreement, and has thus become part of many workers' daily lives outside an existing legal framework. However, this does not mean that all workers and their supervisors have the best reflexes. Now that telework is no longer so urgent and there are legal provisions for it, it is time to learn how to work and lead remotely (through workshops, training), how to deal with problems, conflicts and difficult work situations, and how to optimise the use of digital technologies in the workplace.

#### **i. Evaluation criteria**

In order to provide security for workers in telework relationships and thus promote health and work-life balance, it is imperative to define clear evaluation criteria. One tool for managing performance requirements is target definitions, which can be used to set specific, achievable and measura-

ble work goals. Unspecific or unrealistic work targets lead to excessive demands.

#### **j. Return to the office**

As the agreement does not provide for a right to or an obligation to telework, the parties may at any time request the termination of the "telework" form of work and the return to the traditional form of work. To this end, the agreement provides that in the case of regular telework, the modalities of the transition or return to the traditional form of work must be agreed in writing between the employer and the employee at the time the telework begins. In the interests of fairness between the company's employees, it is important, just as in the case of the transition from office work to telework, to specify the modalities for the return from telework to office work if the employer or the employee wishes to return to the office for the entire period of work. For example, one can provide for a notice period for telework (one month) and specify the workspace to which the person is entitled thereafter, or the modalities for specifying this workspace. This notice period must allow sufficient time for the employer and the employee to make the necessary arrangements for the change.

## **6. Sources**

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