



## Q&A on the new regulation on remote working

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The health crisis triggered by COVID-19 has accelerated the already-existing trend of facilitating and implementing remote working policies in Spain. However, the “forced” remote working as a result of the pandemic has emphasised the lack of regulation in this area, not to mention the practical issues previously left unresolved.

Published on 23 September, the Royal Decree-law on remote working seeks to provide clearer guidelines in relation to this way of working.

Nevertheless, the Decree-law also paves the way for collective and individual bargaining to play a major role when it comes to the more practical and decisive components which this new regulation only touches upon.

Against this backdrop, the challenge for companies is to reach clear and specific agreements with the employees’ representatives covering the most practical aspects of remote working, as well as to implement well-defined remote working policies.

### When — When does the new regulation come into force?



Royal Decree-law 28/2020 of 22 September on remote working (the “Remote Working RDL”) will enter into force on 13 October 2020.

Regarding employees who already worked remotely:

- i. For those whose remote working relationship was already regulated under contract or collective agreement, the Remote Working RDL will apply from the time at which said contracts or agreements expire.

Where such agreements do not have a specific term, the new regulation will apply from 23 September 2021 – unless the signatories decide that it should apply at a later date, although in this case it must be applied from 23 September 2023.

- ii. If the remote working arrangement was not regulated under a collective agreement, individual contracts must align to the new regulation prior to 13 January 2021.

## Who — Will it apply to all remote workers? Are there any groups with special arrangements?



The new regulation applies to all employees providing services for an organisation or under the direction of a company who work remotely on a regular basis.

The term “regularly” in this case means anyone who over a period of three months works remotely at least 30% (or an equivalent percentage based on their contract term) of the time.

The following groups are excluded:

- i. Those who work remotely due to COVID-19 self-isolation.

The Remote Working RDL will not apply to these people while isolation measures remain in place. Despite the above, the company will have to provide employees with the necessary resources, equipment, tools and consumables, as well as ensuring the maintenance of these items.

- ii. Civil servants.

Moreover, certain groups are subject to a set of specific features: contracts entered into with minors, internships and training contracts will have to guarantee at least 50% on-site working.

In any event, it would be pertinent to agree or regulate the conditions that would apply to the employees who do not spend a sufficient amount of their schedule working remotely.

## Mandatory / Voluntary — Can remote working be imposed or is it voluntary?



Remote working is voluntary for both the employee and company.

Companies are not permitted to impose it unilaterally on objective grounds: employment legislation outlines other working conditions that may be modified where necessary to overcome possible financial, technical, organisational or production difficulties.

## Return to on-site working — Can remote working be reversed? Will it be possible to go back to on-site working?



Yes. Correctly regulating the reversibility of remote working is key: essentially, the company and the employee will be able to reverse the decision to work remotely after previous on-site working under the terms set out in the collective bargaining agreement or, failing that, the employment contract.

## Individual agreement — What formalities must be observed in order to implement remote working?



Firstly, before beginning to work remotely, a written agreement must be drawn up and attached to the employment contract.

Said agreement must set out the following, among other elements:

- An inventory of the resources, equipment and tools required for the job to be performed;
- The costs which the employee may incur, as well as the method to be used for calculating the amounts to be reimbursed by the company;
- Term of the remote working arrangement and prior notice period for reversing it;

- Percentage and split between on-site and remote working;
- The company's control measures;
- The employee's chosen remote working location.

Moreover, the company will provide the employees' representatives with copies of all remote working agreements and details of all actions taken. Once the above has been done, said copies will be sent to the employment authority.

## **Tools — Who provides the means for work to be performed remotely? Can the employee be forced to use their own means to work remotely?**



Employees are entitled to receive all resources, equipment and tools needed to carry out their work from the company, which the company must also undertake to maintain.

Moreover, the company will have to ensure that the necessary support is in place in the event of technical issues.

The Remote Working RDL does not specify which equipment and resources are considered necessary for work to be performed: this should be regulated under a collective bargaining agreement. In any case, the resources listed in the inventory included in the remote working agreement must be provided.

## **Can the company force employees to install programs or apps on their personal devices such as laptops?**

No. Companies are not permitted to force employees to install programs or apps on their personal devices, nor to use such devices to perform their work.

## **Costs — If the employee incurs costs due to remote working, who pays?**



Companies must bear the costs relating to the resources, equipment and tools linked to the activity performed by the remote worker. These costs cannot be passed on to the employee.

The Remote Working RDL does not clarify how these costs will be determined or paid, leaving it to the collective bargaining agreements to regulate these matters.

## **Working hours and downtime — Which particular features must be taken into account in terms of working hours and schedules? Will they be the same as those working on-site?**



When an employee works remotely, they must continue to register their working day – notwithstanding the greater flexibility which may be afforded by working remotely.

In this regard, employees working remotely may adjust their schedule, albeit respecting their periods of mandatory availability at all times, not to mention the rules regarding minimum hours and breaks.

## **Does the right to digital downtime apply? How?**

Following the mass implementation of remote working in March 2020 on the back of the pandemic, one of the most controversial subjects has been the issue with switching off from work.

For that reason, the Remote Working RDL clarifies that the right to digital downtime does apply to remote workers.

Companies must guarantee downtime. Among other things, this means capping the use of work-based communication technologies during rest periods.

Following consultation with the employees' representatives, companies must draw up an internal policy aimed at ensuring and raising awareness of the right to digital downtime.

### **Risk prevention — Do companies have any obligations relating to occupational risk prevention?**



Yes, occupational risk prevention obligations still apply.

However, they must adapt their risk assessments and prevention planning to include the risks associated with remote working.

Risk assessments must only be carried out on the area designated for remote working as opposed to the entire location (e.g. the employee's home). Where there is a need to enter said location for assessment purposes, the employee must provide their full consent.

### **Surveillance — Can companies control their employees' work?**



Yes, albeit as long as they respect each employee's privacy and dignity. In this regard, the control of online resources is permitted.

Having said that, companies must set out the criteria for using the online resources they provide, upholding the minimum guidelines on the protection of their employees' privacy.



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