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TELEWORK LEGAL FRAMEWORK



Telework

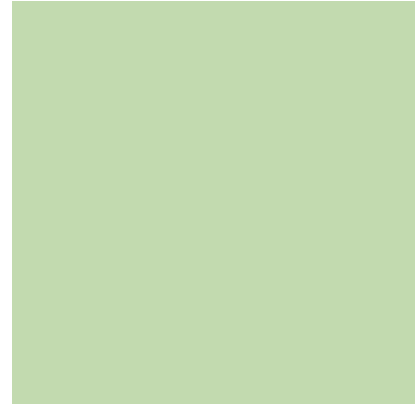
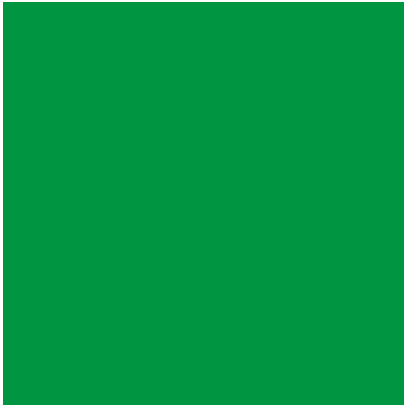
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In Luxembourg, telework for employees is governed by the Grand-ducal regulation of January 22nd, 2021 declaring the agreement of October 20th, 2020 concluded between the social partners to be generally binding. The present brochure features the main provisions of the new telework regime.

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DEFINITION OF TELEWORK

Telework is a form of work organisation, usually using information and communication technologies (ICT), so that the employee can work outside of the employer's premises. The use of information and communication technologies is part of the typical practice of telework, but shall not become an absolute requirement.

Are excluded from the scope of the Grand-ducal regulation:

- posted workers abroad;
- the transport sector (except for administrative functions);
- sales representatives;
- co-working spaces in Luxembourg, as they represent satellite offices of the company;
- smart-working, in the sense of occasional interventions by smartphone or laptop outside the workplace or the usual teleworking location;
- all customer services provided outside the company's premises.

2 TYPES OF TELEWORK

Occasional telework

- for work that has become necessary in order to deal with unforeseen events; or
- for work amounting to less than 10% on average of the teleworker's normal annual working time.

Regular telework

- any teleworking situation that is not occasional teleworking.

The Grand-ducal regulation does not set a maximum application limit.

TELEWORK ONLY ON A VOLUNTARY BASIS

Telework is subject to the principle that both employer and employee have to engage in telework on a voluntary basis by means of a bilateral agreement between both parties. This agreement contains both the modalities for switching to telework as well as of for returning to a traditional work function within the company. The refusal of an employee to telework at the request of his employer is no reason for terminating the employment contract and the employer is not entitled to impose telework by amending the employment contract.



HOW TO PROCEED

WRITTEN DOCUMENTATION

The voluntary agreement between parties requires written proof. The written consent has however become less formal. It is done either at the collective level or within the employment contract for regular telework, or in the form of a written confirmation (email, sms, etc.) for occasional telework.

For regular telework, the written agreement must contain the following elements:

- the place of telework or how to determine this place;
- the hours and/or days of telework during which the teleworker must be reachable by the employer or the guidelines on how to determine these periods;
- the conditions for returning to regular office work;
- the details of a possible compensation for benefits not linked to the physical presence within the company;
- the monthly lump sum for covering communication costs.

Individual agreements are not necessary if agreements have been concluded at the collective level (i.e. collective agreements, company agreements or agreements with the delegation). The Grand-ducal regulation does no longer require an amendment to the individual employment contract.

WORK ORGANISATION

Telework upholds the same rules relating to work time as apply to all other employees of the company. However, the Grand-ducal regulation contains two specific provisions:

- **overtime:** while overtime shall remain an exception, the terms and conditions are to be agreed between parties, but must be aligned as far as possible with internal procedures;
- **right to disconnect:** if such a right exists at the sectoral or company level, it also applies to teleworkers.

The employer further has to take all necessary measures in order to avoid social isolation of teleworkers (regular meetings with co-workers and access to company information).



RESPECT FOR THE PRIVACY OF THE TELEWORKER

In order to respect the employee's private life, inspection visits by the employer, the safety delegate or the health and safety authorities are not permitted. The Grand-ducal regulation does not contain specific provisions on installing a monitoring system for telework.

TECHNICAL EQUIPMENT

The employer is obliged to provide the teleworker with the necessary work equipment. The exact definition of this equipment is done on a case-by-case basis with the following distinctions:

- **regular telework:** the employer must provide the technical equipment and bear the communications costs (possibly in the form of a monthly lump sum);
- **occasional telework:** case-by-case solutions (e.g. laptops that can be used across premises) but no obligation on the employer's side.

As soon as equipment is entrusted to the teleworker, he must take care of it and notify the company in case of breakdowns or malfunctions. The teleworker is also entitled to an appropriate technical support service.

HEALTH AND SAFETY REGULATIONS

The Grand-ducal regulation does not derogate the employer's obligation to provide health and safety at work. The employer must inform the teleworker about the company's occupational safety and health policy and the teleworker must apply it correctly. If necessary, the teleworker is entitled to request an inspection from the health and safety authorities, the safety delegate or the ITM (Inspectorate of Labour and Mines).

As for the accident insurance, the coverage is upheld within the limits and exclusions provided by the AAA and/or the law.

SPECIFICS

STAFF DELEGATION AND OPTIONAL TELEWORK AGREEMENT

The Grand-ducal regulation provides for regular information of the staff delegations on the number of teleworkers and its evolution within the company. The exact arrangements can be decided within the company.

A specific telework regime, adapted to the particular situation of the company or sector can be defined:

- by means of a collective agreement or a subordinate agreement;
- in accordance with the expertise of the staff delegation.

The introduction and modification of the optional telework agreement shall be done:

- in companies with less than 150 employees: after informing and consulting the staff delegation;
- in companies with at least 150 employees: by mutual agreement between the management and the staff delegation.

DATA PROTECTION

Data protection provisions are aligned with the legal obligations of the European Union's General Data Protection Regulation (GDPR). In addition, the employer is obliged to inform the teleworker and to train him, if necessary, on data protection issues. The employee on his side has to comply with the company policy (e.g. restrictions on the use of technical equipment).

EQUALITY OF TREATMENT

The Grand-ducal regulation confirms the principle that teleworkers have the same legal and collective rights and obligations as their colleagues working within the company's premises. The same applies to:

- access to training (with the possibility of appropriate training of the teleworker on request);
- career development possibilities;
- appraisal policies;
- collective rights (communication with delegates, participation and eligibility in social elections, etc.).

The teleworker shall also receive all the current information which the employer or even the staff delegation circulates within the company.

A different treatment of teleworkers can however be justified on objective grounds, but without prejudice to non-discrimination. For example, the possible loss of a benefit must be compensated for the time spent teleworking. However, this right to compensation does not apply to benefits linked to the physical presence on the company premises (e.g. parking space, access to a canteen, etc.).



SPECIAL CASE OF CROSS-BORDER COMMUTERS

TAXATION

Excluding gentlemen's agreements linked to the COVID-19 pandemic, three bilateral tax treaties concluded between Luxembourg and its neighbouring countries set the tolerance thresholds for the taxation of cross-border employees (a fraction of a day counting each time as a full working day):

- Germany: maximum 19 days/year;
- Belgium: maximum 34 days/year;
- France: maximum 29 days/year.

The taxation of a cross-border employee is maintained at 100% in Luxembourg if these thresholds are not exceeded. If they are however exceeded, the salary in relation to all days worked hours worked in the country of residence is taxable in the employee's country of residence. Therefore, the various tax authorities are entitled to ask for proof of the physical presence of border residents in Luxembourg.

The LCGB calls for a harmonisation of these three different thresholds, preferably by adjusting them to the threshold applicable for social security (55 days per year). The LCGB also recommends to include higher force clauses in future tax treaties.

SOCIAL SECURITY

Excluding the gentlemen's agreement linked to the COVID-19 pandemic, social security affiliation is determined by European Regulation 883/2004. According to its basic principle, an employee is insured in only one State, the State in which he pursues his professional activity. Cross-border employees in Luxembourg remain affiliated to Luxembourg's social security if they have a single employer and if they do not work more than 25% of their time (or do not earn more than 25% of their revenue) in their country of residence:

25% = an average of 1,25 days/week over 12 months, thus less than 56 days/year

In accordance with Article 16 of the aforementioned regulation, the LCGB is in favour of aligning the tolerance threshold for social security at a higher level for all three neighbouring countries in order to simplify the monitoring and the management of the reporting obligations. In fact, within a company located in Luxembourg, there may be four different treatments depending on whether the employee resides in Luxembourg, France, Belgium or Germany.



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