



FAQs: remote work regulations

In the Polish parliament, a bill on amendments to the Labor Code and some other laws regulating remote work already exists. Experts answer the most popular questions.

When should the parties of an employment contract make arrangements for an employee to perform remote work?

Andżelika Madej-Kowal: According to the bill, the agreement between the parties of the employment contract regarding the employee's performance of remote work may take place either at the conclusion of the employment contract or during the course of employment, in the latter case at the initiative of the employer or at the request of the employee submitted in paper or electronic form.

Will the arrangements between the parties of the employment contract during the course of employment to perform remote work require an amendment to the employment contract in writing?

A: The bill stipulates that, in the case of an agreement to perform remote work made in the course of employment, the article of the Labor Code, according to which a change in the terms of the employment contract requires written form, shall not apply. In our opinion, this should be interpreted to mean that a change in the terms of the employment contract caused by the above arrangements will not require a written form.

Is the employer bound by the employee's request to perform remote work?

In some cases, e.g. a pregnant employee or an employee raising a child up to the age of 4, the employer will be obliged to grant the employee's request to perform remote work, unless it is not possible to perform remote work due to the organization of work or the type of work performed by the employee. The employer shall inform the employee of the reason for refusing to grant the request in paper or electronic form.

Can remote work be done at the request of the employer?

The bill stipulates that remote work may be performed at the order (instruction) of the employer if the following circumstances exist:

- during a state of emergency, state of epidemic or state of epidemic emergency and for a period of three months after their cancellation
- during the period when it is temporarily impossible for the employer to provide safe and hygienic working conditions at the employee's current place of work due to force majeure — if the employee submits immediately before the order is issued a statement in paper or electronic form that they have the premises and technical conditions for performing remote work. If the employee's premises and technical conditions change making it impossible to continue work-

ing remotely, the employee will be obliged to inform the employer immediately. In such a case the employer will immediately revoke the order to perform remote work.

The employer will also be able to revoke the remote work order with at least one day's notice.

Should the employer regulate the rules for performing remote work, and if so, what should be included in such "regulations"?

According to the bill, remote work should be performed according to the rules for performing remote work set forth in, among others:

1. in an agreement between the employer and the company trade union and in the case where the employer has more than one company trade union organizations, in an agreement between the employer and these organizations,
2. in the regulations, after consultation with employee representatives selected in accordance with the procedure adopted at the employer's (if there are no company trade unions at the employer's),
3. respectively, in the order (instruction) to perform remote work or in the agreement concluded with the employee, when the agreement referred to in item 1 above has not been concluded or



the regulations referred to in item 2 above have not been issued.

In addition, the above regulations should specify the following:

- the group or groups of employees who may be covered by remote work (this does not apply to #3 above);
- the rules for covering the costs of remote work by the employer;
- the rules for determining the cash equivalent or lump sum;
- the rules of communication between the employer and the employee performing remote work, including the method of confirming the presence of the employee performing remote work at the workplace;
- the principles of control of the performance of work by an employee performing remote work;
- the principles of control in the field of occupational health and safety;
- the principles of control of compliance with security and information protection requirements, including procedures for the protection of personal data;
- the principles of installation, inventory, maintenance, software updates and servicing of work tools entrusted to the employee, including technical equipment.

What should an employer provide for an employee doing remote work?

According to the bill, the employer is obliged to:

1. provide the employee performing remote work with the materials and work tools, including technical devices, necessary to perform remote work;
2. provide the installation, servicing, operation, maintenance of work tools, including technical devices, necessary for the perfor-

mance of remote work, or cover the necessary costs associated with the installation, servicing, operation and maintenance of work tools, including technical devices, necessary for the performance of remote work, and cover the costs of electricity and telecommunications services necessary for the performance of remote work;

3. cover costs other than those specified in #2 above directly related to the performance of remote work, if the reimbursement of such costs is specified in an agreement with the unions in the remote work regulations, in the remote work order (instruction) of the employer or in an agreement with the employee;
4. provide the employee performing remote work with the training and technical assistance necessary to perform such work.

The employer and the employee may establish rules for the use by an employee performing remote work of work materials and tools, including technical equipment, necessary for the performance of remote work, not provided by the employer. In such a case, an employee performing remote work using private work materials and tools shall be entitled to a cash allowance in the amount agreed with the employer.

The draft also stipulates that the obligation to cover the aforementioned costs or to pay the above equivalent, may be replaced by the obligation to pay a lump sum, the amount of which corresponds to the expected costs incurred by the employee in connection with remote work.

In determining the amount of the above equivalent or lump sum, the norms of consumption of materials and work tools, including technical equipment, their documented market prices

and the amount of material used for the employer's needs and the market prices of this material, as well as the norms of consumption of electricity and the cost of telecommunications services should be taken into account in particular.

Q: What is the planned effective date of remote working regulations according to the bill?

According to the bill, the "amendment" to the Labor Code regarding remote work will enter into force within 14 days of its promulgation. At the same time, as of the date of entry into force of these planned regulations, the previous provision relating to remote work contained in the Law of March 2, 2020, on Special Solutions for the Prevention, Prevention and Control of Covid-19, Other Communicable Diseases and Emergencies Caused by them will be probably repealed. ●



Family Business Initiative Association (IFR) is a Warsaw-based alliance that groups entrepreneurs who own family businesses, as well as experts and scientists who support this community. **Andżelika Madej-Kowal**, an IFR expert and attorney in the law firm Brillaw by Mikulski & Partners, deals with labor law, among others.

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EXPERT'S OPINION

It's been almost two-and-a-half years since the introduction of the "special Covid-19 law," in which the term "remote work" first appeared. Since then, it has been recited in all cases. Before the pandemic, only one in 10 employees had experience working remotely. Working from home, was mainly available to areas: IT, business consulting, advisory and marketing businesses, that operated mostly on b2b contracts.

The pandemic situation has forced nearly 8 million Poles to change the mode of work they have known so far. Considering that there are about 23 million working-age workers, this means that one in three Poles has experienced remote work. This includes those employed on a contract basis in SMEs, universities or governmental offices — places that were not prepared for this and did not work in such a model. Lack of training and technical support caused professional groups such as teachers and civil servants to have very bad memories of remote work. They had to spend more time and resources to implement the new reality.

As it turned out, our legislation had a lot of space for free interpretation in terms of, for example, operating costs and higher energy consumption incurred by employees working remotely. There were many questions and doubts in the media, since companies no longer have to bear the high costs of offices, their maintenance and supplies, maybe they should share some of

these "savings" with employees who had to work from home, using their own equipment. And after all, employees were also left with more money in their pockets. By working from home, they saved on the cost of getting to work or eating out. A completely separate currency is time. An average 41-minute one-way commute, meaning they saved an hour and a half per day on their daily commute.

It is good that these issues will finally be regulated in the code, curbing the arbitrariness of some companies that have shifted the burden of "remoteness" to employees. In the current amendment, there is a point about providing access to "necessary work tools," but also the cost of the training and technical assistance needed to perform remote work.

The pandemic has brought to light the fact that where we do our work has an impact not only on "workspace" issues but has consequences in other areas such as RODO, data security and cybersecurity (because corporate networks are secured differently from home networks), legal and tax issues (in the context of the increasingly popular "workation") or even health and safety issues. Coming to work in the office, everyone is given information on the ergonomics of the workstation. There is still no health and safety training on working from home, according to a survey conducted by marketing agency CraftJack. Almost a third admitted to working from their bed, which is definitely a

bad and non-ergonomic place to do work. Few are aware that working in unsuitable conditions has an impact on occupational burnout, which is recognized as an occupational disease by the World Health Organization as of January 1, 2022.

There remains the question of control. How to control an employee who works in "their space"? How to carry out an inspection while respecting the intimacy of the employee's "home"? These and other questions, are yet to be answered in this amendment.

Changes in the work model are happening faster than legislation, so it is good that after more than two years we will see an update and clarification of the framework for remote work that will not allow for discrepancies in interpretation. ●



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