

Newsletter Prawa Pracy i HR

Remote work. Changes in the Labor Code in 2022 – the latest bill

In just a few months, entrepreneurs will see the provisions on remote work introduced into the Labor Code. It is one of the most anticipated regulations on the Polish labor market. So what awaits us?

First of all, the provisions on remote work will replace the provisions of the Labor Code on teleworking. The chapter regulating teleworking in the Labor Code will be replaced with a chapter on remote work, which means the end of the battle entitled "Remote work and teleworking". The provisions of the Labor Code on teleworking constitute the basis for the new regulations on remote work (as indicated in the government bill).

According to the proposed new art. 6718 of the Labor Code the work may be performed entirely or partially at the place indicated by the employee and agreed with the employer each time, including the address of the employee's residence, in particular with the use of means of direct remote communication (**definition of remote work**). In practice, it means the possibility of flexible arrangements for performing remote work. Its frequency does not matter. It can be performed e.g. once a week (**hybrid**), as well as regularly (**regular remote work**).

The bill provides for two specific modes of remote work, which can be defined as ordinary (**the employee's consent is needed**) and extraordinary (**at the employer's request**).

When is the employee's consent needed?

The principle when introducing remote work is the necessity to obtain the employee's consent. An agreement between the

employee and the employer regarding remote work will be required. Such a possibility exists both when concluding an employment contract and during employment. In the latter case, remote work may be performed at the initiative of the employer or at the employee's request, submitted in paper or electronic form.

When will remote work be possible at the employer's request? The employee's declaration.

Exceptionally, in the following cases, it will be possible to order remote work by the employer:

1. during the period of the state of emergency, epidemic threat or epidemic state and within 3 months after their cancellation, or
2. during the period when, due to force majeure, it is impossible for the employer to provide safe and hygienic working conditions at the employee's current workplace.

In these two cases, the employer will have the right to order remote work, so the employee's consent is not required.

However, the employee will have to have appropriate housing and technical conditions. Remote work, in accordance with the bill, can be performed at the employee's place of residence or in another place indicated by the employee only if the employee has the premises and technical conditions to perform such work.

In this matter, the employee submits to the employer in a paper or electronic form a **declaration of compliance with the conditions for performing remote work** before commencing remote work. Importantly, the statement that the employee has the premises and technical conditions to perform remote work must be submitted directly before issuing the order.

Agreement on remote work or the remote work regulations

In the agreement on remote work or the remote work regulations, the following should be determined:

1. groups of employees that may be covered by remote work,
2. the rules of covering the costs by the employer,
3. the rules for determining the cash equivalent or lump sum,
4. 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,
5. rules of the control of work performance by an employee performing remote work;
6. rules of inspection in the field of occupational health and safety;
7. rules of the control of the requirements in the field of information security and protection, including personal data protection procedures;
8. rules of installation, inventory, maintenance, software update and service of the work tools entrusted to the employee, including technical devices.

The agreement or remote work regulations may also regulate other issues related to remote work that secure the interests of employers.

Consultation with employee representatives (trade unions, non-union representatives)

If the employer has a trade union organization, the rules for remote work will be determined in an agreement concluded between the employer and the workplace trade union organization, and if the employer has more than one trade union organization - in agreement between the employer and these organizations.

Pursuant to the bill, if a given employer has no workplace trade unions, the employer defines the rules of remote work in the regulations, after consultation with employee representatives selected in the manner adopted by a given employer.

Remote work and the employer's information obligations

In the bill, the information obligations of the employer were extended. If the remote work takes place when concluding the employment contract, the employer will be obliged to inform about:

1. the employer's organizational unit in the structure of which the workplace of the employee performing remote work is located;
2. a person or body responsible for cooperation with an employee performing remote work and authorized to carry out inspections at the workplace.

If the commencement of remote work takes place during employment, the employer provides the employee performing remote work in a paper or electronic form with the information specified above, no later than on the day they start remote work.

The employer's obligations concerning remote work

In connection of remote work the employer will be obliged to:

1. provide the employee performing remote work with materials and work tools, including technical devices, necessary to perform remote work;
2. cover the costs related to the installation, service, operation and maintenance of work tools, including technical devices necessary to perform remote work, the costs of electricity and necessary telecommunications services;
3. cover costs other than those specified in point 2 directly related to the performance of remote work, if the reimbursement of such costs has been determined in the agreement, regulations;
4. provide the employee performing remote work with training and technical assistance necessary to perform this work.

Additionally the employer will be obliged to:

1. define the rules for the protection of data (not only personal data!) provided to the employee performing remote work and conduct, if necessary, instruction and

training in this regard,

2. provide information necessary for mutual communication by means of direct remote communication or otherwise agreed with the employer,
3. equal treatment (not less favorable) of employees working remotely in terms of entering into and terminating the employment relationship, terms of employment, promotion and access to training in order to improve professional qualifications than other employees employed to perform the same or similar work, taking into account the differences related to the conditions of remote work performance,
4. enable an employee performing remote work, on the principles adopted for all employees, to stay on the premises of the workplace, contact other employees and use the employer's premises and equipment, corporate social facilities and social activities.

Rights of the employer connected with remote work

Pursuant to the bill, the employer will have the right to control the work performance of an employee performing remote work at the workplace. If the work will be performed at the place of residence of the employee performing remote work, the employer will have the right to carry out an inspection during the employee's working hours:

1. of performing work,
2. in the field of occupational health and safety,
3. of compliance with information security and protection requirements, including personal data protection procedures

- on the terms specified in the agreement or regulations. The inspection can be carried out in consultation with the employee, at the place of performing remote work, during the employee's working hours. The employer will be obliged to adapt the method of carrying out the inspection to the workplace and the nature of the work.

Performing control activities shall not violate the privacy of the employee performing remote work and his family, or impede the use of home rooms in a manner consistent with their intended use.

Remote work and Occupational Health and Safety

Pursuant to the bill, the employer will be obliged to fulfill obligations in the field of occupational health and safety in relation to the employee performing remote work, to the extent resulting from the type and conditions of the performed work. Exceptionally, the employer **will not be obliged to:**

1. fulfill obligations in the field of first aid provision;
2. take care of the safe and hygienic condition of workplaces and technical equipment, or the efficiency of collective protection measures and their use as intended;
3. ensure regularities related to buildings and work rooms;
4. provide preventive meals and drinks, appropriate hygiene and sanitary facilities or provide necessary personal hygiene measures.

Moreover, it is worth paying attention to the modification of the rules regarding initial training. Thus, in the case of hiring an employee to work remotely in an administrative and office position, the initial training in the field of occupational health and safety will be able to be carried out entirely via electronic means of communication. Simultaneously, the employee's periodic training will be required in the case of an employee in an administrative and office position, even if the type of predominant activity of the employer within the meaning of the provisions on public statistics is included in the group of activities for which no higher than the third risk category has been established within the meaning of the provisions on social insurance against accidents at work and occupational diseases (in the case of remote work, the provisions of Article 2373 § 22 of the Labor Code do not apply). It should be considered reasonable to prohibit commissioning particularly dangerous work and the like in the case of performing remote work at the employee's place of residence or at another place indicated by the employee.

Remote work shall not include works that are:

1. particularly dangerous;
2. as a result of which the permissible standards of physical factors specified for residential premises are exceeded;
3. with chemical agents that pose a risk, referred to in the provisions on health and safety at work related to the

presence of chemical agents in the workplace;

4. related to the use or emission of harmful biological agents, radioactive substances and other substances or mixtures that emit noxious odors, as well as performing dusting or causing intense soiling works.

In terms of **occupational risk**, the bill provides for the following solutions.

Before allowing the employee to remote work, the employer will be required to prepare an occupational risk assessment related to the performed work and, based on its results, prepare information containing the principles of safe and hygienic performance of remote work, taking into account in particular the impact of this work on the eyesight and the muscular and skeletal system. Before being allowed to remote work, the employee will confirm in paper or electronic form that he has read the occupational risk assessment prepared by the employer and the information containing the principles of safe and hygienic performance of remote work.

The mere admission of an employee to perform remote work will depend on the employee submitting a paper or electronic **statement** confirming that the remote work position at the employee's place of residence or at another place indicated by him ensures safe and hygienic working conditions. The employee will be responsible for the proper organization of the remote work position at the employee's place of residence or at another place indicated by him, taking into account the requirements of ergonomics.

Accident at remote work

In the event of **an accident at remote work**, employers will be required to properly apply the provisions on accidents at work. The inspection of the accident site will be carried out after the accident at remote work is reported on the date agreed by the employee or his household member, if the employee is unable to agree on this date due to his health condition, and the members of the accident team.

What is very important, **the post-accident team will be able to refrain from carrying out an inspection of the accident site while working remotely**, if they agree that the circumstances and causes of the accident do not raise any doubts.

Occasional remote work

In addition to the regular or hybrid provision of remote work, the new regulations provide for the possibility of performing remote work for a maximum of 24 days in a calendar year.

This method of remote work is referred to in the bill as **occasional work**.

An employee's application is required to perform such work. **There is no need to conclude an agreement or issue regulations for occasional remote work.**

Occasional remote work is controlled in the field of occupational health and safety and compliance with personal data protection procedures on the terms agreed with the employee.

The institution of remote work performed occasionally may therefore be useful if employees want to work remotely only on a small scale.

Conclusion

For several years, employers have been waiting for the implementation of remote work provisions to the Labor Code. The new regulations will certainly allow for more flexible organization of remote and hybrid work. Employers will eventually obtain a legal basis to organize such work after the pandemic.



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