

# GLOBAL EMPLOYMENT LAW

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## ARGENTINA

### Remote working: a new trend towards flexibility

The concept of remote working in Argentina is characterised by a lack of specific legislation on the issue and by the protective nature of labour laws. With the undeniable technological advances and remote internet access to a company's database, the requirement of being physically present at the workplace is no longer essential for many professions, where most tasks can be equally performed at home or off-site.

Remote work has become very common in Argentina and is often used as a flexibility tool for certain employees. In the absence of any specific and all-encompassing law regulating this matter, the employer must be alert to certain legal issues prior to implementing a remote working scheme.

### General considerations

Notwithstanding the ratification of the International Labour Convention ('ILO') on Remote Work and the guidelines provided by the Ministry of Labour and Social Security, remote working suffers from the lack of specific and comprehensive regulation in Argentina.

In 2003, Argentina passed Law No.25,800 that ratified Convention No.177 of the ILO on Remote Work (the 'Convention'). Through ratification, Argentina is not only bound by the Convention, which has constitutional ranking, but is also implicitly required to adopt and apply its principles, and periodically revise its national policy on remote work, in order to improve the situation of remote workers. In 2007, the Ministry of Labour and Social Security (the 'MLSS') introduced a Bill, no.S-3498/10, (the 'Bill') to the National Congress that defined remote work as the '(...) carrying out of acts, performance of works or provision of services (...) of the employment agreement performed totally or partially at the employee's domicile or other places different from the employer's premises, through communication and information technology.'

Principally, the Bill establishes:

- Equal rights of homeworkers with regard to employees that work on other activities.
- The need for the employee's consent to implement homeworking, on a case-by-case basis.
- Monitoring systems used by employers to supervise employees together with the employee's right to privacy, amongst other issues.
- The provision of work tools by the employer, and the rules regarding their use, or the contribution of tools by the employee and the consequences of such actions.

Remote work is classified as the provision of services outside the employer's premises. The places where the services are provided include the employee's home or other places distinct from the employer's premises. The homeworker must have the same rights as the employees who perform their duties at the employer's premises. These equal conditions include the application of the same benefits, compensation packages, working schedule, etc. Also, the employer must have in place life and work risks insurance for the remote worker. Consequently, the conditions under which remote work is carried out must comply with current labour laws and must not undermine employees' rights or dignity.

### Scope of remote working

For the purposes of remote working the employee must comply with the following:

- The tasks do not require his/her presence at the company premises and he/she has an internet broadband connection (of at least 1MB) at the location where he/she provides the services.
- He/she has the possibility to conduct conference calls with the necessary privacy.

- He/she is available and has the means to travel to the employer's offices, as often as necessary, in order to attend meetings, receive training and maintain a relationship with his/her work team.

### Implementation of remote working

Remote work can be agreed from the beginning of the labour relationship (as part of the employment contract) or as a voluntary decision once the employment relationship has begun. If the employer implements the remote working arrangement after the employment relationship has begun, this will imply a modification to the essential labour conditions, due to the alterations to the employee's working schedule and place of work. The employee is not legally required to accept this change.

If the employer unilaterally decides to implement the remote working regime, and the change is considered to be unreasonable, resulting in a material or moral damage to the employee concerned, the employee can either (i) file an injunction to restore the original conditions of his/her employment or (ii) consider him/herself constructively dismissed, on the grounds that the unilateral change constitutes an abuse of the employer's power to modify his/her labour conditions.

To minimise this risk, the employee should send a written notice to the employer requesting homeworking, following which the employer will reply to the notice accepting the employee's request.

### Termination of the remote working regime

The terms and conditions of remote work are part of the individual employment contract, once its implementation has been agreed between the parties. Under local regulations, the employer is entitled to introduce changes with regard to the form and manner under which the tasks are to be performed, as long as these changes do not imply an unreasonable exercise of its power to modify the essential conditions of the labour contract.

In view of such limitation, it is important that remote work policies specify:

- How corporate communications are going to be notified to remote employees.
- The obligation of the remote employee to attend the employer's office, if requested.
- What controls will be performed in relation to the remote employee to evaluate his/her performance.
- The possibility of terminating remote working in accordance with the company's needs and discretion.

### Working day

Employees of equivalent professional category and responsibilities must have an equivalent working day to those who work from the employer's premises, unless there is an objective reason to establish otherwise. If the employer grants a flexible working day to the remote employee, terms of such flexibility must be defined, in

order to avoid overtime and working during the night, which involves extra costs to the employer.

### Working tools

To provide services remotely, the employee will need the following working tools: laptop and other accessories (e.g. carry case, mouse, headset, webcam), mobile phone, office tools, internet connection etc. The employee will be responsible for its correct use and maintenance, avoiding third party use.

The working tools can be provided by the employee or by the employer. If the working tools are the employee's property, the employer must reimburse the total amount of expenses incurred by the employee on presentation of the receipts. If the working tools are provided by the employer, it is recommended to either have a clear company policy in place, or to include in the employment contract a clause on the matter.

### Types of remote working

The remote work can be:

- Temporary: for a fixed period of time, for a specific situation.
- Permanent: continuous, normally where the company premises and the domicile of the employee are located far from each other.

Additionally, it can be:

- Partial: the employee works remotely only some days, and on other days works at the employer's premises.
- Complete: the employee works remotely every day.

### Conclusion

Remote working is a growing trend and therefore it has become increasingly important to manage it effectively to prevent risks and to minimise the employer's liability, in light of the absence of specific regulations. Companies are recommended to implement and communicate to employees a policy covering remote working. The policy should be in line with labour legislation, the Bill and guidelines provided by the MLSS, ensuring that remote employees are provided with the same level of support and safety as the office-based employees.

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