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## PRACTICAL GUIDE FOR EMPLOYERS ON THE TELEWORKING IN SPAIN

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The Royal Decree Law 28/2020, dated 22 September, (*Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia*) regulates homeworking ("teleworking") in Spain. The most relevant aspects for employers are as follows:

➤ **Obligation to enter into a written teleworking agreement**

When an employee provides services to their employer (the "company") from their home, or another place chosen by the employee (other than the usual workplace), for 30% or more of their total working time, over a reference period of three months, it is compulsory for the employer to enter into a written agreement with the employee to confirm the arrangements.

It will not be necessary to formalise an agreement when the teleworking is carried out as a measure of sanitary containment resulting from Covid-19 (i.e. if the teleworking regime has been implemented because of recommendations from the authorities that an employee/employees should work from home to avoid any risks of Covid-19 infection).

Where an agreement is required, it must be formalised prior to the commencement of the work from home (see 'content of teleworking agreement' below).

➤ **Communication to the employee representatives and to the public employment office (SEPE)**

The company must provide the employee representatives (works council or employee delegates) a copy of all individual teleworking agreements.

The copy must be signed by the work council and registered by the company before the public employment office within a period of ten days since the agreement has been signed

➤ **Teleworking is voluntary and reversible**

Teleworking is voluntary for the employee and the company. The employee's refusal to work from home cannot be a ground for the termination of the employment relationship or a substantial modification of their working conditions. The decision to work from home shall be reversible for the company and the employee.

➤ **Collective bargaining**

Collective bargaining agreements may establish: which positions/roles are entitled to teleworking; the conditions to allow teleworking; the duration of teleworking; the working time on-site; how teleworking arrangements might be reversed to return the employee to work on the company's facilities; and any other related matters.

➤ **Content of the teleworking agreement**

The individual teleworking agreements must contain the following:

- **Means and tools.** The company must list in the agreement the means, equipment and tools that are necessary for teleworking and which will be delivered to the employee. The collective bargaining agreement may regulate what the 'means' required for teleworking are.
- **Expenses.** The agreement must list any expenses related to the work from home system and quantify the compensation to be paid for such expenses. Collective bargaining agreements may establish the rules to quantify the expenses and how they are reimbursed. There is no statutory regulation on how to quantify the expenses or what expenses are to be covered by the company.
- **Working time.** The agreement must set the working hours as well as the rules for the availability of the employee while at home, and also at the usual work place, if teleworking is partial.
- **Working centre.** The agreement must specify the place of work to which the employee is assigned (e.g. office or site etc.) and where, if applicable, they will carry out the work on-site.
- **Company's monitoring systems.** The agreement must state how the company will monitor the employee's activity, especially, if the company uses monitoring systems.
- **Duration and reversibility.** Work from home may be agreed either for an indefinite period or for a fixed period. The agreement must contain the prior notice period required to reverse the arrangement.

In addition, telework also has a particular impact on other aspects of the employment relationship:

- **IT and data protection policy.** Companies should review their existing policies regarding the use of IT equipment and data protection, to adapt them to teleworking.
- **Digital disconnection.** Companies must ensure that employees have the right to digitally disconnect, which means a limitation on the use of media during rest periods. Collective bargaining agreements may provide appropriate means and measures to ensure the effective exercise of the right to disconnect from digital means.
- **Time recording system.** The employees who provide services from home are obliged to record working time as if they were on-site. It will be a challenge for companies to check that employees do not exceed the maximum working time and that they take the mandatory breaks.

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**Employment Law Department**  
**Fieldfisher JAUSAS**  
[info.spain@fieldfisher.com](mailto:info.spain@fieldfisher.com)

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