



# An interview with Legalité discussing remote working in the Czech Republic

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## **1 What are the most consequential issues that an employer should consider when determining its post-covid-19 remote work policies?**

Remote working is no longer viewed as connected only to covid-19 pandemic although the pandemic required both employees and employers to quickly adapt and work remotely, especially in certain industries. Currently, remote working is often offered as a standard employee benefit and expected or even required by many employees, especially in IT industry, as a regular part of their work conditions and the work-life balance trend.

As the practice of remote working continues to evolve and new trends occur, such as remote working from abroad or ‘workation’, it becomes obvious that the regulation significantly falls behind the reality and practical needs of the Czech labour market, although a new legal framework for remote working is expected to be finally approved by the Czech Parliament and come into effect this autumn. It is part of probably the most significant amendment of the Czech Labour Code in the last years implementing, in this context, the EU work-life balance directive. As such, the demand among our clients for modifying current or preparing new remote working policies and other documents complying with the new legal framework is rising.

However, even the new legislation lacks any ‘remote working friendly’ regulation of health and safety at work, which remains, at least from a labour law perspective, the most pressing issue for employers that must be addressed in their remote working policies. This includes an effective way of approving or at least overseeing, the actual place for working remotely and its compliance with basic health and safety at work standards, depending on the level of flexibility the employer will allow. Employers should consider whether to allow remote working from abroad, as this brings a whole set of other issues and risks for the employer.

Of course, there are other aspects of remote working that employers should also consider that remain the same regardless of the new legislation, such as an effective system of requesting and approving occasional remote working, keeping track of working hours, protection of confidential data and internal systems security, work discipline and supervision of the work performed remotely, and compensation of costs related to remote working.

## **2 Pragmatically speaking, is there a threshold to determine when working remotely (from home or otherwise) requires local rules to apply?**

The easy answer to this question would be that there is no such threshold explicitly specified.

For Czech employers and their employees in the Czech Republic, the rules for remote working, including the upcoming legal framework already mentioned, shall apply regardless of the extent of remote working performed by the employees; remote working may be designed as full-time and regular part-time as well as occasional remote work.

In the case of cross-border remote working, this is actually a very complex question touching on various aspects of remote working. The employers must consider governing law, whether and to what extent local rules of the state of the employee's residence or place of work apply regardless of potential choice of law, participation of the employees working remotely in the relevant social security systems, potentially also a need to obtain work permits and, of course, the risk of a taxable presence. These aspects must be carefully assessed and considered in individual cases, as the answers depend on various aspects, not necessarily only on the extent of remote work, but also the type of work and many other aspects.

The fresh news is that, in respect of the participation in the social security system, Czech Republic signed the Framework Agreement regarding habitual cross-border telework in EU member states, which allows the employees working remotely from another member state to participate in the social security system of the state in which the employer has its seat or place of business. This applies subject to multiple conditions, including that the cross-border remote work is at least 25 per cent but less than 50 per cent of their total working time and relies on information technology to remain connected to the employer's working environment.

### **3 If employees voluntarily move away from their main work location, can employers unilaterally impose locally appropriate compensation packages?**

In principle, the employer is required to provide equal pay and other compensation to employees for the same work performed under the same conditions regardless of the location in the Czech Republic and regardless of the actual costs of living in these locations. Such a requirement was confirmed in the summer of 2021 by a decision of the Czech Constitutional Court, although the outcome of the decision was subject to strong criticism from legal professionals and it appears to us that the conclusions of the decision are not fully, simply due to practical reasons, applied in practice.

The new legislation will most probably allow for more flexibility regarding compensation of costs incurred by the employees in connection with working remotely, however, the principle of equal treatment and non-discrimination must be complied with.

In addition, if the salary and other compensation arrangements are agreed between the employer and the employee (as opposed to being determined by the employer in a salary statement), the employer may not change this arrangement unilaterally.

### **4 Do you anticipate a rising trend of employers hiring remote workers as opposed to managing office-based employees who subsequently go remote? What practical issues should employers bear in mind when considering remote hiring?**

This differs depending on the industry and professions. However, in general we anticipate that the trend of hiring remote workers and the demand for allowing at least partial or occasional remote working for regular office jobs, will increase. One of the key factors might be that the new upcoming legislation will allow for more flexibility in the remote work arrangement, and, specifically, will allow the employer and the employee to agree that the employee shall not be entitled to compensation of costs connected to remote working (typically costs of heating, electricity, internet connection etc). The employer may also provide a flat-rate compensation of costs to the employees; this new option is also connected to draft amendment of tax legislation providing more favourable tax regime of compensation for the employer and for the employee.

Employers currently considering hiring remote employees must pay extra attention to the new upcoming rules and should revise their current policies and remote working agreements. In practice, employers contemplating hiring full time remote employees must bear in mind all the aspects of this arrangement as mentioned above, including

their responsibility for health and safety at the remote employees' 'workplace' and compliance of their workplace with the health and safety at work regulation, protection of confidential data and security of their systems, work discipline and supervision of the work performed remotely.

### **5 Do local laws provide remote employees with more generous leave entitlements, such as sick leave? Can employees avail themselves of leave entitlements in both the primary work location and the remote work location?**

Local laws do not provide remote employees with more generous leave entitlements. In fact, remote employees who schedule their own work time are provided with certain types of leave (eg, leave due to medical examination) only as unpaid as opposed to paid leave entitlement for employees working at the employer's premises. The same approach will be maintained even in the new legislation regulating remote working.

### **6 What are some best practices for protecting confidential and proprietary information in a remote work environment?**

From our experience, it is absolutely imperative to provide sufficient training and instruction to employees in this area. This applies especially to employers that are subject to specific public law regulation (General Data Protection Regulation, electronic communications, competition law regulation). In fact, the need to effectively protect confidential information is often the reason why remote working is not an option for employees in certain positions.

Many of our clients require employees to work remotely exclusively using equipment provided by the employer. The employee must log in the internal system or application of the employer using a unique access code and their activity is tracked. The employee is often allowed to access only the parts of the internal system or application that they need for their work.

It is not unusual, and in fact it is very practical, that employers request employees designate a specific work place or home office, where employees can work undisturbed and safely. However, the apparent problem here is with enforcing and monitoring compliance with this requirement.

### **7 How does a remote employee affect the employer's tax obligations? Do the employee's activities render the employer to be 'doing business' in the remote location? Will these activities create a taxable presence for the foreign employer in the local jurisdiction?**

Remote working has several tax aspects that should always be reviewed with tax advisors. Calculating and providing compensation of the costs incurred by an employee in connection with remote work (costs of electricity, heating, internet connection, using the employee's own equipment) is currently one of them and has been widely discussed.

However, the upcoming legislation shall bring substantial changes in this regard. Besides the option of compensating actual costs incurred (and documented) by the employee, it will allow for providing flat-rate compensation that would not be, in the amount specified by the Ministry of Labour and Social Affairs, subject to employee's income tax, however it would be tax deductible on the employer's part. In addition, the new legislation shall allow an agreement between the employer and the employee that the employer will not provide any compensation of costs connected to remote working. The latter option seems to be the most attractive (and is preferred by employers) and it also reflects the fact that most employees requesting remote working view this as a benefit and do not expect nor request their heating, electricity or other costs to be compensated.

The issue of creating a potential taxable presence via remote employees is quite complex and requires thorough review by tax advisors. For example, the nature of the activity of the employee working remotely and of the employer's economic activity must be assessed. For example, if the foreign employer has only remote employees in

the Czech Republic and their duties for the employer include negotiating and concluding contracts with local customers on behalf of the foreign employer then establishing a taxable presence in the local jurisdiction is quite likely.

## **8 What are some best practices for tracking remote work arrangements?**

Many of our clients require employees to log into internal systems or applications while working remotely. Employee activities, including the time spent working, are monitored and tracked. Of course, this raises several issues regarding protection of employee privacy, and employers are required to provide transparent information and instructions to the employees in this respect.

Based on our experience, especially from assisting our clients with disciplinary matters regarding remote work arrangements, one of the key factors here appears to be the existence of a properly prepared remote working policy and well-prepared remote working agreements specifying the requirements and obligations of the parties regarding remote work, while allowing the necessary flexibility inherent to the remote working arrangements.

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## **The Inside Track**

### **What do you think are the most exciting and promising opportunities of remote working? How do you think it will affect the future of work?**

Remote working creates an opportunity to combine work and personal life, and allows individuals, as well as families, to effectively combine and manage their various careers or aspirations (eg, occupational and sports careers). In addition, remote working is no longer only about working from home, but from various places, including abroad. The trend of combining work and vacation is also gaining momentum. Of course, the new trends bring new aspects, issues and risks to which the regulation may not provide reasonable answers. Reasonable regulation allowing more flexibility, including potentially allowing to shift some of the responsibilities regarding the health and safety at work to the employees, instead of creating obstacles, would be welcomed by both employers and employees.

From a different perspective, remote working, if arranged and managed properly, may also be viewed as an interesting opportunity for employers for cost effective operation, especially regarding managing their office spaces and buildings, which we have already seen with some of our clients.

### **In your view, what are the most difficult challenges raised by the rise of remote working? How do you think employers should tackle these challenges and adapt accordingly?**

One of the most difficult challenges, in our view, is combining the requirements of legal regulation (not necessarily only regulation regarding directly to remote working) how employees and employers believe remote working should work, in practice, as trends are clearly heading in the direction of more flexibility than the legal framework is ready to provide.

Therefore, employers should carefully assess their individual situation and activities, including whether the option of remote working is viable, and, if so, specify terms and conditions for remote working in agreement with employees and internal policies.

### **What do you enjoy most about practising and advising in this area?**

These are exciting times for the Czech labour law and labour law professionals. Our local laws are currently going through substantial changes, given the new whistle-blowing regulation affecting not only HR operations of our clients and also the new legislation amending our Labour Code. We enjoy navigating our clients through these

changes and helping to find the best business oriented, innovative and creative solutions to the challenges our clients face in their day-to-day practice, including ensuring their compliance with multiple regulations, which can appear nearly impossible but we love the challenge.

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