

An interview with Legalité advokátní kancelář s.r.o. discussing remote working in Czech Republic

Legalité advokátní kancelář s.r.o.

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Questions

Q&A

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 the 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’, and full remote offices in some industries are on the rise, 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 was adopted in 2023. It is part of probably the most significant amendment of the Czech Labour Code in recent years implementing, in this context, the EU work-life balance directive. Following the amendment, remote working includes not only working from home (home office) but also working from other places such as co-working centres and smart hubs. This was followed by an extremely high demand among our clients for modifying current or preparing new remote working policies and other documents complying with the new legal framework, including such documents for employees working in other flexible forms of labour-law relationships outside typical employment based on employment contracts. It is also connected with a rising demand for other flexible forms or aspects of cooperation, including working time self-scheduling.

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 (eg, the potential application of foreign legal regulations, stay and work permits for employees, trade permits for the employer, tax and social security issues).

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, monitoring employees, protecting confidential data and internal systems security, work discipline and supervision of the work performed remotely, and compensation of costs related to remote working.

Based on our experience advising the clients on their remote work arrangements, it appears that the employers are capable of coping with issues such as health and safety and accept a certain amount of risk in exchange for a more reasonable and flexible approach corresponding to the market needs. However, it appears that in practice, the most pressing challenge is work discipline and effectively supervising remote work.

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 new 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 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 for employees or trade licences for the employer 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.

In respect of participation in the social security system, in July 2023, Czech Republic signed the Framework Agreement regarding habitual cross-border telework in EU member states, which allows 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 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.

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

Employees voluntarily moving away from their main work location does not automatically provide an option for the employer to grant special 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. Any differences in compensation must be based on and reasoned by objective criteria, which would differentiate the position and work performed on such position from other positions. However, in this context, we anticipate implementation of the EU Gender Pay Gap directive, which might in fact allow introducing the aspect of territoriality as one of the objective criteria for determining remuneration of employees.

In addition, the current legislation allows for more flexibility regarding compensation for costs incurred by employees in connection with working remotely, including the option to agree with the employee that no such compensation is provided. However, the principles 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.

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