

New Law on Remote Work

On August 14, 2020, the “Legal Regime of the Remote Working Contract”, Law 27,555, was published in the Official Gazette (the “Law”).

The Law will enter into force 90 days after the end of the Preventive and Mandatory Social Isolation. That means it does not have a certain entry into force date yet.

The remote working concept is established as an addition to the Employment Contract Law, including it in section 102 bis as: *“the performance of acts, execution of works or provision of services in the terms of sections 21 and 22 of this law is carried out totally or partially at the domicile of the employee, or in places other than the employer’s establishment or establishments by using Information and communication technologies.”*

Therefore, after the entry into force of the Law, any activity carried out by a worker communicated through information and communication technologies, may be considered an employment agreement with the rights and obligations regulated by the Employment Contract Law, especially regarding the working hours and the salary of the agreement.

Although this rule determines the nature of an employment agreement for this type of benefit, it also establishes that it must be regulated by a special law and by collective bargaining.

The Law sets limits regarding the employer’s right to require the worker hired under this modality to provide services outside the agreed hours, for which the working hours must be established in writing.

On the other hand, the workers under this modality have the right to reconcile their work schedules when they prove that they are in charge of a minor under 13 years old, a person with a disability or a cohabitating elderly adult. The law establishes that: “Any act, conduct, decision, retaliation or obstruction from the employer that violates these rights will be presumed discriminatory.”

When it comes to the transfer of a face-to-face position to a remote working one, the worker’s consent must be recorded in writing, the worker being empowered to request the reversibility of the transfer at any time, and the employer shall grant him face-to-face tasks in the establishment closer to his home.

All technological equipment, such as software to be used by the employee and the costs of installation, maintenance and repair of the same shall be paid by the employer.

Although it is established that the employee will be responsible for the correct use and maintenance of the working elements and tools, in case of damage, breakage or wear of these that prevent the provision of tasks, the workers will continue to enjoy the right to receive their remuneration. In turn, the employee must ensure that the work elements provided by the employer are not used by people outside the relationship and the employer may take the necessary measures to guarantee the protection of the data used and processed by the worker. However, the same law prohibits the employer from using surveillance software which violates the worker’s privacy.

The law grants trade union organizations various rights of participation and control over the agreements and software that apply to this regime.

The law provides for its application in remote working agreements executed both in the country and abroad, in the most favorable being applicable to the employee.

In our opinion, instead of encouraging remote working, the Law discourages this working modality as it restricts the employer's own powers, and leaves independent relationships in a gray area.