

March, 2020

▶ DETAILS OF NEW TELEWORK LAW APPROVED BY CONGRESS

On March 23, 2020 the bill on Telework was finally and completely approved by the Congress and ratified by the President of Chile. Therefore, according to transitory article number 2, this law will become valid and enforceable starting April 1st 2020.

This law regulates telework in the following terms:

I. Definition of telework and remote work

A new chapter IX "Of remote work and telework" is created under Title II, Book I of the Chilean Labor Code; which in its new Article 152 quater G defines remote work as "That where the employee is able to totally or partially render services from his/her domicile or other places different to the company's premises."; and telework as "When the services are rendered through technological, computing or telecommunication means, or if the services need to be reported through such means".

II. Elements of remote work and telework

1. Place where the services will be rendered: The parties shall agree on specific place in which the services will be rendered, which may be at the employee's domicile or at a different place. If the nature of the services allows for it, the parties may agree for the employee to freely decide the exact place in which the services will be rendered. If the employee renders its services on places designated and furnished by the employer, even if those places are outside the facilities of the company; it shall not be considered remote work or telework.
2. Type of telework: Telework may be total or partial. Partial telework means that part of the daily or weekly schedule may be rendered in the company's facilities and the rest by telework.
3. Working schedule regulation in telework:
 - a. The parties may agree that the employee freely decides the distribution of hours of the working schedule.
 - b. General rules of working schedule regulation from the labor Code apply, so it is possible to agree on a working schedule, or exempt the employee of a schedule based on article 22, second paragraph of the Labor Code.
 - c. In case the employee is subject to the limit of the working schedule, the employer must establish a mechanism for the registration of attendance and the hours control, as provided in article 33 of the Labor Code.



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- 4.** Right to disconnection: This right applies only to employees who can freely decide the distribution of their working schedule and to employees who are excluded from the working schedule limitation. The right to disconnection relates to the obligation of the employer to take all necessary measures to guarantee that there will be a certain period of time in which the employee will not be obligated to reply to communications, orders or other requirements. This time must be of at least 12 consecutive hours on a 24-hour period.
- 5.** Additional minimum content of the employment contract for telework:
 - a.** Express representation that the parties have agreed on the telework scheme, specifying if it is total or partial, and if partial, the manner in which both systems will be combined, if applicable;
 - b.** Specification of the place/s where the services will be rendered, unless the parties have agreed that the place will be freely chosen by the employee;
 - c.** The term in which telework will be in force, which may be indefinite or for a fixed-term;
 - d.** The control mechanisms which will be adopted by the employer;
 - e.** Disconnection from work time; and
 - f.** Express representation that the employee will be able to distribute his/her working hours in the manner that best fits him/her, or that the employee will be exempted from working hours' limitation, pursuant to article 22, 2nd paragraph of the Labor Code.
- 6.** Termination of the telework scheme:
 - a.** If telework is agreed after the start of the employment relationship: Either party may unilaterally decide to return to the previous working conditions, with a minimum 30 days' notice.
 - b.** If telework is agreed at the beginning of the employment relationship is agreed: Both parties must expressly agree to adopt the modality of on-site working.
- 7.** Obligation to register employment contracts (or the addendum in which telework is agreed) before the Labor Board: within 15 calendar days as of the moment in which telework was agreed. This can be performed in the Labor Board website.
- 8.** Working tools: all the tools, elements and costs associated from the performance of services by the employee must be conveyed or borne by the employer. The employee is not obliged to use its own tools or to incur in non reimbursable expenses to render the services.

- 9.** Health and safety: The employer has the obligation to inform about the health and safety conditions associated to the work, including the risks to which the employee will be exposed while rendering services (“right to know”). The employer may not enter the place in which the employee renders services without authorization, even if the employer’s reason for entering are the working health and safety conditions of the employee. For these purposes, the employer must request the Mutual Aid Fund to investigate these conditions. Additionally, the employer may request the Labor Board to investigate, however in this case the consent of the employee is necessary.
- 10.** Unions: The employer is obliged to inform the employee of the existing unions when he/she begins to render services, also, the employer must inform to all telework employees of the new unions which had been legally formed.
- 11.** Validity: The law comes into force on april 1st 2020 and grants three months to adjust and implement the requirements and formalities regulated by the law to the employees who render services already in a telework modality.