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# Remote work: New regulations for working away from work

Starting in April 2023, new regulations governing work away from the employer's location will take effect in Poland. Provisions on "remote work" will replace the old regulations on "telework." What responsibilities do the new provisions entail, and how will remote work differ from telework?

Both telework (*telepraca*) and remote work (*praca zdalna*) allow the performance of work away from the employer's location. Under the new regulations entering into force on 7 April 2023—Art. 67<sup>18</sup>–67<sup>34</sup> of the Polish Labour Code—in the case of remote work, employees will be entrusted with the initiative to indicate where they will perform their duties. This is reflected in the definition of remote work, which shows that while the location of remote work should be agreed by the parties to the employment contract, it is the employee who should propose the location.

## The concept of remote work

Unlike telework, remote work does not require the employee to communicate with the employer via electronic communications. Unlike telework, certain activities cannot be performed as part of remote work, specifically:

- Particularly dangerous work
- Work causing permissible physical parameters for living quarters to be exceeded
- Work with hazardous chemical agents
- Work associated with the use or release of harmful biological agents, radioactive substances, or any substances emitting offensive odours
- Work generating lots of dirt.

Remote work is seen as a convenience for the employee, and for this reason the employer must agree to remote work by certain people. This right has been given to persons caring for a family member. The employer will be able to reject their request for remote work only if it is impossible due to the organisation of the work or the type of work performed by the employee. The new regulations do not define this notion, but examples of

circumstances that an employer might cite when arguing against remote work include:

- Significant financial costs associated with this form of work
- Impossibility of effective teamwork
- The need to use devices located in the employer's office
- Inability to ensure confidentiality of information provided by the employee.

### Introduction and termination of remote work

Like telework, remote work requires an agreement with the employee. Such arrangements can be made when entering into the employment contract or during the course of the employment relationship.

An interesting new feature is the ability to order an employee to work remotely. This possibility exists during the period of a state of emergency, a state of threat of an epidemic, or state of epidemic, and for three months after such state is called off. Also, the employer may issue such an order if it is not otherwise possible to provide safe and sanitary conditions due to *force majeure*.

For the employer to require compliance with such an order, the employee must make a declaration that he or she has the premises and technical conditions for performing remote work. However, the new provisions do not introduce any possibility to check whether an employee who asserts a lack of adequate premises and conditions is telling the truth. Thus employees who don't want to work remotely might easily avoid it. On the other hand, an employer who succeeds in establishing that an employee has lied can take action against the employee, not excluding disciplinary termination.

A significant difference from the regulations on telework is the fairly flexible

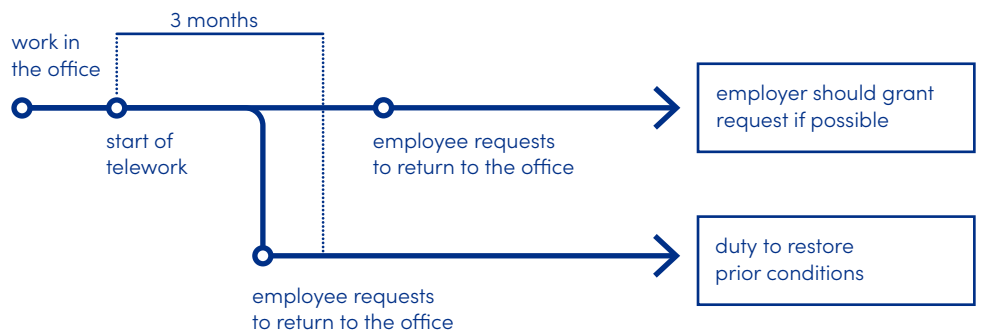
method of introducing remote work during the employment relationship. In this regard, the arrangements do not have to be in the form of a written agreement amending the employment contract. Therefore, remote work can be arranged by the employer and employee verbally or by email.

Under the old provisions, if telework was introduced during the course of the employment relationship, the employee had three months to apply for a return to work in the office. The employer had to accept such a request. If the request was made later, the employer could grant or deny the request (but was supposed to grant the request if possible).

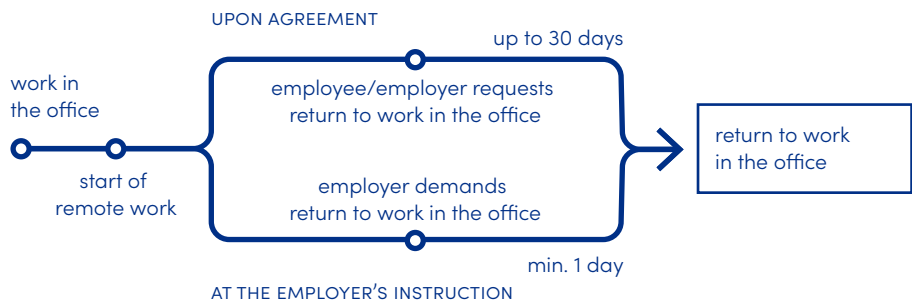
In the case of remote work, either party may request reinstatement of the previous working conditions at any time. This shall take place within the period agreed by the parties, not more than 30 days after receipt of the request, and in the absence of agreement, 30 days after the request was delivered to the other party. The request can be submitted in written or electronic form and does not require justification.

It should be pointed out that if remote work begins as a result of an order from the employer, the employer may require the employee to return to the office at any time, while ensuring that the employee is given at least one day to appear at the workplace. >>

#### TELEWORK



#### REMOTE WORK



## Form of determining the rules of remote work

The regulations for establishing the rules for performance of work outside the office are similar for telework and remote work. These rules can be established by agreement with trade unions, in workplace rules issued by the employer, or in an agreement between the employee and the employer. Additionally, in cases where remote work is performed at the employer's order, the rules for performing remote work may also be specified by order of the employer.

Pursuant to Art. 67<sup>20</sup> §6 of the Labour Code, these documents should define issues such as:

- The group or groups of employees who may be subject to remote work
- Rules for the employer's coverage of costs associated with remote work
- Rules for oversight of the performance of remote work
- Safety rules
- Data security and protection rules.

## Oversight of performance of work at home

The scope of oversight of telework and remote work is similar. An important difference is the possibility for the employer to inspect the place of remote work also in order to verify whether the procedures protecting the confidentiality of business information held by the employer are maintained. This additional area of oversight was introduced following alarms raised by employers pointing out the risk of disclosure of trade secrets in the course of remote work. In this respect, if deficiencies are found, the employer can withdraw consent to perform remote work.

Notably, as in the case of telework, conducting an inspection of remote work must be agreed with the employee.

	TELEWORK	REMOTE WORK
<b>Definition</b>	Work that can be performed <b>regularly outside the workplace</b> using means of electronic communications (within the meaning of the regulations on electronic services)	Work that may be performed <b>wholly or in part at a place designated by the employee</b> and agreed upon in each case with the employer, including at the employee's home, in particular using means of direct remote communication
<b>Who always has the right to work outside the office?</b>	No one has the right to telework	<ul style="list-style-type: none"> <li>• Employee who is the parent of a disabled child</li> <li>• Pregnant employee</li> <li>• Employee raising a child up to age 10</li> </ul>
<b>Where are the specific conditions for performing work outside the office defined?</b>	<ul style="list-style-type: none"> <li>• Agreement with the workplace trade union organisation</li> <li>• Workplace rules</li> <li>• Agreement with the employee</li> </ul>	<ul style="list-style-type: none"> <li>• Agreement with the workplace trade union organisation</li> <li>• Workplace rules</li> <li>• Agreement with the employee</li> <li>• Employer's order</li> </ul>
<b>Scope of oversight in the employee's home</b>	<ul style="list-style-type: none"> <li>• Performance of telework by the employee</li> <li>• Installation, inventory, maintenance, service or repair of equipment entrusted to the employee</li> <li>• Occupational health and safety</li> </ul>	<ul style="list-style-type: none"> <li>• Performance of remote work by the employee</li> <li>• Compliance with health and safety regulations</li> <li>• Compliance with security and data protection requirements</li> </ul>
<b>Opportunity for occasional work</b>	No, but informal home office work often used	Yes
<b>Employer's occupational health and safety obligations do not include:</b>	<ul style="list-style-type: none"> <li>• Construction and modification of buildings</li> <li>• Ensuring the safe and hygienic condition of working premises</li> <li>• Provision of adequate hygiene and sanitation devices</li> </ul>	<ul style="list-style-type: none"> <li>• Organisation of the workplace</li> <li>• Provision of meals and refreshments</li> <li>• Provision of sanitary devices and essential personal hygiene products</li> </ul>



## The employer is also not required to reimburse employees for expenses they incur due to occasional performance of remote work.

### Occasional work

The new regulations take account of the frequent practice in which employees requested to be allowed to work in a home office from time to time. Since such work was irregular in nature, the telework provisions did not apply to it, and there were no provisions specifying the rules for performing such work (e.g. as to compliance with occupational health and safety regulations).

In the case of remote work, it is permissible to perform such work occasionally, up to 24 days a year. In that case, it is not necessary to specify the rules for performing remote

work in workplace rules or in an agreement. The employer is also not required to reimburse employees for expenses they incur due to occasional performance of remote work.

### Occupational health and safety obligations for remote work

One of the significant changes introduced by the remote work regulations is the reduction of the employer's obligations regarding safe and healthy working conditions. First of all, the duty to organise the workstation in accordance with regulations

and ergonomic principles was shifted to the employee. This means that it is up to employees working remotely to ensure that they have a properly positioned desk and a chair that meets the requirements imposed by law.

### Summary

The new regulations on remote work draw on the experience of using telework and work from home in Poland during the period when Covid regulations were in force. While the parliament has not managed to avoid a number of ambiguities, the new regulations are more responsive than the old ones to the needs of both employees and employers. As working from home becomes a permanent fixture in the realities of labour relations, hopefully the new regulations will make it possible to organise the performance of work more effectively. But it is too early to reach a final assessment. ●