COVID-19: PARIS EMPLOYMENT NEWSLETTER

REMOTE WORK: WHAT IS NEW IN 2021?

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In November 2019, a national survey indicated that only three percent of French employees remotely worked on a regular basis.

After a year of the global health crisis, the situation is different as companies have had to accept remote working, which has become unavoidable.

In order to help employers in the implementation of remote work, the French government has published several protocols and practical questions and answers on remote work.

Beyond the health crisis, remote work has been a key topic for companies for several years and is expected to become a more regular practice in the coming years.

REMOTE WORK ELIGIBILITY

During the lockdowns, French employees had to learn to work remotely when their duties allowed it. It can be complicated for employers to determine which functions can be performed remotely.

According to the French Ministry of Labor, companies should proceed with the following concrete method:

1. List the main activities of each function within the company;
2. Evaluate the possible difficulties of remote work for each of the activities identified;
3. Identify the means and conditions to remove these obstacles, such as the supply and installation of secure connection tools, the identification of available time slots for customers, managers in order to consequently adapt the company's agenda (for example, starting earlier in the morning), etc.

In France, remote work at 100 percent remains the rule whenever possible. However, faced to the difficulties of certain employees working from home, the French Ministry of Labor has provided that:

- Since 13 November 2020, for employees isolated during the lockdown, employers are authorized to offer isolated employees (employees with disabilities or in a precarious situation) a return to the office for a specified number of days per week.
- Since 6 January 2021, employees working 100 percent remotely can ask their employer to allow them to return to work at the office for a maximum of one day per week.

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CONCLUSION OF A NATIONAL AGREEMENT ON REMOTE WORK

The global COVID-19 pandemic has changed the habits of work in ways that will impact organizations even in non-crisis situations.

At the end of 2020, negotiations on remote work were initiated between the employers' and employees' trade unions at the national level. A national inter-professional agreement was concluded on 26 November 2020 (the Agreement).

The Agreement is actually an update of the previous national agreement of 2005. The aim of the Agreement is therefore to complete and redefine the legal framework for remote work. This Agreement is a tool to help companies and guide them in the implementation of remote work. It will become mandatory for all employers once an order is published.

The Agreement stipulates that, in principle, remote work should be implemented by consent of both the employee and the employer. However, in exceptional circumstances, the employer may impose telework on the employee.

The Agreement provides for employers to assess the health risks to employees working remotely. In addition, the employee's right to disconnection must be maintained and guaranteed, i.e., employees must not work and/or be contacted after their normal work hours. As this right is mandatory, an employee cannot be sanctioned for not being available after his/her normal work hours.

WHAT ABOUT CONTROLLING EMPLOYEE'S ACTIVITY?

Under French law, employers must control the employee's workload, working environment conditions, and working time notwithstanding the fact that the employees are performing their work from home. However, this is a delicate challenge for employers as monitoring of remote workers should also comply with their fundamental individual rights (respect for privacy, secrecy of correspondence, etc.). The monitoring must comply with the principles of loyalty and proportionality between the goal sought and the restrictions on individual rights.

In concrete terms, employees must be informed in advance of any monitoring methods to be utilized, and the employees' representative body (Economic and Social Committee) must be informed and consulted prior to implementation.

The French Ministry of Labor reminds that no system may lead to constant and permanent monitoring of an employee's activity. Practices such as the use of webcams to monitor employee attendance or excessive calls or the remote recording of actions performed on the employee's computer are prohibited.

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