

LABOUR & EMPLOYMENT 2021

EXPERT GUIDE

THE EUROPEAN COURT OF JUSTICE

OUTLINES CRITERIA ON WORKING TIME AND REST PERIODS - P26

VALIDITY AND ENFORCEABILITY

OF MUTUAL SEPARATION AGREEMENTS IN NIGERIA - P16

IMPLEMENTATION OF NEW LAW

FOR EQUAL PAY FOR EQUAL WORK IN JAPAN - P12

SNAPSHOT:
THE LABOUR & EMPLOYMENT LANDSCAPE POST-COVID - P6

Bulgaria: COVID-19 and the legal framework following the rise of working from home

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The COVID-19 pandemic imposed a variety of difficulties with regard to employment relations. Working at the employer's premises while observing all anti-epidemic measures became increasingly challenging and, in some cases, impossible. In these new conditions, working from home proved to be a viable alternative mitigating many of the negative consequences of the social distancing limitations.

The legal framework

The Bulgarian *Labour Code* extensively regulates remote work. Due to the pandemic, the Parliament passed the *Act on the Measures and Actions during the State of Emergency Declared by a Resolution of the National Assembly of 13 March 2020 and on Overcoming the Consequences*, which – among other issues – amended

certain employment rules as interim measures applicable during a state of emergency or extraordinary epidemic situation, including impacting work from home.

General notes

Working from home falls under the category of distance/remote work defined under the Bulgarian Labour Code as a way to organise work outsourced from the employer's premises through the use of information technology, which work was or could have been performed at the employer's premises before its outsourcing.

In normal circumstances (i.e., outside a declared country-wide state of emergency or extraordinary epidemic situation) the performance of work from home may be performed with the

consent of both the employer and the employee (and agreed in the employment agreement or by amendment to an existing employment agreement).

Due to the pandemic, a simplified procedure for switching to work from home was introduced. During a state of emergency or extraordinary epidemic situation the employer may unilaterally (by way of an order) assign the employee to perform work from home without his/her consent. The change to the place of work does not entail amendment to any other terms and conditions of employment.

Additionally, if the type of work allows for it, an employee who has been in contact with a confirmed case of COVID-19 unilaterally switches to work from home for a 14-day period with a written declaration to the employer. The conditions, execution and control of the switching to work from home are determined by an employer's order.

Work place, equipment & maintenance

Employees working from home must designate a specific area in their home as a working space and properly store and operate with the provided equipment. In case of a breakdown employees must immediately inform the employer in accordance with the procedure agreed in advance or set in the order for assignment of work from home during the state of emergency / extraordinary epidemic situation.

In normal circumstances the issues related to the provided equipment and its maintenance, supply and replacement are stipulated in the individual employment agreement (or the annex thereto). During the state of emergency or

extraordinary epidemic situation the employer sets these rules in the act ordering work from home.

The employer provides at its own expense the supplies, equipment and devices necessary for performing distance work, as well as preventive maintenance and technical support. The employer provides the employee in advance with written information on the liability and the sanctions in case of failure to observe the established rules and requirements.

Health and safety: Accidents at work

Employees working from home have the same rights related to the organisation of work and the health and safety at work as those enjoyed by the employees working at the employer's premises.

The employer is obliged to ensure that the working space satisfies the minimum statutory requirements for health and safety at work (including, for example, light and space) at all times and to instruct employees on the requirements of the organisation of work and of the health and safety working conditions in accordance with the existing regulations.

The fact that the strict health and safety obligations of the employer have not been alleviated for the duration of the pandemic irrespective of the massive switch to work from home, has caused dissatisfaction to employers and discussions with authorities on their assuaging, to no effect. The employers continue to be liable for work accidents during working hours in working conditions which they hardly practically control – a problem that was not expressly dealt by statutory rules even before the pandemic.



Work hours

Employees working from home organise their own working time so as to be available and to work at the time when the employer and its business partners communicate. The employee performing work from home is responsible for correctly recording on a monthly basis the actual time worked.

Employees performing work from home determine their own rest periods within their working time and are entitled to paid annual leave in accordance with the statutory provisions and the individual employment agreement and/or the collective labour agreement.

Remuneration

The amount of the employment remuneration during work from home periods is the one set in the individual employment agreement subject to the provisions of the labour legislation and in accordance with the collective labour agreement and the enterprise's internal salary rules. It is not subject to unilateral modification by the employer (unless increased).

An employee performing work from home continues to be entitled to all additional employment remunerations provided for in the legislation, the internal salary rules, the individual employment agreement and/or the collective labour agreement.

Labour and union rights

Employees working from home have labour and trade union rights equal to on-site employees. They may form their own group, which may choose a separate information and consultation representative, provided that their total number exceeds 20.

The employer should provide information related to performing the distance working and opportunities for participation of employees working from home in the social life of the company and that of the trade union organisation whereof they are members.

Additionally, on-site employees and employees performing work from home have the same access to training and career development op-

portunities, and are subject to the same assessment policy.

Other practical considerations during the pandemic

- *Remote working from abroad*

In an increasingly global world, employees sometimes prefer to work remotely from another country. This has – in the recent years – posed certain mobility issues (work and residence requirements), as well as health and safety hurdles. The Bulgarian legislation so far enables the employer to control such remote work from abroad (by not agreeing to remote work altogether, or not ordering/allowing remote work from abroad in the times of pandemic), however such issues will become more common in the future when assessing employer's needs, employee's flexibility and satisfaction, and statutory restrictions.

- *Digitalisation of employment documents exchange*

The pandemic and the remote working while

observing social distancing requirements have once again highlighted the need of digitalisation of employment documents exchange. The Bulgarian law allows for such exchange subject to meeting various requirements towards the software system and the types of electronic signatures that may be used with respect to different types of documents. However, the pandemic has found the business largely unprepared to follow such rules and relying mostly on paper-based documentation (an approach welcomed by labour supervision authorities). No alleviating rules/exceptions have been introduced in the pandemic situation and businesses have focused efforts on digitalising on the terms of existing legislation.

Conclusion

Bulgarian legislation during the pandemic has taken steps to facilitate employers in the implementation of work from home while at the same time guaranteeing that the rights of the employees will not be restricted by a failure to conform to the bilateral nature of the employment relations. In the most part, however, labour law rules have remained unchanged.