

ТРУДОВЕ ПРАВО; ПРАВО СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ

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TELEWORKING "IS HERE TO STAY"?

Over the last decade advances in Information and Communication Technologies (ICTs) have significantly changed the world of work, making it possible to work anytime anywhere in many sectors and occupations. This is occurring in the context of a growing knowledge-based and service economy where ICTs are key tools for work.

The article emphasizes that the term "telework" encompasses various types of working styles that involve the use of information and communications technology equipment, such as telecommuting, mobile work or self-employed home-based work.

There are two dominant theories in occupational health literature that facilitate our understanding of the relationship between telework and occupational health: the job-demands-resources model in occupational health psychology, and macroergonomics systems theory in ergonomics.

This article analyzes that telework is not without potential negative health and wellness outcomes. In particular, employees: suffer stress and burnout from the feeling they are expected to be available outside of regular hours, regardless of whether they are actually working; feel frustration over unclear boundaries between work and life; feel isolated and disconnected from their colleagues.

It is important to note that if there is to be a significant shift to telework, workers and their managers will need to manage the arrangement consciously. When the same physical space is both home and place of work, the boundary between the two worlds blurs easily, creating conflict and stress. Permanent connectivity of devices promotes an 'always-on'.

However, at the EU and national levels current legislation addresses most of the issues which have been highlighted as potential challenges linked to telework such as working time, health and safety and work-life balance.

Key words: labour law, employee, telework, remote work, rights.

Лягутіна І. В. ДИСТАНЦІЙНА ПРАЦЯ «ЗАПАНУВАЛА НАЗАВЖДИ?»

Протягом останнього десятиліття досягнення в області інформаційно-комунікаційних технологій (ІКТ) значно змінили світ праці, зробивши можливим працювати в будь-який час і в будь-якому місці в багатьох секторах і професій. Це відбувається в контексті зростаючої економіки, заснованої на знаннях і послугах, де ІКТ є ключовими інструментами для роботи.

У статті наголошується, що термін «дистанційна робота» охоплює різні види стилів роботи, які передбачають використання обладнання інформаційно-комунікаційних технологій, наприклад, дистанційна робота, мобільна робота або робота на дому.

У літературі з гігієни праці є дві домінуючі теорії, які сприяють нашому розумінню взаємозв'язку між дистанційною роботою та професійною гігієною: модель робочого місця-потреби-ресурси в психології гігієни праці та теорія макроергономічних систем в ергономіці.

У цій статті аналізується, що дистанційна робота не позбавлена потенційних негативних наслідків для здоров'я та самопочуття. Зокрема, працівники: страждають від стресу та вигорання через відчуття, що вони будуть доступні в неробочий час, незалежно від того, чи працюють вони насправді; відчувати розчарування через нечіткі межі між роботою та життям; відчують себе ізольованими та відокремленими від своїх колег. Працівники повинні співпрацювати з роботодавцем у впровадженні заходів, спрямованих на виконання обов'язки щодо охорони праці задля забезпечення гідних та безпечних умов праці.

Однак на рівні ЄС та на національному рівні чинне законодавство вирішує більшість питань, які були виділені як потенційні проблеми, пов'язані з дистанційною роботою, таких як робочий час, здоров'я та безпека та баланс між роботою та особистим життям.

Ключові слова: трудове право, працівник, дистанційна робота, віддалена робота, права.

Problem setting. The employment relationship is a contractual one and as such must have all the basic elements of an enforceable contract to make it legally binding. The essence of any contract is the terms within it, for they show what the parties intended. Labour

law is one of the fastest moving areas in the law today. The relationship between an employer and employee does not stand still but evolves over the years.

The system of labour rights as a theoretical construction is modified, improved, developed, reflect-

ing the achievements of theory, law and practice. The system of individual and collective labour rights of employees is enriched with the emergence of new rights.

Modern world trends in the transformation of employment and the emergence of its remote forms require theoretical justification. The scientific community of different countries uses different terms, which are synonymous in nature, but in content can reflect different aspects of the manifestation of remote employment. At the heart of all definitions (such as telework, telecommuting, telejob, flexplace, peripheral jobs, work-at-home, home-based work, remote work, eWork) the main characteristics are the form of conduction and means (respectively remote form, ie at a distance, and modern communications as a means).

Analysis of recent researches and publications.

Topical issues of legal regulation of such form of employment is the subject of study of such scientists, as: P. Adrjan, D. Ahrendt, M. Avogaro, E. Baillien, A. Broughton, M. Battaglini, G. Bruomprisco, S. Gr. Carmichael, G. Ciminelli, J. Cerully, R. Chari, C. Chang, C. Criscuolo, D. Cort s-Denia, P. Gal, L. Godderis, A. Judes, M. Koelle, O. V. Llave, T. Leidecker, E. Lopez-Zafra, F. Losma, M. Mascherini, G. Nicoletti, R. Perri, M. Pulos-Maros, S. Ricci, S. Sauter, P. Schulte, M. Sercu, A. Schill, C. Schweltnus, T. Sinclair, T. Vander Elst, A. Van den Broeck, R. Verhoogen, L. Uscher-Pines, T. Weber, etc.

The **purpose** of this article is to review and evaluate the existing research about telework and worker health and well-being.

Article's main body. Specialists of the International Labour Organisation have identified a number of factors that influenced the formation and development of remote labour relations in the labour market, which include: technological, social and psychological, social, institutional, economic climate in the country, opportunities within the firm [1].

The main essence of telework is that employees can perform their duties at a distance from the office, at a convenient time for them, using advanced computer and telecommunications technology, and then electronically transmit the results of their work to the office. Telework is another step taken by organizations to achieve the flexibility needed to comply with human resource management rules. When employers reorganize their business in an effort to increase productivity and reduce costs, they also try to address the issues facing the modern worker and related to the performance of work and family responsibilities, promotion, and numerous stresses. The last decade has seen the rapid development of telecommunications, with many consequences. This gave employers the opportunity to hire workers outside the office in an environment that is more

conducive to tasks that require continuous and sustained concentration.

Significantly, remote work loses the characteristic features of labour relations: the employee is not under the direct control of the employer, so the issues of labour discipline and labor protection (the ability of the employer to provide it) and mutual responsibility of the parties are in question.

At EU level, in 2002, the social partners concluded a Framework Agreement on Teleworking between the European Commission and European trade unions and employers' associations [2].

Remote work increased over the last decade and tremendously in response to the COVID-19 pandemic.

Remote working has exploded in 2020, with estimates suggesting that almost 40% of people employed in the EU started teleworking fulltime as a result of the pandemic. However, there are regional disparities. In 2019, remote working was more common in northern European countries such as Sweden, Finland and Denmark – and these countries have also seen the biggest proportion of workers begin to telework during the pandemic. It's partly because there are more jobs in sectors conducive to remote work [3].

In October 2020, the Pew Research Center conducted a survey about telework among workers in nine industries and found that the majority of workers in four of those industries indicated that their job can be done from home: 84% in banking, finance, accounting and real estate, 84% in information and technology, 59% in education and 59% in professional, scientific and technical services. However, there has not been any research to date comparing worker well-being across occupations and industries in relation to telework [4].

Whereas most jobs in finance, corporate management, and professional and scientific services could plausibly be performed at home, very few jobs in agriculture, hotels and restaurants, or retail could be [5].

As from 1 July 2022, the Luxembourg rules on telework resulting from an agreement of 20.10.2020 between social partners will become unavoidable in practice. In parallel, for companies of the Luxembourg financial sector, the "CSSF Circular 21/769 (as amended by CSSF Circular 22/804) on governance and security requirements in relation to tasks or activities carried out through telework" will need to be complied with. Companies will enter into their "post-pandemic" operational mode, with on the one hand, employees coming back to the office and, on the other hand, employees being officially allowed to work remotely according to the procedures set in place permanently within the companies [6].

In Japan IT giant Fujitsu, for one, launched a "Work Life Shift" program last year that transformed the office into a "collaboration hub" for

hybrid work. It also created more clearly defined job roles, making it easier for its 80,000 employees in Japan to work remotely. Car maker Honda, mobile carrier SoftBank and telecom company NTT Communications have all made similar allowances for remote work. Although not every country may be as keen on remote work as the US or UK, hybrid and remote trends are here to stay. Although not every country may be as keen on remote work as the US or UK, hybrid and remote trends are here to stay [7].

It is worth highlighting that in March 30, 2020 The Law of Ukraine “On Amending Certain Legislative Acts to Ensure Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-2019)” № 540, which regulates flexible forms of work organisation and teleworking, was adopted.

Thereby, the specifics of labour regulation of employees working outside the employer's location have been established in the Labour Code of Ukraine. According to article 60 of the Labour Code telework is such a form of labour organisation when work is performed by an employee at his place of residence or at another place of his choice, including using information and communication technologies, but outside the employer's premises.

It should be noted that performing telework does not entail any restrictions on the volume of labour rights of employees. Thus, the teleworkers must have the same rights as the other employees concerning health and safety, wages, training and representation.

Article 24 of the Labour Code of Ukraine contains a requirement for a written form for concluding an agreement on telework.

But it should be stressed that information and communication technologies are what made the blurring of the space and time boundaries between work and private life possible in the first place, and today's Internet and mobile devices support constant reachability. This makes actual working time difficult to define and measure, especially when work emails are read and answered from home.

However, telework has both beneficial and adverse effects for worker health and well-being. Telework outcomes seem to be regulated by working context and job characteristics, including autonomy and support. The extent of telework also plays a primary role in predicting the job satisfaction and overall health of teleworkers. Employees experienced lower levels of social support when teleworking full-time, versus hybrid or in-office workers, and subsequently lower levels of vigor than workers who had a hybrid or face-to-face work arrangement. That said, employees teleworking eight hours or less may be at a decreased risk of experiencing depression, while those working extended telework hours may experience depressive symptoms at the hand of social isolation and reduced social support [4].

As one might expect, the effects of pandemic-related mobility restrictions are largely driven by knowledge-intensive occupations where teleworking is more feasible. These include occupations such as software development and marketing. By contrast, in occupations such as food preparation or driving, which typically require physical presence at the workplace, the share of advertised telework in online job ads increased very little, confirming evidence from other sources [8].

Here's what's even more remarkable that enterprises are calling employees back to the workplace – but not all of them. This is stoking resentment among employees and employers. By selecting which employees have to return to the office, and which can have flexible working, employers are inadvertently creating off-kilter workplace dynamics. It's leading some employees to challenge such decision making at a corporate level. Enterprises incapable of flexibility will hemorrhage the quality employees [9].

However, high levels of telework adoption might also be counterproductive: some workers start feeling isolated, and communication and knowledge flows within the company could become more difficult. Lack of social interactions and the fusing of private and professional life as the major downsides of teleworking.

Finally, policies should protect employees from excessive teleworking by adapting the legal environment – with a special focus on health insurance coverage for remote working and the right to disconnect. Importantly, regulations should ensure this working arrangement remains a choice made jointly by employers and employees. Dialogue among social partners will be crucial to achieving these goals [10].

The reporting of occupational illness and injury by occupational health practitioners to the relevant health authorities is an important way to track the incidence of occupational health outcomes and monitor the efficacy of workplace interventions. Illnesses and injuries, arising out of or during the course of telework, may be less likely to be reported as occupational diseases and accidents. Occupational health practitioners should assess the work-relatedness of injuries and illnesses among teleworkers and should report cases to occupational health registries while ensuring confidentiality for workers.

Protecting and promoting health and well-being in teleworking requires a comprehensive set of measures to provide a healthy and safe work environment, including adequate organization of the work.

Governments, employers and employees all have a role in protecting and promoting health and safety while teleworking, including ergonomics, mental health and well-being, as defined by the ILO

Convention on Occupational Safety and Health, 1981 and the Promotional Framework for Occupational Safety and Health Convention, 2006 [11].

Enterprises, institutions, organisations will have to rethink cybersecurity too. During the pandemic, many employees were using external video conferencing platforms to communicate and some were found to be prone to hacking [3].

COVID-19 has brought with it the compulsory enforcement, in most cases, of teleworking, revealing the agility and adaptability of companies to the change, with the added complication of its unexpected arrival. Whether through preference or requirement, remote working presents new challenges for companies, above all regarding cybersecurity: 1) protecting data from attacks outside of the company; 2) protecting data from within the company; 3) developing the applicable regulatory framework within the organisation; 4) implementing collaborative tools; 5) providing employees with corporate devices [12].

Conclusions. The establishment, implementation and protection of employees' labour rights will create the conditions for the development of the rule of law, where the rule of law prevails. Legal regulation of the peculiarities of labour regulation of remote employees in the current labour legislation of Ukraine contributes to ensuring compliance, implementation of fundamental principles and rights in the field of labour: freedom of association and effective recognition of the right to collective bargaining; abolition of all forms of forced or compulsory labour; effective prohibition of child labour; non-discrimination in the field of work and occupation, as well as other personal non-property and property rights of employees.

Bibliography

1. Vittorio Di Martino. The high road to teleworking. Promoting decent work, ILO, Safe Work. Geneva, 2001. 143p.
2. Framework Agreement on Telework, between the ETUC, UNICE/UEAPME and CEEP 2002. URL: http://ec.europa.eu/employment_social/news/2002/oct/teleworking_agreement_en.pdf
3. Ceurstemont S. Teleworking is here to stay – here's what it means for the future of work. URL: <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/teleworking-here-stay-heres-what-it-means-future-work>
4. Telework and Worker Health and Well-Being: A Review and Recommendations for Research and Practice. URL: <https://www.mdpi.com/1660-4601/19/7/3879/htm>
5. Dingel J., Neiman B. How many jobs can be done at home? URL: <https://voxeu.org/article/how-many-jobs-can-be-done-home>
6. Teleworking in Luxembourg – Are you ready for 1 July 2022? URL: <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/teleworking-in-luxembourg-are-you-ready-for-1-july-2022>
7. The countries resisting remote work. URL: <https://www.bbc.com/worklife/article/20220511-the-countries-resisting-remote-work>
8. Strengthening Economic Resilience Following the COVID-19 Crisis: A Firm and Industry Perspective, OECD Publishing, 2021.
9. Christian A. The simmering tension between remote and in-office employees. URL: <https://www.bbc.com/worklife/article/20220408-the-simmering-tension-between-remote-and-in-office-workers>
10. Teleworking is here to stay and may raise productivity if implemented appropriately. URL: <https://voxeu.org/article/teleworking-here-stay-and-may-raise-productivity-if-implemented-appropriately>
11. Healthy and safe telework: technical brief. Geneva: World Health Organization and the International Labour Organization, 2021. URL: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_836250.pdf
12. Challenges of cyber-security when teleworking. URL: <https://www.izertis.com/en/-/news/challenges-of-cyber-security-when-teleworking>.