

Mexico Amends the Federal Labor Law

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On January 11, 2021, a Decree was published in the Official Gazette of the Federation, which amends the Federal Labor Law on the subject of remote work by adding Chapter XII Bis, which became effective on January 12, 2021.

The Decree regulates the practice of remote work, which it denominates as “telework,” and defines it as the performance of remunerated activities at locations different than the establishment(s) of the employer, not requiring the physical presence of the worker at such establishment(s). Under this form of work, the contact between the worker and the employer is effected through information and communication technologies, i.e., through services, infrastructure, networks, software, information applications and equipment. The form of “telework” is to be part of collective bargaining agreements and, if there no such agreement, the internal labor regulation.

For purposes of the Decree, “telework” entails work that occupies more than forty percent of the worker’s time at the worker’s domicile (or place it elects as its domicile), but will not cover work which is occasional or sporadic.

“Telework” must be formalized through a written contract which, among other items, must include a description of (i) the nature and characteristics of the work, (ii) the equipment and consumables of the work, (iii) the mechanism for contact and supervision between the parties and (iv) the duration and distribution of the work schedules.

Employers will have certain special obligations related to “telework,” the following being some of the principal ones: (i) to supply, install and maintain the necessary equipment for “telework,” such as computers, ergonomic chairs and printers; (ii) to assume the costs related to “telework,” including paying for telecommunication and electricity services; (iii) to respect the workers’ right to disconnect on completion of the work day; and, (iv) to register workers engaged in “telework” to the obligatory social security regime, among others. One of the principal obligations of employees engaged in “telework” is that they comply with and use the employer’s operating mechanisms and systems for the supervision of the workers’ activities.

The change to “telework” must be voluntary, except in cases of force majeure. Both parties are to have the right to revert to in-person work.

The employer must at all times promote equilibrium between the labor relationship of workers engaged in “telework” and those engaged in in-person work, balancing the worker’s personal life with the availability to perform “telework” during the work day. In addition, employers must guarantee the right of privacy of workers and must respect applicable law on the protection of personal data.

Special conditions for health and safety respecting “telework” are to be established by the Secretary of Labor and Social Security ([Secretaría del Trabajo y Previsión Social](#)) in a Mexican Official Norm (*Norma Oficial Mexicana*) to be published within eighteen months of the Decree’s entry into effect.

The tax implications for both the employer and the worker will have to be analyzed, including the deductibility of the costs for electricity and telecommunication services which the Decree obligates the employer to incur, given that these services would be invoiced in the name of a third party other than the employer, and the possibility that these costs might be considered income to the worker.

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