

A man with a beard and a blue shirt is sitting at a desk, looking at a laptop with a frustrated expression. The background is a bright, out-of-focus office space with a window showing greenery. A red diagonal graphic element is on the left side of the page.

Short guide for teleworkers



OGB-L

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The Covid-19 pandemic crisis achieved what was unthinkable just a few months ago: tens of thousands had to telework to stem the spread of the coronavirus. According to a Statec study, 69% of employees who continued to work during the period of confinement (excluding those who suffered a period of short-time work or those who used extraordinary leave for family reasons to take care of their children) have teleworked, for a part or their entire working time.

This transition to the use of telework on a very large scale, which was also recommended by the government, has often been done in a relatively pragmatic, even improvised, manner. The legal provisions which will be set out in the following pages have not necessarily been applied to the letter. The experiences varied between companies and sectors. However, it is to be expected that more employees and more employers will want to use and introduce forms of telework in the future, at least where it is possible.

In Luxembourg, telework is not governed by law, but by an interprofessional agreement concluded in 2006 between employers' representatives (UEL - Union des entreprises luxembourgeoises) and the nationally representative unions OGBL and LCGB.

The OGBL wants a renegotiation of this agreement with the employers. The agreement certainly already provides a large number of guarantees, but there are certain elements to clarify or add, in particular the explicit definition of a right to disconnect for the teleworking employee, but also some burdens to reduce and elements to adapt to the rapid evolution of new technologies.

Pending such renegotiation, telework will be governed in the coming months according to the legal provisions in place. So there is a return to common law after the exceptional period of the state of crisis.

We will in the next pages try to answer the frequently asked questions concerning the regulation of telework in Luxembourg.



***If you have any further questions or special problems, we would be happy to advise you.
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What exactly is telework?

Telework is a form of organization and/or performance of work, using within the framework of a work contract information and communication technologies, so that work, which could also be done in the employer's premises, is commonly done outside these premises and more particularly at the employee's home.

Who can work in telework?

In theory, telework is open to all employees¹.

However, in practice, many jobs require the physical presence of employees, eg catering, construction, cleaning ..., so in these sectors, teleworking is obviously not possible.

Can the employer force me to telework?

No, apart from exceptional situations like the Covid-19 pandemic. Teleworking is only possible if there is a mutual agreement between the employee and the employer. The employee's refusal to switch to telework cannot be a valid reason for dismissal.



Does the employer have to give me the opportunity to telework if I ask?

No. The transition to teleworking is based on an agreement between employee and employer.

The employer can always refuse to switch to telework for reasons of internal organization or other.

Is telework punctual or regular?

According to current regulations, it is a work performed regularly and customarily. An occasional use of telework is currently not provided for.

Does telework have to be part of my employment contract?

According to current regulations, yes. Telework can be part of the employee's initial job description; the employee and the employer can also agree to an addition to this effect later, in the form of an addendum to the employment contract.

What elements must be mentioned in the employment contract?

Apart from various legal notices which must appear anyway in the employment contract, the following elements must be defined by the employment contract in the event of using telework:

- ▶ the place from which the employee performs telework;
- ▶ a precise description of the function of the teleworker, as well as of the work and tasks to be performed by the teleworker, with, if necessary, the objectives to be achieved; this job description must, where applicable, allow the teleworker to identify her-/himself to the employees performing comparable tasks on the employer's premises;
- ▶ the classification of the teleworker as part of the classification of functions or/and wages of the collective agreement that may apply to the company;

- ▶ the hours and days of the week during which the teleworker must be reachable for the employer, these cannot exceed/go beyond the normal working hours of a comparable employee of the company;
- ▶ the department of the company to which the teleworker belongs;
- ▶ the establishment of the company to which the teleworker is attached;
- ▶ his line manager(s);
- ▶ his contact person(s);
- ▶ the exact description of the teleworker's work tool made available and installed by the employer in the place where the telework is executed;
- ▶ the necessary information relating to the contracted insurance policies, if so, by the employer to guarantee the loss or damage of the equipment due to fire, water damage, theft etc.

Are adaptation periods for the transition from work in the company to telework provided?

Yes, the agreement in force provides for an adaptation period between 3 and 12 months, during which the return to a traditional way of working is at any time possible. The duration of the adaptation period is fixed between the two parties, however during the adaptation period the right to return to traditional work can be requested at any time by the employee without this being a reason for dismissal. Beyond the adaptation period, a return to a classic way of working can only be done by mutual agreement.

Does switching to telework have an effect on working hours?

No. The legal or conventional rules concerning the organization of working time and rest time are not changed by switching to telework. The normal



working time remains 40h/week and 8h/day and the maximum working time allowed 48h/week and 10h/day. However, regarding the provision of overtime, the current regulations provide specific terms to be agreed between the employer and the employee, which should be aligned "as far as possible" with the internal procedures of the company.

If I am teleworking, am I entitled to all the supplements which I benefited from in classic working mode?

In principle yes. Teleworkers have the same rights and are subject to the same obligations under applicable law and collective agreements as workers on company premises. The principle of equal treatment between teleworkers and traditional

workers must be respected with regard to conditions of employment. Any specific treatment of teleworkers must respect the conditions of equal treatment and non-discrimination.

That said, the current regulations exclude benefits in kind that are "intimately connected" to the performance of his task in the premises of the company. Any other benefit in kind which would be lost by switching to telework must be replaced by an equivalent benefit in kind or compensated in cash.

Can data protection issues arise if I process professional data from my home?

Yes. It is the responsibility of the employer to take the necessary measures to protect the data used and processed by the teleworker for professional purposes. The employer has the obligation to inform and train the employee in this regard; the employee has the obligation to comply with these rules. The employer may provide for sanctions in the event of non-compliance.

Can the employer restrict my right to view my private emails or use the internet for private purposes while I am working from home?

Yes, the employer can restrict the use of computer equipment or tools such as the internet or e-mail. He must inform the employee if such restrictions are provided.

Does the employer have to pay for my work equipment?

Yes. In all cases, the employer must bear the costs directly incurred by this work, in particular those related to communications. He supplies, installs and maintains the equipment necessary for teleworking. If, exceptionally, the teleworker uses his own equipment, the employer ensures its adaptation and maintenance. He provides an appropriate technical support service. The employee has the obligation to immediately inform the employer in the event of equipment failure or malfunction and must take care of the equipment entrusted to him.

Is my privacy respected?

In principle, it should be. The current regulations explicitly state that the employer must ensure that the employee's privacy is respected. The employer can only inspect the work equipment made available after having made an appointment with the employee.

The employer's access to teleworker's accommodation must be limited to the location, or even the room, where the work equipment provided is kept. A monitoring device can be provided, within the limits defined by the labor code, only if the use is proportionate to the aim pursued.

Is there specific training for teleworkers?

Yes. The teleworker must receive appropriate training, focused on the technical equipment at his disposal and on the characteristics of this form of work organization.

For the rest, the teleworker has the same conditions of access to continuing vocational training as all the other employees of the company.

What about occupational safety and health rules?

The employer must inform the employee of the rules provided by the company, in particular with regard to the display screens. The employee must respect these rules.

To check compliance with safety and health rules, the competent authorities (eg ITM) as well as the security delegate of the company can inspect the workplace of the teleworker, including the same conditions with regard to respect for privacy as for the employer. The employee can also request an inspection visit himself.

Is telework covered by accident insurance?

Yes, but the use of telework must be explicitly mentioned in the employment contract or in an addendum to the employment contract.

I am a cross-border worker. If I'm teleworking, am I taxed in my country of residence or in the one the company headquarters are?

Bilateral tax agreements exist between Luxembourg and Germany, Belgium and France. These agreements provide that taxation is maintained at 100% in Luxembourg if the following thresholds are not exceeded:

- ▶ Germany: maximum 19 working days per year
- ▶ Belgium: maximum 24 working days per year
- ▶ France: maximum 29 working days per year

In case of exceeding these thresholds (adding the days of telework and activity in any country other than Luxembourg), the salary in relation to all the days worked outside Luxembourg (therefore from the 1st day) is taxable in the employee's country of residence.

This almost always implies a higher tax burden for cross-border workers and therefore greatly limits the attractiveness of teleworking for cross-border workers.

N.B. Temporary agreements have been concluded between Luxembourg, Germany, Belgium and France to neutralize the time spent in telework during the Covid-19 crisis, as of March 16, 2020 for the calculation of the maximum days allowed. For Belgium and France, it has been announced that this exceptional measure expires on August 31, 2020, for Germany the end date is still pending at present.

I am a cross-border worker. Does teleworking affect my social security affiliation?

European regulation n° 883/2004 is based on the principle that the worker is insured in the country where she/he pursues her/his professional activity. According to this same regulation, employees who reside outside the Grand-Duchy of Luxembourg remain affiliated to the Luxembourg social security scheme provided that they do not work more than 25% of their annual working time in their country of residence. If the cross-border worker exceeds this limit, she/he is disaffiliated from Luxembourg social security and affiliated to the social security of her/his country of residence.

The OGBL claims, in general, a renegotiation of bilateral tax agreements with France, Belgium and Germany, and to harmonize upwards the number of days allowed without having fiscal disadvantages between the 4 countries. Thus, the OGBL proposes to align the tax thresholds with the limit of 25% of the annual working time provided for in social security.

