



**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.

Subsequently, and due to the commitment of the OGBL on this subject, a new agreement was negotiated on 20 October 2020, declared to be of general obligation by the Grand-Ducal regulation of 22 January 2021.

This agreement provides some clarification, although there is still room for improvement in favor of employees. It follows that the OGBL will continue to submit its demands to improve the legal and regulatory provisions.

In the next few pages, we will try to answer frequently asked questions about telework regulations in Luxembourg.



***If you have other questions or particular problems, we will be pleased 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.

A teleworker is a person who teleworks according to the above definition.

Telework is considered occasional if it is carried out to cope with unexpected events or when

it represents less than 10% on average of the teleworker's normal annual working time. It is considered regular in other cases. The reference period is the calendar year.

## Who may telework?

In theory, telework is open to all employees<sup>1</sup>. However, in practice, many jobs require the physical presence of the employee, e.g. catering, construction, cleaning..., so in these sectors telework is obviously not possible.

The following are excluded from the scope of the agreement from the scope of the agreement:

<sup>1</sup> A specific scheme for civil servants and public employees, which is not covered by this brochure, is currently under discussion.

- ▶ posting abroad
- ▶ the transport sector in the broad sense (excluding administrative work)
- ▶ sales representatives
- ▶ co-working spaces, in the sense that the work is carried out in a satellite office of the company
- ▶ smart working, in the sense of occasional interventions by smartphone or laptop outside the usual workplace or teleworking location
- ▶ all services provided outside the company to customers.

### **Can the employer force me to telework?**

Apart from exceptional situations such as the Covid-19 pandemic, no. Telework is only possible in case of mutual agreement between the employee and the employer. The refusal of the employee to telework is not in itself a reason for termination of the employment contract. Nor can the refusal justify the use of Article L. 121-7 of the Labor Code (modification of the employment contract) to impose this form of work.

### **Is the employer obliged to give me the possibility to telework if I ask for it?**

No, not at all. The agreement always specifies the voluntary nature of telework, and the switch to telework is based on an agreement between the employee and the employer. The employer can always refuse the move to telework for internal organizational or other reasons.

### **Is telework punctual or regular?**

The agreement now provides for both possibilities, either occasional or regular telework.

### **Does telework have to be part of my employment contract?**

When telework is occasional, the employer must provide the employee concerned with written confirmation.

Where telework is regular, it can be part of the employee's initial job description, or the employee and the employer can agree to an addition to this effect later, in the form of an addendum to the employment contract.

### **What should be mentioned in the employment contract?**

Apart from various legal mentions which have to be included in the employment contract anyway, the following elements have to be defined in the employment contract in case of telework:

- ▶ the place of telework or the modalities to determine this place
- ▶ the hours and days of the week during which the teleworker teleworks and must be reachable for the employer or the modalities for determining these periods
- ▶ the modalities of possible compensation in terms of benefits in kind
- ▶ the monthly flat rate for connection and communication costs
- ▶ the arrangements for switching to or returning to the traditional work arrangement

These elements can also be defined in the framework of the specific telework scheme.

### **What is the specific telework arrangement?**

The specific telework arrangement can be defined at the level of the company or sector in question by means of a collective bargaining agreement or a subordinate agreement. It concerns for example the categories of employees excluded from telework, the places or types of places allowed for teleworking, the rules on health and safety at work, the rules on personal data protection and the contact persons for telework.

It can also be defined at company level in accordance with the competences of the staff delegation, if any. In this case, the introduction and modification



of the specific arrangement is done after information and consultation of the staff delegation or by mutual agreement between the employer and the staff delegation if the company has at least 150 employees.

### **Are adjustment periods foreseen for the transition from company work to telework?**

The agreement does not provide for an adjustment period. However, the transition or return to working in the traditional way can be requested at any time by the teleworker or the employer. The arrangements for this are to be agreed in writing at the time the employee starts teleworking.

### **Does switching to telework have an impact on working hours?**

No. The legal or conventional rules concerning the organization of working time and rest time are not modified by the switch to telework. The normal working time remains 40h/week and 8h/day and the maximum working time allowed is 48h/week and 10h/day. The teleworker's workload and performance criteria are equivalent to those of comparable workers on the employer's premises.

### **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 the applicable legislation and collective agreements as workers on the company's premises.

The principle of equal treatment between teleworkers and regular workers must be respected as regards employment conditions, working time, remuneration conditions, conditions of and access to promotion, collective and individual access to continuing vocational training, respect of privacy and processing of personal data for monitoring purposes in the framework of the employment relationship.

Any specific treatment of teleworkers must respect the conditions of equal treatment and non-discrimination.

This said, the agreement excludes benefits in kind which are "closely related" to the performance of one's task in the company, such as access to a parking space, a canteen, or a sports hall on the company premises. Any other benefit in kind that would be lost by the move to telework must be compensated in accordance with the principle of non-discrimination.

### **Are there any data protection issues if I process professional data from home?**

Yes, it is the employer's responsibility to take appropriate measures to ensure the protection of data used and processed by the teleworker for professional purposes.

The employer has the obligation to inform and train the employee in this respect; the employee has the obligation to comply with these rules. The employer may provide for sanctions in case of non-compliance.

### **Can the employer restrict my right to check my private e-mails or to 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 use. It is mandatory to inform the employee if such restrictions are foreseen.

### **Is my work equipment at the expense of the employer?**

Yes, the employer must pay for the costs directly incurred by the work, in particular those related to communications. The employer provides, installs, and maintains the equipment necessary for teleworking. If necessary, the teleworker can request an appropriate technical support service.

The employee has the obligation to inform the employer immediately in case of breakdown or malfunction of the equipment and must take care of the equipment entrusted to him/her.

### **Is my privacy guaranteed?**

In principle it should be, but the agreement does not explicitly state this.

### **Is there any specific training for teleworkers?**

Yes, the teleworker has to receive appropriate training on the technical equipment available and on the characteristics of this form of work organization. For the rest, the teleworker has the same conditions of access to continuous professional training as all other employees of the company.

### **What about occupational health and safety rules?**

The employer must inform the employee of the company's rules on health and safety at work. The employee must respect these rules. The teleworker is entitled to request an inspection visit from the competent authorities (eg ITM) and the security delegate of the company.

### **Is telework covered by accident insurance?**

Yes, subject to written confirmation by the employer in the case of occasional telework, respectively to the provisions on telework in the employment contract or in an addendum to the employment contract.

## **I am a cross-border worker. Am I taxed in my country of residence or in the country of the company's headquarters if I telework?**

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: max. 19 working days per year
- ▶ Belgium: max. 34 working days per year
- ▶ France: max. 29 working days per year. (agreement in principle to move to max. 34 days; but this agreement has not yet been put into practice)

If these thresholds are exceeded (adding the days of telework and activity in any other country than Luxembourg), the salary in relation to the entirety of the days worked outside Luxembourg (i.e. from the 1st day) is taxable in the employee's country of residence. This almost always implies a higher tax burden for cross-border employees and therefore strongly limits the attractiveness of telework for cross-border workers\*.

*N.B. Temporary agreements have been concluded between Luxembourg, Germany, Belgium and France to neutralize the time spent teleworking during the Covid-19 crisis, from 16 March 2020 for the purposes of counting the maximum days allowed.*

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

The European regulation n°883/2004 is based on the principle that the worker is insured in the country where he/she carries out his/her professional activity. According to the same regulation, employees who reside outside the Grand Duchy of Luxembourg remain affiliated to the Luxembourg social security system on condition that they do not work more than 25% of their annual working time in their country of residence (approximately 1.5 days per week, calculated over 12 months for a full-time job). If the frontier worker exceeds this limit, he/she is disaffiliated from the Luxembourg social security system and affiliated to the social security system of his/her country of residence.

**The OGBL demands, in general, a renegotiation of the bilateral tax agreements with France, Belgium and Germany, and to harmonize upwards the number of days allowed without having tax 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 the social security system.**

\* Note that these tolerance thresholds do not apply to employees of public institutions and establishments if they are resident in France or Germany.