

Domestic Remote Work (Mexico)

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A Practice Note addressing legal and practical considerations in Mexico regarding domestic remote employment within the employee's home country or state. It reviews variations in remote work arrangements, laws that directly or indirectly impact remote work, and best practices to manage domestic remote workers.

Domestic remote work is work done from a remote location away from the employer's central workplace but in the same country or state. Now that remote work options are now widely requested by employees and accepted by companies, employers must understand the applicable legal landscape in Mexico to properly manage remote workers and remote work productivity. This Note addresses those potential legal issues and proposed measures to run successful remote employment programs.

Remote Work Considerations

Effect of the COVID-19 Pandemic

Companies globally were forced to embrace remote employment in 2020 and learned about the many opportunities and challenges of this alternative work arrangement. The shift to remote work, together with evolving laws and regulations, required employers to implement quick changes to established policies, procedures, and practices. These opportunities may not be available in every industry or for every employer and employee yet. However, the previously uncovered benefits of remote work are sufficient to guarantee that it is here to stay.

While this Note considers the effects of the Covid-19 pandemic, it reviews the current era of remote work in Mexico.

Legal and Practical Considerations

Applicable Laws

Mexico did not have any regulations regarding teleworking or remote work in the workforce before COVID-19. During the pandemic, companies provided voluntary home office arrangements for employees to manage and control the workplace as the pandemic and different lockdown measures evolved.

In January 2021, [Mexican Federal Labour Law](#) (Ley Federal del Trabajo)(FLL) was amended to add telework regulations that define remote work or teleworking as work:

- Performed outside of the workplace.

- With the use of information technologies.
- Where the employee works at least 40% of their weekly work schedule remotely.

(Article 330-A, FLL.)

Occasional or sporadic remote work is not considered teleworking under the FLL.

Teleworking is only mandatory in the case of force majeure, for example, the COVID-19 pandemic. Once the cause of the force majeure concludes, employees must return to their normal work arrangements.

The working conditions regulating telework must be in writing.

Employer's Obligations to Teleworker

Employers must:

- Provide, install, and maintain equipment necessary for teleworking.
- Pay wages in the manner and on the stipulated dates.
- Bear the costs arising from teleworking, including payment of telecommunication services and their proportional share of electricity.
- Register inputs delivered by teleworkers in compliance with the provisions established by the [Ministry of Labor and Social Welfare](#).
- Have mechanisms that preserve the security of the information used.
- Respect the teleworker's right to disconnect.
- Register teleworkers to the compulsory social security system.
- Establish the necessary training mechanisms to guarantee the adaptation, learning, and proper use of the information technologies.

(Article 330-E, FLL.)

Teleworker's Obligations to Employer

A teleworker must:

- Take care of the equipment and materials received by the employer.
- Inform the employer the costs for the use of telecommunications services, and electricity for teleworking.
- Comply with safety and health provisions.
- Use mechanisms, and operating systems for the supervision of their activities.
- Obey data protection policies, and restrictions.

(Article 330-F, FLL.)

To avoid the telework obligations listed above, some employers require employees to keep regular office hour arrangements, allowing only one or two days of telework per week.

Employment Status

Teleworking is available for all employee categories (that is, indefinite term employees, fixed-term contract employees, agency workers, and independent contractors) except for employees whose job requires them to always be on site, for example, manufacturing workers.

Rights of the Teleworking Employee

Teleworkers must have the same rights and benefits as employees working on-site. While teleworkers are subordinates to their employer during working hours, they are protected by an implied right to disconnect pursuant to the requirement that employers must comply with and respect rest periods outside the established working time. (Article 330-E, section VI, FLL.) To this end, teleworkers:

- Should not work after completing their agreed shift.
- Have the right to disconnect from technological devices they use for their work activities.

Employers are also responsible for safety, confidentiality, privacy, and health of teleworking employees.

Employment Contracts

For a detailed review of employment contracts in Mexico, see [Country Q&A, Employment Contract Terms in Mexico: Overview](#)

Telework Contract Provisions

Under the January 2021 amendments to the FLL, an employment contract for a teleworking employee must include:

- A description of the working characteristics.
- A detailed description of the equipment and supplies that the worker receives (including the ones related to security obligations).
- The description and the amount of home services the employer must pay because of the telework. The employer is responsible for the cost of telecommunication services such as internet and telephone and should assume a proportional part of electricity services in the employee's home.
- The way the employee and the employer keep in touch.
- The way the employer supervises the employee's labors and the employee's schedule.

(Article 330-B, FLL.)

The parties can add additional terms to a telework agreement setting out the employee's responsibility for the equipment, tools, and resources received from the company.

Collective Bargaining Agreements

If there is a Collective Bargaining Agreement (CBA), teleworking conditions must be negotiated with the labor union and included in the CBA (Article 330-C, FLL). Companies with no CBAs must include teleworking in their internal work regulations.

A CBA can include additional rules on telework (Article 330-C, FLL). If there is no applicable CBA, the internal work regulations of the company must provide telework guidance and requirements (Article 330-D, FLL).

Existing Employees

Moving an existing employee to a teleworking arrangement is considered a change in employment conditions that requires both parties to:

- Voluntarily agree to such change.
- Sign a new agreement, separate from the employment contract.

That agreement must include:

- Terms and conditions for teleworking.
- A reversibility right (meaning that any of the parties can terminate the teleworking arrangements).
- Return to prior office arrangements.
- Conclusion of the special teleworking scheme.

(Article 330-G, FLL.)

For more information on modifying terms of employment in Mexico, see [Practice Note, Changing Terms of Employment \(Mexico\)](#).

New Employees

When recruiting teleworking employees, the job offer should include:

- An established objective with detailed elements of a qualified candidate.
- Clarification as to what profile the employer is seeking.
- Characteristics that the candidate must meet.
- Functions and tasks the employee needs to perform.

- Benefits offered to the employee.

(Article 330-I, FLL.)

The job offer should also exclude discriminatory language based on:

- Gender.
- Sexual orientation.
- Age.
- Nationality.

(Article 330-I, FLL.)

For more information on an employer's obligations when hiring a teleworking employee, see [Work Equipment and Tools](#).

Working Hours

The employee and employer must determine the work schedule, provided it complies with the legal maximum work hours established by the FLL (Article 59, FLL). Regular shifts are:

- Eight hours for a day shift.
- Seven hours for a night shift.
- Seven-and-a-half hours for mixed shift.

(Article 61, FLL.)

The employee and the employer can distribute weekly working hours to meet business needs while also allowing for the required one day of rest for every six days of work. The employer does not owe overtime to the employee as long as the employee works within the legal work shift provided by the FLL (maximum of 48 hours for the weekly day shifts; 45 hours of weekly mixed shift; and 42 hours of weekly night shift) (Article 61, FLL). Employees are also entitled to mandatory rest days (holidays). The parties can agree for the employee to work on a mandatory rest holiday, but even when agreed, the employer must pay the employee twice for any work performed on a mandatory rest day, regardless of salary.

Employees are entitled to a daily break during their shift. The break should be one hour and must be at least 30 minutes. If the break is less than one hour, it is considered effective time worked for the purposes of calculating the maximum daily work shift. Employees must take daily breaks outside the premises of the Company.

These rules apply to any teleworking scheme, and remote employees working more than the above daily and weekly limitations on working hours are entitled to the payment payments.

Work Equipment and Tools

The Ministry of Labor and Social Welfare established the [Official Mexican Standard](#) (NOM-037) to regulate the safety and health conditions of teleworkers. The NOM discusses the ergonomic, psychosocial factors, and other risks that can cause adverse effect on the life, physical integrity, or health of teleworking employees. The standard establishes the obligations of the employer which include:

- Maintaining a list of all its teleworkers.
- Validating the safety and health conditions of the teleworker's workplace(s) by conducting physical inspection with prior authorization from the teleworker.
- Having a written telework policy that covers all aspects of employer regulation and telework arrangements.
- Advising teleworkers of the risks associated with telework, including health, ergonomic, and psychosocial risks.
- Establishing and documenting, where appropriate, the process to implement teleworking arrangements.
- Providing all the tools, supplies, and attachments for teleworking, such as:
 - ergonomic chairs;
 - internet; and
 - printing tools where necessary.
- The conditions for maintaining and safely using work equipment.
- Training teleworkers on workplace health and safety, at least once a year.
- Providing care mechanisms in case of domestic violence.
- Changing the telework to in person work, where appropriate.
- Following up on notices of work accidents.
- When required, sharing documentation of compliance with the NOM-037 standard with the Safety and Hygiene Commission of the Ministry of Labor and Social Welfare.

Employers have the following obligations to their teleworking employees:

- Provide, install, and maintain all the equipment used by the teleworker. For example, computers, printers, and ergonomic chairs.
- Assume all teleworking related costs, including telecommunication services and a proportional part of electricity expenses.
- Keep a record of all the provided supplies for each worker.
- Implement the necessary mechanisms to assure the safety of all company information in workers possession.
- Provide proper training for teleworkers to learn how to use any software and equipment related to remote work.

(Article 330-E, FLL.)

The requirements under Mexico law for the employer to cover the costs of internet, electricity, and other services the employee needs to work from home can make remote work arrangements in Mexico inefficient. Testing and developing best practices together with additional regulation is necessary to improve the efficiency of remote work arrangements.

Fairness, Equality, and Discrimination

Teleworkers may not be discriminated as a result of them not coming to the office. They are entitled to the same benefits, promotional opportunities, and any other rights given to on-site employees. An employer must encourage interaction between teleworkers and on-site employees working at the company's facilities. This promotes equal access and equal treatment in remuneration, employment opportunities, and training. An employer must also consider and reconcile, from a gender perspective, its employees' personal needs and their willingness to telework. (Article 330-H, FLL.)

Management and Productivity

Although employers are allowed to monitor teleworker's productivity by using software or other technology available for such purposes, employers cannot force an employee to keep their camera on during their entire work shift. An employer must not infringe on the privacy of the employee. The use of microphones and cameras to supervise an employee can only be used sporadically or in extraordinary circumstances as required by the position or work and if the nature of the employee's work requires that kind of supervision. (Article 330-I, FLL.) (see [New Employees](#)).

It is important for the employer and employee to include their agreement to monitor teleworking in the employment contract, and for the parties to have a privacy notice in place. For more guidance on employee monitoring in Mexico under the [Federal Law on the Protection of Personal Data Held by Private Parties](#) (*Ley Federal de Protección de Datos Personales en Posesión de los Particulares*) (FDPL), see [Practice Note, Employee Monitoring \(Mexico\)](#).

Benefits, Insurance, Health, and Safety

All employees in Mexico, including teleworkers, must be enrolled with the [Mexican Social Security Institute](#) (IMSS), which provides medical attention to employees as required. Under the [Social Insurance Act](#) (*Ley Del Seguro Social*) ((SIA), there is compulsory coverage of:

- Occupational Hazards.
- Sickness and maternity.
- Disability and Life.
- Retirement.
- Unemployment in advanced and old age.
- Nurseries and social benefits.

(Article 11, SIA.)

If the employee requests medical attention from the IMSS and requires time off work, they are entitled to payment of their salary by the IMSS during their medical leave of absence. A work-related injury is defined as a bodily injury a worker suffers on the occasion or as a result of work performed as an employee.

If the accident occurs at home, the employee must prove the injury occurred:

- During working time.
- At their workplace.
- With or while using work tools.

(Article 156, [General Law of Social Security](#) (*Ley del Seguro Social*).)

The Mexican Labor and Welfare Ministry has enacted NOM-037 to guide employers on how to protect teleworkers health. The employer must ensure teleworkers have ergonomic chairs to prevent posture-related health issues.

Intellectual Property, Information Security, and Data Privacy

An employer can protect its Intellectual Property (IP) and proprietary information by having teleworkers sign NDAs protecting information they have access to while working remotely, such as, passwords, keys, or financial accounts.

Although the teleworking chapter of the FLL does not specifically address IP, the rights of the creator of the work, in this case the remote employee, and of the person who commissions it, the employer, are mainly regulated by the [Federal Copyright Law](#) (*Ley Federal del Derecho de Autor*) (LFDA) and the FLL.

For more information on Intellectual property laws in Mexico see [Practice Note, IP in Employment \(Mexico\)](#)

Both the LFDA and the FLL make a distinction between inventions derived from a labor relationship and work for hire or collaborative work.

Inventions and Works for Hire

If the parties' working relationship is established through an individual labor agreement, economic rights to an invention are presumed to be divided equally between the employer and employee. The employer, however, can disclose the work without the employee's authorization, but an employee cannot do the same.

If there is no written individual employment contract, the economic rights belong to the employee (Article 83, LFDA).

For work to be considered commissioned work, the terms of the contract must be clear and precise, and if there is doubt, the interpretation most favorable to the author prevails.

In connection with works for hire or collaborative works, the employer and employee are free to agree on who has ownership of the economic rights over the invention, which includes the moral rights to carry out the release and collect profits.

For more information on employer obligations to pay remuneration to employee-inventors for creating patentable inventions, see [Practice Note, Inventor Remuneration \(Mexico\)](#).

For more information regarding key legal and commercial issues in relation to Intellectual Property (IP) created by an employee, see [Practice Note, IP in Employment \(Mexico\)](#).

Information Security and Data Privacy

Employers must implement the necessary mechanisms to assure the safety of all company's information in a teleworker's possession. These include having continuous talks and providing training for teleworkers, to raise awareness of the risks that come with accessing information from work devices at home. Employers should implement systems that help keep information safe within the company network, as well as implement passwords and security keys within tools used by employees (Article 330- E, FLL).

Similarly, employers must implement the necessary mechanisms, software, encryptions, or any other available technology to protect the personal information received by the employee working remotely or teleworker.

There must be a data privacy notice in place duly signed by the teleworker. This notice should identify and acknowledge data privacy obligations expected from teleworkers, and how they should treat personal and private data from third parties in the course of their work activities.

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