

# Telework

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The new agreement on telework, signed on 20 October 2020 between the social partners LCGB, OGB-L and UEL, was declared of a general obligation by Grand Ducal Regulation of 22 January 2021, published in Mémorial A No 76 of 2021. As a result, this new agreement is now binding for all companies in Luxembourg, pursuant to Article L.164-8 of the Luxembourg Labour Code.

This Agreement confirms that teleworking is neither a right nor an obligation and requires a joint agreement between the parties. It can be put in place either at the time of hiring or during the performance of the employment contract.

Further to clarifying the legal framework, this Agreement introduces two forms of telework namely “occasional” and “regular”:

- occasional telework applies (i) where telework is carried out to deal with unforeseen events (e.g. in the event of a national lockdown measure following the state of emergency declared during the Covid-19 crisis, in the event of a cancelled flight/train making it impossible for employees to travel, in the event of computer problems at the workplace, etc.) and/or (ii) where telework represents less than an average of 10% of the teleworker’s normal annual working time (reference period calendar year) ;
- regular telework applies in all the other cases.

Common principles apply to both types of telework (e.g. voluntary basis of telework, equal treatment, non-discrimination, right to privacy, social integration, health and safety, information and training, of teleworkers etc.).

The implementation of occasional telework, however, offers more flexibility than regular telework. Notably, regular telework must be agreed in writing between the parties, hence regulating the applicable terms and conditions (e.g. place of telework, hours and days of telework during which the employee must be available, equipment provided to the teleworker, costs covered by the employers, eventual compensation replacing the loss of benefits in kind, etc.). In contrast, occasional telework does not require any particular formalism, even though a minimum written

confirmation is recommended, for accident insurance reasons.

The COVID-19 health crisis has precipitated the massive recourse to telework, without even requesting the employees' prior consent, due to health and safety considerations. Employers who now wish to continue telework on a regular basis one year after the beginning of the crisis, are invited to take all necessary steps to formalise it.

Indeed, the current pandemic situation may no longer qualify as an unpredictable event, despite the appearance of new variants of the virus, so that the more flexible provisions of occasional telework should not apply. It is therefore recommended to sign addendums to the employment contracts in order to obtain the employees' formal consent to exercise the activity in the form of telework (even if it is on a temporary basis throughout the vaccination campaign) and eventually establish an internal policy providing the applicable framework.

Attention is also drawn to the fact that the implementation of an internal teleworking policy or scheme within a company is now subject to prior information and consultation of the staff delegation. The co-decision procedure applies for companies with at least 150 employees. As a general rule, the staff delegation should be regularly informed about the number of teleworkers and any changes therein within the company.

For any further information please contact us or visit our website at [www.elvingerhoss.lu](http://www.elvingerhoss.lu).

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

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