



COVID-19

Legal Insights no. 50

Teleworking scheme

Decree no. 3-A/2021, of 14 January 2021, which regulates the state of emergency decreed by the President of the Republic was published.

According to the present decree:

Teleworking scheme

The adoption of the teleworking scheme is mandatory, regardless of the employment relationship, **whenever the functions in question allow it and the worker has the conditions to perform them**, without the need for a written agreement between the employer and the employee.

The employee who performs his activity through the teleworking scheme has the same rights and duties as other employees, in particular regarding remuneration, limits on normal working hours and other working conditions, safety and health at work and compensation for damage arising from an

labour accident or occupational disease, while retaining the right to receive the meal allowance that was already due.

The employer must provide the work and communication equipment necessary for teleworking.

When this is not possible and the employee consents, teleworking can be carried out through the means that the employee possesses, with the employer being responsible for the necessary programming and adapting to the needs inherent in the provision of teleworking.

The functions shall be considered incompatible with the activity carried out, namely, in the following cases: (i) the employees assigned to public departments that provide face-to-face services; (ii) The employees directly involved in the Portuguese Presidency of the Council of the European Union; (iii) The employees for whom this is determined by the members of the Government responsible for the respective services, under the respective management power.

Whenever it is not possible to adopt the teleworking scheme, regardless of the number of employees, the employer shall organize the hours of entry and exit from the workplaces in a lagged manner, as well as adopt the technical and organizational measures to ensure the physical distance and protection of the employees, applying, with the necessary adaptations, the provisions of Decree-Law no. 79-A/2020, of 1 October, namely:

I - Working time lagged organization

The employer shall (i) organize the hours of entry and exit from the workplaces in a lagged manner, ensuring minimum breaks of thirty minutes up to an hour between groups of employees and (ii) adopt technical and organizational measures that ensure the physical distance and protection of employees, namely:

- a) The establishment of stable work teams, in order to assure that the contact between employees is limited to persons in the same team or department;
- b) The rotation of breaks for rest, including meals, between teams or departments in order to maintain social distancing between employees;
- c) The promotion of homeworking, whenever the nature of the activity allows it;
- d) The use of appropriate personal protective equipment, in situations where physical distance is clearly impracticable.

II - Modifications in working time

For the purposes of organizing working time, the employer may modify working time up to a maximum of one hour, unless such modification implies serious harm to the employee. For that purpose, the employee must be notified at least five days in advance.

In particular, (i) the lack of collective transport to enable the observance of the working hours and (ii) the need to provide unavoidable and essential assistance to the family shall be considered serious harm.

Changes to working hours must remain stable for periods of at least one week and the employer cannot change the working hours more than once per week.

The breach of the rules on (i) the teleworking scheme, (ii) the working time lagged organization and (iii) the modification in working time is deemed a very serious administrative offence.

The present Decree entered into in force on January 15, 2021.

To access the full text of the Decree no. 3-A/2020, please click [here](#).

For further information, please contact us:

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