Remote working reform enters into force

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FAQs

On 11 January 2021 an amendment to the Federal Labour Law was published in the *Federal Official Gazette*, regulating employment relationships under the modality of remote working. This article answers employers' and employees' questions on the reform.

FAQs

What is 'remote working' pursuant to the reform?
The reform sets out that the provisions included therein apply when the following conditions are met:

- services are performed in exchange for a salary;
- work is performed at the employee's home address or in a location freely chosen by the employee; and
- the contact between the employee and the employer, and the supervision exercised by the latter, are carried out primarily through information and communication technologies.

Do remote working provisions under the reform apply automatically to any employee who occasionally renders services remotely?
No, the reform provides that:

- the provisions thereunder will apply when the employee spends more than 40% of their working time under a remote working modality; and
- work that is performed occasionally or sporadically from a remote location will not be construed as remote working.

What special obligations apply to employers that benefit from the services of remote workers?
Pursuant to the reform and with regard to remote workers, employers must:

- provide, install and maintain the equipment that is required to perform services under a remote working modality (eg, computer equipment, ergonomic chairs and printers);
- cover the costs incurred by remote workers pursuant to the rendering of their services under a remote working modality, including the payment of telecoms services and a proportion of electricity costs;
- keep records of the working tools delivered to remote workers;
- implement mechanisms that guarantee the security of the information and data used by remote workers;
- respect remote workers' right to disconnect at the end of their working schedule; and
- implement the training and instruction mechanisms required to guarantee remote workers' adaptation to, learning of and adequate use of technologies.

How must remote working arrangements be formalised?
An individual employment agreement containing specific provisions associated with remote working must be executed.

If there is a collective bargaining agreement in place:

- it must include provisions relating to remote working and a copy thereof must be delivered to unionised personnel rendering services under a remote working modality; and
- mechanisms that allow communication under a remote working modality must be implemented to guarantee freedom of association.

If there is no collective bargaining agreement in place, employers must include remote working provisions in their internal workplace regulations.

Is employees' consent required if employers wish to change them to a remote working modality?

Yes, in order to change an employee to a remote working modality, their consent is required and must be documented in writing. The only exception is in cases of *force majeure*.

Can the parties request to switch back to rendering services under an in-person modality?
Yes, if there was a change from an in-person to a remote working modality, the parties must have a reversibility right in order to return to an in-person modality. The parties must agree on the specific mechanisms, processes and timing required to make effective such a change.

Can employers offer different employment terms to remote workers than those granted to employees working under an in-person modality?
No, except for the specific obligations set out by the reform. Pursuant to the reform, employers must provide equal treatment between remote workers and employees rendering services under an in-person modality with regard to:

- compensation;
- training and instruction;
- social security;
- access to better work opportunities; and
- other conditions regulated by Mexican labour law.

Does the reform introduce flexible hours provisions for remote workers?
While the reform includes no flexible hours provisions, it sets out that employers must use a so-called 'gender perspective' that allows remote workers to balance their personal life with their availability under the remote working modality during the working schedule.

Does the reform introduce special health and safety provisions for remote workers?
While the reform includes no special health and safety provisions, it sets out that no later than July 2022, the Labour Ministry must issue an Official Mexican Standard in connection with the special health and safety conditions applicable for services rendered under a remote working modality, considering ergonomic, psychosocial and other risks that may cause adverse effects on the life, physical integrity or health of remote workers.

When does the reform enter into force?
The reform entered into force on 12 January 2021.

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