

Key information on teleworking



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1. Teleworking in France: what is it all about?

In France, teleworking is considered as a form of work organisation in which a task that could be performed on the employer's premises is carried out by an employee outside these premises on a voluntary basis using information and communication technologies (1). Its regime is provided for by law (2), but also result from a National Interprofessional Agreement (hereinafter "ANI") of July 19, 2005 (3), and more recently, the ANI of November 26, 2020 (4)..

2. How to implement teleworking in France?

Currently, to implement telework within a company, there are three different scenarios. Teleworking may be implemented either (5): by the conclusion of a company agreement; or, failing that, by a unilateral charter drafted by the employer - after the opinion of the Social and Economic Committee ("CSE" i.e., staff representative body (6)) where it exists; or failing that, by an individual agreement with the employee concluded by any means (in most cases by e-mail) (7).

The company agreement not only allows to derogate from the two aforementioned ANIs, but also to enact its own specific rules applicable within the company. Where the unilateral charter does not have the legal scope of a company agreement (impossibility to derogate from the ANI for example) and recourse to the individual agreement is less permissive..

3. Teleworking during the Covid-19 pandemic.

The Covid-19 pandemic experienced for almost a year now has pushed companies, under the strong recommendations from the French public authorities, to resort to telework, tending in theory towards a goal of "100% teleworking" to try to reduce the spread of the Covid-19 virus. Facing a sudden change, companies have had to adapt quickly and resort to a mode of work organization that is often unknown and whose legal rules are not always well understood. .

4. The scope of the new national agreement ("ANI") from November 26, 2020.

This observation prompted national cross-industry representatives, both employees and employers, to meet and review the way telework was conceived in the 2005 ANI. A new National Interprofessional Agreement ("ANI") was therefore ratified on November 26, 2020, complementing its predecessor of 2005, alongside the existing legislative provisions. Pour autant, force est de constater que ce nouvel ANI n'édicte aucune nouvelle obligation et se présente davantage dans le paysage juridique comme un guide de bonnes pratiques à suivre.

However, this new ANI does not lay down any new obligations and is

1. Article L. 1222-9 of the French Labor Code.

2. Law of March 22, 2012, amended by the ordinances of September 2017 and the ratification law of March 29, 2018.

3. National interprofessional agreement (ANI) of July 19, 2005 (extended by the decree of June 15, 2006).

4. National Interprofessional Agreement of November 26, 2020, for Successful Implementation of Telework.

5. Article L. 1222-9 of the French Labor Code, cited above.

6. As recalled in article 11 of the ANI of July 19, 2005, the implementation of telework is part of the modification of working conditions, and must therefore be the subject of a consultation of the Economic and Social Committee.

7. This possibility was opened by the ratification law of March 29, 2018.

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However, this new ANI does not lay down any new obligations and is rather conceived as a good practices guideline to be followed.

The new ANI reminds French companies that the implementation of telework should ideally be the subject of a social dialogue and that the identification of activities that may be the subject of telework should be part of the discussion.

In addition, the new ANI recalls the main principles of access to telework: the voluntary nature of its use, the moment when it can be instituted (at the time of hiring or during the execution of the contract), the possible refusal of the employer which must necessarily be motivated.

It also reaffirms pre-existing obligations, such as the obligation to observe an "adaptation period" allowing each of the parties to put an end to this form of work organization by observing a previously defined notice period. But also, that telework is reversible by mutual agreement.

The new ANI also outlines the necessity to hold an annual interview with each teleworking employee on his/her workload (8).

One part of the new ANI is dedicated to the adaptation of management practices and to the training of managers who hold a key role in the implementation of telework insofar as they are "guardians of the maintenance of the social link between the teleworking employee and the company".

Finally, a section was entirely dedicated to telework in exceptional periods, recalling in particular that the decision to implement telework is within the employer's management power in exceptional periods, but that staff representatives must be consulted as soon as possible on this subject. This agreement also calls for the anticipation of such situations by providing for an agreement determining the terms and conditions for the use of telework in the event of an exceptional period.

5. Teleworking and psychosocial risks ("RPS").

The psychosocial risks ("RPS") linked to teleworking have also been the subject of particular attention in recent government communications, notably in the "National Protocol to ensure the health of employees in companies faced with the Covid-19 pandemic", updated on January 29, 2021 (9). The French Ministry of Labor notably invites companies to pay particular attention to the risk of isolation that could result from the situation of an employee teleworking on a 100% basis.

6. The difficulty to implement telework on a «100%» basis.

Neither the ANI of November 26, 2020, nor the Protocol of January 29, 2021, enacts a legal obligation for an employer to set up telework within his company, even in case of exceptional circumstances or force majeure.

This situation has made it difficult for French public authorities to implement "100% teleworking" in France as there are only legal tools that may incite companies to implement it, but there are no legal means to force them to use it.

8. Article L. 1222-10 of the French Labor Code.

9. National protocol to ensure the health and safety of company employees in the face of the covid-19 epidemic, updated to January 29, 2021.

According to a study published on February 9, 2021 (10), the rate of employees teleworking in France is estimated at 31%, which would correspond, more or less, to the rate of teleworkers in December 2019, before the Covid-19 pandemic.

However, there are disparities according to sectors, with 64% of teleworkers in the banking-insurance sector, for only 10% of teleworkers in industry and commerce. Two-thirds of the people interviewed in this study indicated that they spend all their full time at their usual place of work.

Recently, the French General Labor Directorate ("DGT") noted this decline in the use of telework in a recent instruction dated February 3, 2021 (11).

In this instruction, addressed to the French labor administrations ("DIRECCTE") and labor inspectors, the DGT calls for increased mobilization on the use of telework, which involves, on one hand, strengthening support for employers and employees in developing the use of telework and, on the other hand, strengthening the control of the implementation of telework for all "teleworkable" tasks, which "will be systematic during any control carried out by the control agents of the labor inspectorate", suggesting the likelihood of disputes on this issue in the near future.

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10. Baromètre Malakoff Humanis, P. Dupont, France info, " Le télétravail est retombé au niveau d'avant la crise du Covid-19 ", February 9, 2021.

11. Instruction from the Directorate General of Labor on the orientations and methods of intervention of the labor inspection system (SIT) within the framework of reinforced measures to combat COVID-19, February 3, 2021.