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**LEGAL ASPECTS OF REMOTE WORK IN 2022: WHY
REMOTE WORK SHALL BE A RIGHT INSTEAD OF A
PRIVILEGE**

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ABSTRACT

This paper aims at proving the remote work options to be a valid workers' right rather than a privilege. It is analyzed in the paper, what are the legal circumstances of remote workers in their current state. As well as it is compared to the pre-pandemic position of remote workers. The paper analyzes the position of remote workers in the current labor market, their vulnerabilities, and legal relationships with employers. Finally, it is analyzed how remote work engages with the security of workers' rights and cases of discrimination. The aim of this paper is to prove that the remote option is important enough to make changes in equality and non-discrimination movements to be treated as a workers' right while at the same time not being a burden on the employers. Finally, it is important to notice that this paper concerns only the type of jobs that can be fully performed remotely without any loss of quality or performance issues.

INTRODUCTION

In 2020 the covid pandemic forced the popularity of remote work all around the world. The legal system accordingly has faced challenges of mass movement of workers to home offices and different states responded differently to it.

However, while technologies evolve quickly enough to satisfy the needs of a new work environment, our society can be reluctant to change. Especially older generations who also tend to hold management positions, tend to be untrusting of new technology and avoid using it as much as possible for the sake of comfort and sticking to the “good old ways”. Therefore even while a state recommends moving everyone who is possible to a home office, there is still a possibility for a manager to claim that it is not possible for employees to work remotely. So one can keep subsidiaries in the office simply to avoid unwanted extra administrative work and keep the everyday office routine.

As of today, not a single European country gives employees a legal remedy to fight for necessary remote working. This can be done neither for personal reasons nor for pandemic safety reasons.

So while all over the world remote work tends to become permanent, companies relocate employees to their home offices for at least part of their weekly hours, there is still a big question for the legal regulation of this new working style. More to that, companies run by more traditional people have full opportunities to refuse necessary measures even during the pandemic. On one side of the barricades, there are companies threatened with being unable to control their employees, and on the other - the employees struggling to keep their benefits and organise a work-friendly environment at home.

However remote work has not been discovered only in 2020. With a much less variety of possible jobs and working conditions, remote work had been there in the pre-pandemic world as well. Yet it is important to see if any changes have been made to legislation and what new questions and issues have been arising since more and more people chose home instead of the classic office. The currently existing legislation, both pandemic-related and pre-pandemic ones will be studied in part III of this paper.

The year 2021 has proven remote work to be a great social tendency for a variety of reasons for example eco-friendliness, more opportunities for people with special needs, and even saving the company's money. Therefore the author is convinced that employees shall have at least basic rights to demand relocation to a home office without having special reasons such as pandemic or health conditions. The advantages of remote working and the justification of such rights are reviewed in part IV of this paper.

In this paper, different approaches in European Countries to remote working will be reviewed. Further, this paper will justify the right of workers to demand relocation to a home office and offer legal remedies for potential conflicts between employer and employee.

Additionally, it is important to note in the beginning that the scope of this paper concerns only those workers who can work from home or other remote locations to avoid confusion. Therefore workers whose job is impossible in whole or in part to be done remotely shall not be a subject to discussion in this paper.

Finally, it is important to mention the specifics of terminology. An event of a person working from outside of an office can be casually called in many different ways? Synch as "remoe work", "work from home", "telework". While in casual speech these terms can mean the same thing, it is still important to outline the scope of this paper. With lacking legislation, there aren't many terms related to remote work. However, According to European Framework Agreement there is a definition of "telework", which is defined as kind of work with using information technologies within working agreement, when work which can be implemented on the employers' premises, is implemented outside of it necessarily on a permanent basis¹. Furthermore work-related equipment and expenses (for example, software and hardware, bills and furniture) are to be covered by the employer. For such a teleworker it is required to inform their employer about job safety. Finally, working time regulation is the same as for other employees, working on the employer's premises. In this case, the definition and set of rights and obligations are well set and sufficiently clear, however telework definition is not covering all aspects of remote work, which are to be reviewed in this paper. Namely, this concept does not cover employees working from (literally) home, own place of

¹ Stasiv, O. "Peculiarities of legal regulation of remote work in Ukraine " Wrocławsko-Lwowskie Zeszyty Prawnicze Tom 12 (2021)

living - which is usually not previously equipped with necessary job-related things. It also doesn't cover workers who work remotely and are free to choose their work location. Therefore, home-workers are the first category excluded from this scope. Secondly, the location to work from could be any, for example, one of the most popular options today is coworking spaces which may provide a variety of packages starting from an unfixed place at a desk to a fully equipped fixed desk of one's choice with a set of work safety measures and more. In general, remote workers whose job character doesn't require extensive amounts of hardware or bulky items tend to keep moving between different spaces of their choice, such as public libraries, cafes, and even the middle of a forest as long as there is wifi coverage. And keeping in mind current technology development, there is a significant amount of various specialists who are able to work with a smartphone or a tablet only, let alone a personal computer.

This way different groups of remote workers are excluded from the scope of the above-mentioned definition of "telework". Therefore in this paper, general remote work is to be addressed - not exclusively telework or workers from home offices.

1. RIGHTS OF EMPLOYEES IN EUROPEAN COUNTRIES

1.1 General labor rights in the EU

First of all, it is important to identify who classifies as a worker under EU law therefore to whom all the rights and obligations are applicable as well as who has been excluded from the scope of these provisions.

It is rather often that in western countries legislation clearly separates workers, so to say employees, from independent contractors. So unfortunately while the first ones are the central focus of the provisions, the latter are often excluded from the scope of protection. While the distinctions between employees as workers and independent contractors have been a basic concept in the law of work, in regard to the current topic the division between the two types of workers is much less.² Both can work from home and moreover have to do so during lockdowns, both face the same need for dignified working conditions, both face trouble finding work-life balance and communicating with managers when working from home. In the scope of remote work the two types aren't anyhow different, both face the same struggles. However general legislation considers only employees to be workers. This issue includes Estonia where contract workers receive no health insurance for example and cannot get any help from working inspection in any possible questions.³

Here comes, secondly, the question of EU workers' rights. EU law gives an extremely broad definition for workers including people irrespective of their revenue (if any) and working hours, even those who are searching for work at the moment qualify as workers.⁴ Accordingly, remote workers are included in the scope irrespective of their contract type or working conditions.

Workers in the EU have all the basic rights such as:

² Owens, Rosemary J., *The law of work* / Rosemary Owens and Joellen Riley, South Melbourne (Vic.); Oxford: Oxford University Press, 2007 p 134

³ Barnard, C., *The substantive law of the EU: the four freedoms*. Oxford: Oxford University Press, 2019, 636 p.

⁴ Barnard, C., *The substantive law of the EU: the four freedoms*. Oxford: Oxford University Press, 2019, 233 p.

- health and safety at work: general rights and obligations, workplaces, work equipment, specific risks, and vulnerable workers.
- equal opportunities for women and men: equal treatment at work, pregnancy, maternity leave, parental leave.

As it will be shown later in this paper, the security of these rights is rarely affected by the home office. However, in certain specific cases, additional measures might be needed to take care of the remote employees.

1.2 Comparison of remote work rights in the EU countries

So far none of the EU countries offer employees a right to demand work from home. Yet in some countries, it is more common practice (and was before the pandemic) than in others, and therefore legislation slightly differs in all countries.

For example, in France it is the most common practice, several remote work options are available:

- 1) Permanent work from home means working full time from home,
- 2) Alternating work from home means working part-time from home,
- 3) Telework in co-working spaces which means the employee performs their work in professional spaces with necessary equipment managed by a private operator (other than the employer);
- 4) Mobile telework means working wherever necessary (for example employees who travel regularly).

These 4 forms of remote work can be called generally accepted in all European countries. Depending on a country one type can be more or less widespread than others and the terminology used may also vary.

In France, relocation to any of these options is possible via individual or collective agreement. Generally, in all EU member states, an agreement is required in a free form

(collective or individual, in writing or not), except for Spain and Slovakia where no special agreement is required for relocation. However, moving from the legal world to a practical one it is hard to imagine a small business owner, for example in Estonia, concluding agreements with those employees who are moving to a home office for Covid safety reasons. Especially in cases when nobody knows for how long it will be.

In Poland, the term “telework” is used and in fact, an employee can insist on working from home in 3 exceptional cases:

- 1) Telework is a part of the employment contract
- 2) The employer's internal regulations grant such a right
- 3) If an employee is a parent or a legal guardian of a child suffering from certain disabilities/illnesses

While the first two points can be executed without a special legal provision - an agreement or a company internal regulation can successfully grant the right - this is as close as European countries get to a right to remote work.

In the case of fully remote work employer should equip the workplace and pay the related expenses or employees can buy the equipment themselves and let the employer cover the costs if they agree so. An inspection of work performance is allowed, however, privacy is protected by GDPR as well as in any other European country and the company is responsible for ensuring compliance. Finally, Poland allows a worker’s workplace to be inspected, however, if it is located at the employee’s home prior consent is required. At the same time in the case of a combined work-office schedule, no right for workplace expenses coverage is given.

The Slovak Republic has offered a legal right to insist on work from home only for the pandemic period as long as the nature of the agreed work allows this and there are no operational reasons why working from home is not possible. As well as the employers, during the pandemic, had the right to order the employee to work from home without discussion. As well as other countries, Slovakia offers an option to conclude a remote work agreement between parties.

Again the employer is bound to equip the worker with the required things, however, the employer is not responsible for fulfillment of the ergonomic requirements.

In contrast to Poland, an inspection of a home workplace is generally not allowed and during the pandemic, it was recommended to inspect work performance remotely. However, this seems more of a sanitary measure rather than privacy protection. Nevertheless, there is such an experience provided by the Slovak Republic.

Both Slovakia and Spain have specified that remote and on-site employees are to be treated equally, which is an important notice: remote workers in Spain are specifically to be subject to the same working conditions and any required equipment shall be granted by the company. As well as in Slovakia, an inspection of a home office is not allowed without prior consent and employee is to evaluate their health conditions in accordance with the health prevention service's instructions.

Altogether in most countries rules are the same, however, minor differences are still present. There are also several peculiar moments specified by some countries, but not by others. For example, only Finland notes that employees must be treated equally when deciding who can and who cannot work remotely (still, the remote option is not a right, but can be agreed upon). While in Hungary the employer has unexpectedly full right to inspect a workplace of home-officed employees with only a condition that it does not disturb other inhabitants of the property in question. Surprisingly, not the employees' privacy is paid attention to, but their families or roommates.

2. REMOTE WORK AS A NECESSARY RIGHT

2.1 Why is remote work beneficial?

In 2021 many employers were surprised to find out that despite stressful relocation to home offices and all the hardships of adapting to the new working environment, many of their workers don't want to be back in the office at least full-time.⁵ Lack of privacy during work, concentration issues, higher responsibility for own health at work, deadlines and communication with the teams, troubles finding a comfortable place to work at a small home - all of these issues aren't nearly as horrible to employees as being chained to their office 5 days a week. This leads to 64% of US workers considering quitting if asked to return to the office full-time.⁶ Which leads to incredible amount of conflicts between employees and companies.

Remote work can be beneficial for a variety of social groups. First of all, there are obvious cases of parents of young children who might need more flexibility and more time at home. On one hand, a household with children might be a lot harder to organise a workplace in, but on the other hand, if organised correctly, parents can spend more quality time with their children and pay more attention to house chores with less stress involved. There are more typical reasons why workers may choose the remote option - for example simply for the sake of personal comfort and flexibility. Remote workers can choose either to work from home or any other place: a coworking space, a cafe, a library, or any other place with the most suitable location and conditions. Obviously, a workspace offering a Bouldering wall (Kivi climbing in Tallinn, for example) is much more appealing than a regular office. The remote option is popular among young people as it is promising the ability to work and travel anywhere as long as there is electricity and wifi.

There are however more deep and important reasons why people might be so eager to stay at home, rather than just personal comfort and time-saving. The work-from-home wave of 2020-2021 has shown, for example, that some people might feel uncomfortable working in an

⁵ "Apple employees rally against office working plan", BBC 7 June 2021
www.bbc.com/news/technology-57385999

⁶ "WORK:64% of workers would consider quitting if asked to return to the office full-time", Morgan Smith, CNBC 28, April, 2022
<https://www.cnbc.com/2022/04/28/64percent-of-workers-would-consider-quitting-if-asked-to-return-to-office-full-time.html>

office filled with mainly people of different races, cultures, sexual orientations, or even gender identities.⁷ For such people, a remote or combined working option may be not only a nerve-saving bonus but also a major reason to accept a job. Furthermore, according to CNBC, remote work may be a game-changer for LGBTQ people in the labor market.⁸ The study says for many people remote work means “having greater control of their surroundings and less pressure to present themselves in a certain way.” Moreover, it also concerns the situations where a company is located in a different country or city from their potential employee. For LGBTQ people moving to a less friendly environment may often be a question of safety. And for safety reasons many working relationships may not happen simply because moving for a permanent stay may be dangerous for the employee, especially in less tolerant countries than the USA. Such a situation may occur also because of race or cultural issues.

Finally, there is an obvious case of people with disabilities. It might be too big of a burden for a company to make their office accessible for one single employee which will result in not choosing a disabled person for a job even if they are qualified. As well as it might be too tiring or even impossible for a disabled person to travel daily to the office even if it means a different neighbourhood in their city (depending on the general accessibility of city transportation and streets). Working from home can be a great solution for people with disabilities. However according to a recent article by Stacey Hickox “court decisions regarding remote work as an accommodation [for people with disabilities] shows that employers are still reluctant to allow employees with disabilities to work remotely, even where remote work would be possible”⁹. That means that even after forced relocation to home offices there is still a vast amount of employers who are not accepting the idea of remote work. This example clearly shows that simply forced practice of relocation to a home office isn’t enough to make it widely accepted and therefore a right to work from home is needed.

The above-mentioned reasons mean that the right to remote work has a high chance of opening more opportunities for vulnerable groups of people. Right now many people may lose, not receive, or even be unable to take a given job opportunity because of their specific

⁷ CBS NEWS “Why many Black employees don't want to return to the office” October, 26 2021

<https://www.cbsnews.com/news/black-workers-return-to-office-future-forum-workplace/>

⁸ “WORK For some LGBTQ employees, remote work is a ‘game changer’ for inclusion” CNBC, 22 June 2021

<https://www.cnbc.com/2021/06/22/remote-work-can-be-more-equitable-and-inclusive-to-lgbtq-employees.html>

⁹ Barnard, C., The substantive law of the EU: the four freedoms, Oxford: Oxford University Press, 2019 p 235

social or health conditions. In some rare cases, it may happen to be a case of discrimination, however in fact an average job seeker is not likely to have recourses and simply wish to start a lawsuit against discrimination. Moreover, in most cases, there are simply no grounds for discrimination charges, especially in situations where a person cannot accept a given job offer (being unable to travel because of disability or to move to a potentially unsafe town). It is not discrimination from the employee, but in the end, one can clearly see how certain groups of people are being deprived of the same opportunities as others.

For this reason, a right to demand remote work will give equal work opportunities to less fortunate groups of people. It is important not only for the sake of equality but also for the sake of filling empty workplaces, reducing unemployment, and integrating these people into society.

2.2 Which labor rights cross paths with the right to remote work?

In general, a vast amount of rights-related topics have already been discussed in the previous part. First of all, As it has already been discovered in the previous part, the right to non-discrimination can be ensured by remote work for a variety of vulnerable groups. Additionally, remote work can give more room for equal treatment for men and women.

Furthermore, the right to health and safety at work can significantly cross paths with work from home. Of course, factory workers from the majority of dangerous industries aren't in the scope of this paper. Yet the employer is required to ensure the health and safety of workers, including those who work from home. However, while currently, the majority of remote workers are working from their laptops and mainly sitting behind their desks, there is still plenty of room for ensuring the health and safety of the employees. For example, these topics concern lack of movement and eyesight health.

Deirdre McEvoy states that the employer's responsibilities don't change much with the relocation of employees to a home office. The author stresses that it is most important for the manager to “Communicate, communicate, communicate”¹⁰ with their employees. It is

¹⁰ Hickox, S. A., & Liao, C. (2020). Remote work as an accommodation for employees with disabilities. *Hofstra Labor & Employment Law Journal*, 38(1), 25-92.

important to know to what extent they can and want to work from home, if the workspace is safe and suitable for their needs, if the requirements and tasks are clear, if the communications methods are appropriate, and so on. The employer might need to provide necessary equipment for the home office: most that can be headsets, monitors, or even laptops and ergonomic furniture if the employee wasn't prepared for work from home.

More to that, according to Claudine McCarthy employees working from home are struggling to maintain a work-life balance in cases when they have a family.¹¹ This author also points out that it is recommended to look into childcare options for those employees who have both parents in the family working remotely (however it is not clear how one parent working from an office is going to be of any help doing daycare for the child if presumed both parents have same or overlapping office hours) and also “Rethink categorising paid and unpaid sick and vacation leave.” Instead of dividing options call everything a paid time off for whatever reason. It can be added that the latter would also ease the situation with privacy violations while working remotely: with no need to explain and prove their children's illnesses and detail of situations. It is significantly good option since medical data and family matters are perhaps two of the most sensitive of all different kinds of personal information - and both are overlapping in such occasions. And in addition, it would also save a lot of time for the employees and potentially leave more space for work-life balance.

These are the general related rights of employees that overlap with remote work topics. So far a right to demand remote work is showing itself to be a good solution to security or promotion of the rights.

2.3 Disadvantages of remote work

Perhaps one of the most unexpected and to some even shocking news can be called the tendency of remote workers to pick up two jobs at the same time without telling every employer about the existence of the other one.¹²

¹¹ McEvoy, D. (2020) ‘Work health and safety: Working from home - basic health and safety obligations’, LSJ: Law Society of NSW Journal. Law Society of New South Wales, (71), pp. 84–85.
<https://search.informit.org/doi/10.3316/agispt.20201015038165>

¹² Kelly, J. “The Remote Trend Of Working Two Jobs At The Same Time Without Both Companies Knowing” Forbes 15 August 2021
<https://www.forbes.com/sites/jackkelly/2021/08/15/the-remote-trend-of-working-two-jobs-at-the-same-time-without-both-companies-knowing/?sh=1e8823fd17f3>

Such a way to double your own salary suddenly became popular after massive relocation to home offices. And while switching between two jobs and keeping track of the double amount of tasks without letting either manager know about the situation may sound tiring and even impossible, a survey by Forbes showed that such “overworked” people don’t actually work more than 40 hours per week even with two jobs. It may sound impossible, however, the popular book “The Way We're Working Isn't Working” has shown a lot of room for productivity improvement which could be in fact very much achievable during a lockdown.

Such a situation could happen so massively only in remote work, therefore there aren’t enough precedents of similar employees’ behavior in a pre-covid era.

This whole situation can be viewed from various angles. Unfortunately, it is too early to have a decent analysis of employees’ health (both physical and mental) with such a workload. However, it is possible to make a few notes already. For example, it is hard to imagine an employer who would be happy to know their employee has an additional job at the same working hours even if they manage to complete all the tasks without losing the quality and speed of their work. Yet, there is not a single law prohibiting such behaviors for an employee or prescribing them to open up to their boss about having an additional job. From the point of view of health and work safety, it may be a much bigger burden for a company to care about a double worker. Moreover, in this situation in case of conflict, it would happen that the employee in question appears to be more protected than the company. If a company loses their employee over a double job conflict, they most likely have no immediate substitute and will have to go through a long process of recruitment, perhaps also reeducation and a trial period with a new employee. At the same time, the fired employee doesn’t lose their entire income as in classic company-worker conflicts. A double-worker only loses one of the jobs and yet stays employed, covered by medical insurance and company benefits. They only lose a part of their income.

Such a sudden balance change may need to be regulated further. On the other hand, there is still a question of who shall be more protected in the case of double-workers: the company or their employee? Unfortunately, so far we lack legal procedures on this matter. Perhaps, a clause prohibiting full-time employment with another company at the same time could be a solution for remote workers. It might become a new standard term, however, with such a

clause nothing stops the worker from getting hired as a freelancer and receiving the same amount of work of 40 hours per week. Therefore a single clause in a working agreement may not be sufficient to protect the employees' health and ensure the employer's adequate expectations.

Of course, there are other disadvantages that can be added to overworking. One of these is the disconnection of a remote employee from the rest of the company. During the pandemic, all workers were relocated to home offices and therefore had approximately equal conditions and opportunities. However, in the post-pandemic world where the home office is a right (or a wish) instead of a mandatory requirement, not all people will have the same conditions. No matter how hard the employer will try to even the remote and on-site workers, communication methods are still different. Gregor Thüsing in "European Labour Law" justifies the "right to be informed" for the employees.¹³ However, with remote workers, it may be a lot harder to establish. Remote workers don't have morning coffee together with on-site workers, as well as they don't do occasional small talk, they don't participate in everyday rituals. This separation tends to result in a lack of informal information and therefore disadvantaged positions for the remote workers. For example, if a company is going bankrupt, or planning to fire a big amount of employees, rumours about it will definitely start earlier than the actual announcement happens. This happens because of informal conversation, observance of colleagues, and managers' behaviour - general things that aren't accessible for a remote employee. Therefore in the case of remote workers, the right to be informed is crucial to stay equal with those who work from an office. There is however an important question on how this right shall be ensured. Again, corporate announcements can be mailed to everyone at the same time, still keeping remote workers disconnected. Therefore it would demand regular team events - both formal and informal - for remote and on-site employees to maintain some contact. That could also help both to keep better team building. It would be also most important for newly hired employees who haven't yet established their relationship with the rest of the team. So in this case new measures to protect remote workers are also beneficial for the company's working environment.

Thirdly, there is a big question of remote employees' privacy. Since 1890 We have had an established concept of "the right to be left alone"¹⁴, however with modern-day technological

¹³ Thüsing, G., *European Labour Law*. Bloomsbury Publishing 2013

¹⁴ Charles S. Warren and Louis Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 193-205 (1890)

advancements and high-speed working environment surveillance at workplaces gets more and more intense. When one takes their work home, workplace surveillance takes it to the next level: not an office desk is being watched, but literally one's homeplace. As has already been mentioned in the previous chapter, it is the employer's responsibility to ensure that workers' conditions at their home office are appropriate and suitable for the work in question. This means that the employer is already invading the personal space of their employees because there is not necessarily a separate room serving as an office. Finally, as well stated in "Limitless Worker Surveillance" in California Law Review: "The freedom to safeguard one's private time and personal life should not be deemed an economic good that may be exchanged for the benefit of employment"¹⁵. Workplace Wellness Programs and Productivity apps, communications recordings, and biometrics analysis can be aimed at improving productivity, caring about employees and their health, but in the end, there is the same conflict between the privacy of employees and care about their health¹⁶. The same article finds a suitable solution in The Employee Privacy Protection Act and Employee Health Information Privacy Act (EHIPA), a completely new package of legislation that would clarify employees' sensitive health data and "mandate strong rules regarding both employer and vendor access to health data". However not every company has this amount of programs and cares about their employees, so first of all, it would be appropriate to limit workplace surveillance to its appropriate context-actual areas, namely workplaces and actual work tasks. It would be also wise to leave room for the employee to have a right to object to some measures in case they work from home: for example sound recording or workplace inspections if there are such. In such a case, the employee would confirm their rejection of certain measures "on a paper" and accordingly reject further claims against the employer in this matter. For example, if an employee rejects workplace inspection, they also shall confirm that they will have to take responsibility for their own health and will keep in mind to inform the employer of any extra requirements for equipment or furniture if needed without any extra inspection. So say, if the employee doesn't want the company to take care of their work-related wellbeing, then the employee shall take care of it themselves.¹⁷ It should also be an option to prescribe health- or productivity and time management- related courses to the

¹⁵ Davies, A. (2009). Frontmatter. In Perspectives on Labour Law (Law in Context, pp. I-Viii). Cambridge: Cambridge University Press.

¹⁶ Ajunwa, L., Crawford, L., Schultz, J., Limitless Worker Surveillance, California Law Review 105, no. 3 (June 2017): 735-776

¹⁷ Gera, D. "Legal implications of remote working – opportunity or threat?" 20 May 2020, Lexology.com <https://www.internationallawoffice.com/Newsletters/Employment-Immigration/Hungary/Schoenherr/Legal-implications-of-remote-working-opportunity-or-threat>

employees in such a case. This will make sure that the employees are qualified enough to take on the new responsibility.

To sum up, there is already an inspected area of workplace surveillance problems, while home office people are more sensitive in terms of privacy than others. Generally, the same principles can apply to home-office people with only extra opportunities to object in order to protect the privacy of their homes.

2.4 How can the problems be solved?

As it has been already mentioned, all problems have at least one possible way of solving. First of all the easiest and perhaps the most non-revolutionary method of improving the position of remote workers and reducing discrimination against them would be mandatory meetings for remote and on-site workers. While both can meet in a formal environment if they work under the same supervisor or in the same team, it is probably even more important to give time for non-formal communications which office workers have during lunch and coffee breaks. However, the method of arranging such communication time can be completely different from one company to another: it will differ depending on the percentage of remote employees, size of the company, its multinationalism level, and simply area of work. Therefore it shall be ensured more globally that remote employees shall have an opportunity for informal and formal communication between each other and on-site employees, equal to opportunities of on-site employees.

Secondly, since the company needs to make sure their worker actually works and doesn't overload themselves with another job at the same time which could slow down the process, certain control measures can be arranged. Just the same way as a prohibition of work with competing companies (some time after or during the period of employment) saves everyone from conflict of interest and secures a company's input into an employee, a similar contract clause could balance control over a remote employee's workload.

As it is well put by Occupational Medicine Journal: “Managers may need further guidance in managing workers and building trust for those working away from the normal workplace.”¹⁸

¹⁸ “The health and well-being of remote and mobile workers” J. O. Crawford, L. MacCalman, C. A. Jackson Occupational Medicine, Volume 61, Issue 6, September 2011, Pages 385–394, academic.oup.com/occmed/article/61/6/385/1387389?login=true

3. PRE- AND POST-COVID SITUATIONS COMPARISON

3.1 Is there any legal development? To better or worse?

It is possible to mark March of 2020 as the beginning of Covid lockdowns in Europe. Since then vast amounts of employees have been relocated to home offices in a variety of countries with different working cultures and legislations. A variety of specialists on both low and high management levels, people of different social groups, ages, income levels, gender identities, and so on - all of them have faced forced relocations. As it has been already shown in previous chapters, in less than 2 years our society has gained loads of new experiences concerning literally everyone and specific for every social group. Until now, Covid-related limitations are still present, the pandemic is still not “defeated” and working from home is still not only a comfortable solution for casual working problems but also a necessary measure to prevent further disease spreading (even though being often neglected along with other safety measures).

Yet even today no country in Europe would allow employees to insist on working from home. Whether there is a Covid safety measure in question or simply personal preference for other reasons - an employee cannot insist on staying at or relocating to the home office. Even if the disease spreading is on the rise and an employee has been working from home before, they still have no legal ground to object to the employer’s demand to return to the office, no matter how crowded it is.

Germany may be called one of the most progressive countries in this matter, however, still, no legal changes have been made.

The Federal Government has formulated an occupational health and safety standard that companies in the pandemic should comply with, including the following aspects:¹⁹

- 1) arrangement of the workplace;
- 2) washroom facilities, canteens, and break rooms;

¹⁹ Sagan A, Schüller C. Covid-19 and labour law in Germany. *European Labour Law Journal*. 2020;11(3):292-297.

- 3) ventilation;
- 4) infection control measures for building sites, farms, field service staff, delivery services, haulage, and on-site vehicle movements;
- 5) infection control measures for collective accommodation;
- 6) working from home;
- 7) business trips and meetings;
- 8) ensuring safe distancing;
- 9) work equipment and tools;
- 10) organisation of working times and breaks;
- 11) storage and cleaning of work clothing and personal protective equipment (PPE);
- 12) access to plants and premises by outside individuals;
- 13) rules in the event of suspected cases;
- 14) minimising psychological stress due to coronavirus;
- 15) mouth-and-nose protection and PPE;
- 16) instruction and active communication; and
- 17) preventive occupational health care and protection of high-risk groups.

Such a safety standard is a rather rapid and profound measure regarding the pandemic situation, however, sadly it does not give any insight into work from home. An employee can be relocated to the home office only if both sides agree on it.

However, if before the pandemic courts weren't friendly towards relocation to the home office as a necessary measure, after the pandemic home office is treated with more "trust" since it has proven itself to be an effective instrument to stop the disease spreading.²⁰

Nevertheless, the discussion still focuses on whether it is appropriate to assign employees to the home office as instructed by their company, but not on the rights of employees to demand it. Furthermore, the focus is still on pandemic-related reasons. Therefore there is a very slight movement toward development in the German example, yet it is focused only on a very narrow part of a global cause.

²⁰ Fuhlrott, M., Fischer, K., 'Corona: Virale Anpassungen des Arbeitsrechts', (2020) 36 Neue Zeitschrift für Arbeitsrecht 345, p 349-50.

3.2 What kind of development does society need?

2 years is a short period of time in the world of legislation, yet it is a huge period of time in a modern globalized society rapidly developing and communicating with the help of new technologies. This example of a remote work situation clearly shows how legislative development isn't following the needs of society.

It has been shown in the previous chapters how remote work can be beneficial for both employees and employers, it has also been explained how remote work can decrease the level of discrimination against certain groups of people and ease their access to the labor market. It can be concluded that the home office is a solution not only for the pandemic period but also for the rest of the time. The pandemic has "helped" our society to understand that a vast majority of specialists can work remotely without any significant complications and discomfort, as well as minor problems related to the relocation can be relatively easily solved.

However, the lack of legislation on the right to demand remote work gives employers enough room to "stick to the old ways". One of the most up-to-date examples would be pandemic-related again. If an employee wants to return to a home office for safety reasons (namely crowded office, taking public transport to work, possibility that other inhabitants of the office are unvaccinated or hiding the fact of being sick or contracting with sick people) nothing is stopping the employer from simply denying such a request without any further discussion. Furthermore, a simple request to work from home can rapidly lead to firing the "uncomfortable" employee (or not prolonging a contract with them when the time comes). In case an employee doesn't possess a unique set of skills, it can be easier for a company to simply get rid of a problematic and "demanding" employee and replace them with a new one instead of continuing discussions and bargaining with the demanding employee into staying. Since the employee in such a case is not exercising their rights, but simply demanding extra options - there is no obstacle to such a treatment from the side of the employer.

Again, returning to the question of people with disabilities and other social groups who cannot move as freely as others: an employee can easily refuse to give a job to a qualified employee who wants to and in fact can work from home simply because the employer doesn't want to. There is no need to justify such a decision by high costs or inability to

communicate since there is no right for a worker to work from home. This way the vulnerable groups of people stay discriminated against, while technological advancements have allowed them to work and participate in a labor market equally with others.

In a world where many managerial and generally decision-making positions are held by older generations who tend to be reluctant to new technologies and changes in general, the lack of right to work from home is especially dangerous. The career path for younger workers is already hard enough when they have to compete with older and more experienced workers. The latter's life length and health conditions are high enough to allow them to stay in the labor market for longer and longer time and not necessarily retire at some point. High positions allow these people to keep to their preferred traditional ways of work keeping the above-mentioned vulnerable groups of people away from jobs.

This way, employers still have an option to “not bother themselves with changes” which are needed not only for covid safety reasons but also for improving the current labor market situation in a variety of aspects as mentioned above.

In this particular case of balance between employees' and employers' rights and guarantees, employees are definitely facing a more vulnerable position and need to be protected to a better extent.

4. PROPOSAL FOR NEW LEGISLATION

4.1 What needs to be achieved

As the paper shows, there is a lot of room for improvement. Here are the most important points that should be implemented in any country irrespective of local labor market specifics.

First of all, it is important to establish the right to work remotely in order to have a starting point. It shall be outlined that any worker has the right to work out of the office as long as their work performance doesn't suffer any losses. This way employees whose job character requires them to be present on site will not confuse the companies when discussing terms with employees who cannot perform work remotely.

It could also be noted, that if work can be done remotely only in part and not fully, then the employee shall have a right to remain out of the office for the part of working hours accordingly.

It is also important to keep the employees' health protected. However, if one insists on working from home, it becomes harder for the management to ensure decent and suitable working conditions such as furniture, lighting, and computer placement. While it can be achieved in the office at lower costs (due to standard equipment for all employees) and office space is usually fully controlled by the company, a home office is not so easy. It is almost impossible to control the working conditions of the home-officed employees without invading their privacy as well as in the case of those who prefer coworking and other spaces it would be unreasonably tiring to keep track of chosen locations and approve (or disapprove) them. Therefore since remote work opportunity robs the management of controlling possibility in terms of working conditions, then it shall be specified that the employee is to carry the burden of notifying the management of any assistance they need with organizing their workspace whether it is equipment or health issues. This way the responsibilities and privileges are balanced between the company and the worker.

Thirdly, it might be important for many employers to make sure their employees actually do the work instead of wasting paid time. In such a case, especially concerning workers based on

an hourly fee, various tracking software are popular among companies. Mostly the software automatically recognizes the windows or program the user spends time with and adds it to a calendar minute by minute or creates a generalized infographic. On one hand, it can seem privacy-invading when an employee work from their personal computer rather than one provided by the company, however many of the software options offer a “private time” mode or something similar to allow the employee some privacy. It may seem stressful to be watched by an app, however, it is also unfair to judge managers for aiming to pay only those workers who actually work. Therefore again, if an employee insists on working from home and receiving the privileges accordingly, the employer’s hardship can be fairly balanced with the tracking software of any other time-controlling option: daily reports or scheduled calls and online meetings to keep the workers updated. In addition to working time tracking, such actions can also help the coworkers and managers keep updated on each other’s work progress and news - this way the communication problem mentioned in the previous chapters can be solved as well.

Another part important to notice is the right to be informed. It shall be stated that it is a burden of the employer to keep remote workers informed on any changes and updates equally with the regular ones. Otherwise, it is impossible to keep remote workers on equal terms and remote workers will stay more vulnerable to changes in the company. It shall be ensured that managers organize regular team events to let the workers socialize and keep each other updated. Also, the workers should be able to contact each other directly if their jobs are somehow connected.

Altogether there are many different aspects to be kept in mind concerning remote work. However, most of them can vary to meet the needs of local labor markets and working customs. And since remote work itself make it possible to work in one EU member state while residing in another it would be useless to focus on each country’s legislation. The above-mentioned terms on the other hand would fit in an EU legislation to leave room for member states to decide upon minor country-specific differences.

Such minor differences as to what extent the employer shall compensate costs of home office can be left for each member state to decide since adequate level of compensation depends not only on industries but also on local labor market trends. For example, it would be unreasonable to demand employer compensate their workers an entire set of furniture or gear

if the employee is unlikely to stay in the company longer than 2 years according to industry trend. As well as it would be unreasonable to expect an employee to set up a separate room for work in order to receive any compensation in countries with lower wages or more expensive costs of living premises. So while in some countries young workers can afford to rent (or buy) a home with spare bedroom to use solely as an office, in other countries the same specialists with the same workload tend to share bedrooms due to higher rent costs and lower wages. Therefore the minimum level and conditions of compensation shall be a question to every country separately.

Finally, measures such as preventing a worker from taking double jobs has no reason to be especially established as a employer's right, since it is already a common practice in industries with high competition. The same is for keeping remote employees informed and treated equally with others: there is no possibly single solution suitable for both big and small companies, for companies with different percentage of remote employees and different industries. Only the general principle can be established, while further every company will have to find their own ways to follow it.

To sum up, the main principles are the following:

- 1) An employee has a right to demand a remote work option as long as it is possible to complete the workload fully without any losses and their work performance doesn't suffer from relocation to a home office or any other remote workplace
- 2) If only a part of work can be performed remotely, an employee shall be granted a right to remain out of office for the part of time accordingly, as long as it doesn't damage work effectiveness
- 3) An employee working (in full or in part) remotely shall be responsible for informing the employer about any health related needs and maintaining their own health at workplace
- 4) An employer accordingly shall be responsible for providing such an employee with reasonable compensation of work-related equipment costs
- 5) An employee working (in full or in part) remotely shall be treated equally with other employees and receive equal pay for the same work done
- 6) Remote employees shall be informed equal with other employee and shall be updated on any new information they could miss from the office

CONCLUSION

In conclusion, this paper has reviewed the concept of remote work from different perspectives. It turned out that relocation to a remote option, whether it is a home office or an undefined location of the employees' choice, can bring a lot more to the table than simply employees' comfort and freedom of movement. It appears that remote work can be an option to ensure safety and equality, maintain work-life balance, and provide more opportunities to both employer and employee. And even to provide an extra sustainability action for companies.

However, as in any other employment-related matter, the employee is the one in need of more protection and guarantees rather than the company. Surprising or not, regardless of all the mutual benefits (which may seem more significant to employees, the more vulnerable - the more significant accordingly) majority of issues stopping the possibilities of remote work arise from the side of employers only. While employees are more willing to take extra risks and responsibilities upon themselves and put aside the hardships of home office. In addition to fear of losing control over their own workers, companies fear delegating the obligation of identifying work safety issues. There is also an important issue arising: an extended need for effective communication between managers and specialists is needed in case of remote work. And finally, a simple human factor is a major dealbreaker in most cases: if management is not willing to change their casual ways, learn new methods of effective communication, or support remote work options - there is so far no way to make them no matter how discriminating and globally unprofitable the decision is.

Remote work was not invented in 2020 with the start of the pandemic, it has been used as a solution (mainly for cheaper labor) for many years before the unexpected yet effective mass spreading. Nevertheless, during the last 2 years, there has been no significant development in legislation as to the rights of the remote workers. The only available options differ from state to state, yet they offer a limited amount of legislation that is too far from covering the basic needs of society. One could say that in this case, remote workers are not a topical issue to work on, however, it has been proven the opposite. All over the world companies and employees have been having conflicts about coming back to offices since the first wave of

the pandemic “ended”. The conflicts exist, the workers are unprotected and the companies are let to act however they find suitable on this topic.

It is already a general rule that technologies and societal needs develop faster than laws. Yet two years is a long time in a period of a regular worker’s life, enough to suffer the consequences of companies abusing their powers over the employees. It is also a bit paradoxical that technologies, the same as those providing the possibility for remote work, could also speed up the legislative process since, after all, both are bound to communication.

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