

Client Alert

Belgian "Work from Home" Legislative Patchwork Now More Complex Following Supreme Court Decision

October 30, 2020

In our recent alert [*How to Determine the Best Work from Home Strategy for Your Company with Belgium Back in COVID-19 Mandatory Telework Mode*](#), you will find a table summarizing the three recognized forms of telework under Belgian law.

When it comes to structural telework (as opposed to occasional telework or COVID-19 telework at home), an agreement in writing (employment contract or addendum) must be entered into prior to the start of the telework. Article 6 of CBA n° 85 lists the provisions that should be included (frequency of telework, periods of availability, working place (home address or other), etc.).

However, on October 5, 2020, the Belgian Supreme Court ruled that the fact that an employer and an employee did not enter into an agreement in accordance with article 6 of CBA n° 85 did not necessarily mean that a system of structural telework had **not** been put into place.

The employee in the case concerned claimed an indemnity in accordance with article 119.6 of the Employment Agreements Act on "homeworkers" (*huisarbeiders* in Dutch, *travailleurs à domicile* in French). The employer contested this claim, arguing that the employee was teleworking in a situation where no homeworkers' indemnity was due. The Labor court agreed with the employer, on the basis that there was no structural telework agreement as required by CBA n° 85 and, hence, no telework. The Supreme Court has now overturned this judgment.

This Supreme Court decision demonstrates just how important it is for employers to put in place a telework policy and determine clear rules on indemnities and cost reimbursement.

Note that the above does not relate to the current mandatory COVID-19 rules on telework at home, where no individual agreement between employer and employee is required. The facts presented to the Supreme Court date from before the COVID-19 pandemic.

Our team assists clients with the drafting or review of telework policies and employment contracts/addenda determining telework terms. We help our clients to define the best work from home strategies for their companies. We also continue to closely monitor all COVID-19 developments, and we are available to help companies through this crisis in the best possible way.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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