

# CLIENT ALERT

## How to Determine the Best Work from Home Strategy for Your Company with Belgium Back in COVID-19 Mandatory Telework Mode?

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Since October 19, 2020, new Belgian rules have once again made it obligatory for most employees to “telework at home” as much as possible.

The latest Belgian rules passed in the fight against COVID-19 state that telework at home must be the general rule for all companies, organizations and services where employees are in a position that allows for remote working. However, the rules do recognize that continuity of business operations, activities and services must be assured, and the legislature has acknowledged the importance of employees maintaining a connection with both their colleagues and the company. Hence, employers are allowed to schedule limited, well-organized return-to-the-office moments for homeworkers provided they respect all the health and safety measures.

Is your company considering implementing a telework policy or updating its current policy? The table below, which summarizes the three recognized forms of telework under Belgian law, can be your starting point.

	Structural telework	Occasional telework	COVID-19 telework at home
Concept - example	Monday Tuesday Wednesday Thursday Friday  The employee works one fixed day from home. On the other days, the employee works in the office.	  The employee exceptionally works from home for personal reasons (e.g., the handyman needs to fix the heating at the employee’s home) or there is <i>force majeure</i> (e.g., bad weather conditions and related traffic risks).	  Mandatory/highly recommended work from home in the context of the prevention of the spread of COVID-19.
Legal grounds	National CBA 85 on telework (2008)	Act on flexible and workable work (2017)	Ministerial decrees concerning the prevention of the spread of COVID-19 (2020)
Voluntary?	Yes. Based on employer’s and employee’s consent.	Yes. The employee does not have an absolute right to	No. Rules imposed by the Belgian government.

	The employee does not have an absolute right to structural telework. The employer cannot oblige structural telework.	occasional telework.	
Individual written agreement with employee?	Yes, mandatory to have an agreement in writing (employment contract or addendum) prior to the start of the telework. CBA lists provisions to be included (frequency of telework, periods of availability, working place (home address or other), etc.).	No obligation to have an agreement in the employment contract/addendum. However, a reasonable time prior to the occasional telework (the amount of time depends on the circumstances), the employee should request the telework and both parties should agree on the terms of the telework (IT equipment, availability, etc.).	No obligation to have an agreement in the employment contract/addendum.
Company policy/Work Rules update required?	Not mandatory, but highly recommended to determine your company's telework rules and practices in a policy.	Not mandatory, but if the company decides to fix the rules by company CBA or in the Work Rules, the law provides the mandatory provisions.	Not mandatory, but it can be useful to put some rules and practices in writing in light of the continued mandatory telework at home.
Employment conditions	Teleworkers have the same collective rights (e.g., the right to have access to an employee's representative (a union member)) and individual rights (e.g., the right to advancement and training opportunities) as the other employees working from the employer's offices.		
IT, communication means and tools to be provided by the employer - Cost reimbursement by the employer?	The employer must provide the employee, at home (or at another chosen location), with all communication means and tools necessary for the performance of the work (e.g., a laptop, a phone, a printer, etc.), and keep it operational.  If the employee has to use	No mandatory cost reimbursement, but employers have some (social security/tax friendly) options to reimburse costs.  The so-called office allowance of 129.48 EUR per month to cover the costs of small office equipment, as well as heating and electricity costs (see below) can be granted free of social security contributions to all employees who work from home following the government measures.  In addition to this allowance, the employer may reimburse the following expenses (free of social security contributions, if the limits	

	<p>own tools, the employer shall bear the costs related to the telework (e.g., phone and internet fees and necessary hardware and software to be installed, maintenance of the tools). No social security contributions are due if the threshold of 10% of gross salary (limited to the portion of salary related to telework) is respected.</p>	<p>are respected):</p> <ul style="list-style-type: none"> <li>• Use of own PC - a lump sum of maximum 20 EUR per month</li> <li>• Use of your own Internet connection - a lump sum of maximum 20 EUR per month</li> </ul> <p>Other expenses (use of own telephone, purchase of a screen or scanner, etc.) may be reimbursed if based on actual costs (no lump sum foreseen).</p>	
<p>Employers can grant a lump-sum tax friendly telework allowance of up to 129.48 EUR per month, provided that employees work at least five days per month. Other allowances, such as 20 EUR per month for the costs related to the use of the own computer and 20 EUR per month for the costs related to internet connection, can also be granted without tax contributions.</p>			
<p>Costs of heating, electricity, etc. to be reimbursed by the employer?</p>	<p>Not mandatory, but the employer may do so (and this can be beneficial in the context of employer's cost management given the tax/social security treatment of such cost reimbursement).</p>	<p>Not mandatory.</p>	<p>Not mandatory.</p> <p>Social security and tax friendly option for employers to reimburse using the office allowance of 129.48 EUR per month.</p>

Rules and practices on health and safety, occupational health accidents, data protection, etc. can also be detailed as part of a telework policy. Please note that if you are considering implementing structural telework, the representatives of the employees (Works Council/Trade Union Delegation) concerned should be informed and consulted.

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.

**Emmanuel Plasschaert**

Partner – Brussels

Phone: +32.2.282.4084

Email: [eplasschaert@crowell.com](mailto:eplasschaert@crowell.com)

**Evelien Jamaels**

Counsel – Brussels

Phone: +32.2.214.2814

Email: [ejamaels@crowell.com](mailto:ejamaels@crowell.com)

**Stefanie Tack**

Counsel – Brussels

Phone: +32.2.282.1848

Email: [stack@crowell.com](mailto:stack@crowell.com)

**Adrien Moureaux**

Associate – Brussels

Phone: +32.2.214.2872

Email: [amoureaux@crowell.com](mailto:amoureaux@crowell.com)