

CLIENT ALERT

New *Ad-Hoc* Belgian Framework for Telework during COVID-19 Pandemic

Jan.29.2021

The Belgian government body responsible for checking that all employment rules are being correctly followed recently announced that only one in five Belgian companies is respecting the current rules on compulsory or recommended teleworking as imposed by the government to help fight COVID-19. Also, many companies still have no telework arrangements in place. In response to this issue, the National Labor Council has now agreed a new collective bargaining agreement (CBA no. 149) that is intended to better stimulate and encourage telework. It will remain in force until December 31, 2021.

What effect will CBA no. 149 have in practice? Where previously no agreement between the employer and the employee was required, CBA no. 149 creates an *ad-hoc* framework to be complied with by all companies that have not yet put any telework arrangements into place.

Content of CBA no. 149

1. Which companies must comply?

CBA no. 149 applies to all companies that do not already (since January 1, 2021) have telework arrangements in place under pre-existing rules (CBA no. 85, or the Law of March 5, 2017 concerning workable and agile work). In other words, CBA no. 149 does not apply to those companies that already have a company-level CBA on telework, individual telework agreements and/or a telework policy concluded within the company prior to January 1, 2021.

2. What obligations does it impose?

CBA no. 149 obliges companies to determine specific telework arrangements for each teleworker by either (i) concluding a company-level CBA, (ii) amending the existing work rules, (iii) concluding individual agreements or (iv) drafting a telework policy.

The telework arrangements must include, among others, information on the general principles that apply to telework, a framework to clarify certain aspects of the telework as applicable within the company (in order to ensure legal certainty for each of the parties and the smooth running of the telework arrangements), and information with regard to employee wellbeing at work (related to the telework).

3. What rights do employees have?

When setting up the telework arrangements, the employer must take into account that the teleworker should be able to enjoy the same rights and obligations with respect to working conditions as those applied when working at the company's premises. The teleworker must be informed of any specific terms and conditions of employment supplementing or derogating from those applied when he/she works at the company's premises.

In addition to their individual rights, teleworkers have the same collective rights as when they work at the company's premises (*i.e.*, they have the right to communicate with the employees' representatives and vice versa; the employees' representatives must be provided with the necessary facilities to communicate with the teleworkers, *etc.*).

4. What specific content should be agreed upon?

The following specific elements should be discussed and agreed upon in relation to each teleworker and to the extent necessary:

- **The applicable working time**

The teleworker's workload and performance standards are to be the same as those applied when working at the company's premises. The teleworker should organize his/her own work within the working hours applicable in the company. This means that, in the absence of specific agreement to the contrary, the teleworker should follow the work schedules which he/she would have otherwise had to respect.

- **The availability of the teleworker**

The times and periods during which the teleworker must be available during the working hours applicable within the company should be specified, in particular to take into consideration the teleworker's work-life balance. The means for contacting the teleworker can also be specified.

- **Monitoring of the teleworker**

The employer can exercise appropriate and proportionate control over the teleworker's performance. The teleworker should be informed of the manner in which such monitoring is to be carried out by the employer, and receive information about the company's rules on data protection and the restrictions and sanctions related to the use of IT equipment and tools. The monitoring should in any event be carried out in a manner that respects the teleworker's privacy and is in compliance with the GDPR.

5. What technical and remunerative aspects should be agreed?

The telework arrangements must also include details on the following aspects:

- The provision by the employer of the equipment and technical support necessary for telework (*e.g.*, the provision of a computer);
- If the teleworker uses his/her own equipment, details of the reimbursement or payment to be made by the employer relating to the cost for the installation of the relevant software programs and the relevant operational, maintenance and depreciation costs.
- Any additional connection costs.

The abovementioned agreements with regard to telework-related costs should take into account any payments made to the teleworker by the employer under a global framework set up during the COVID-19 health crisis.

6. Further details regarding well-being at work

As briefly mentioned under point 2. above, the teleworker should be informed of the company's policy on wellbeing at work in relation to telework. More specifically, teleworkers should receive information and guidelines from the employer on protective measures, such as on the proper use of display screens and the available IT support. The psychosocial dimension and health aspects related to telework should also be considered and the employer is required to take appropriate measures to maintain the good health and prevent the isolation of teleworkers from their colleagues and the company. Among other things, the employer can schedule well-organized and limited "return-to-the-company" opportunities, provided they respect the applicable sanitary regulations.

Final Remark

The Minister of Employment has expressed his intention to initiate a thorough evaluation of the existing regulations on both structural and occasional telework, and on disconnection from work. We are following this closely and will bring you news of any further developments as they unfold.

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

Evelien Jamaels

Counsel – Brussels

Phone: +32.2.214.2814

Email: ejamaels@crowell.com

Stefanie Tack

Counsel – Brussels

Phone: +32.2.282.1848

Email: stack@crowell.com

Adrien Moureaux

Associate – Brussels

Phone: +32.2.214.2872

Email: amoureaux@crowell.com