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HOME OFFICE – STILL CURRENT TOPIC

BASIC RULES AND PITFALLS OF SETTING UP HOME OFFICE MODE:

- **Work from home (home office)** or distance work (telework) (hereafter referred to as "**home office**") has become very widespread in the last two years and has become a common way of organizing work from a hitherto underused employee benefit.
- Nevertheless, **the existing home office legislation** remains very **brief**. It is contained in only one provision of Act No 262/2006 Coll., the Labour Code, as amended (hereinafter referred to as the "**Labour Code**" or "**LC**"), namely Section 317 of the LCA, which in practice gives rise to a number of ambiguities and problems.
- The home office was hastily introduced by many employers, often only based on a verbal agreement with the employee.
- **When introducing home office mode, in particular following points should be borne in mind:**
 - **defining the place of the work outside the employer's workplace:** The employer should carefully consider from which places(s) he will allow his employees to work. This means whether it should be limited, e.g. to the employee's place of residence or whether it should also be allowed from other locations, e.g. the employee's cottage or even from public places, e.g. an in-

ternet café. Among other things, this definition will have a major impact on the employer's ability to fulfil his statutory OSH obligations.

- **determination of the method of scheduling the employee's working hours:** The employee may schedule his/her working hours himself/herself (within the meaning of Sec. 317 of LC) or his/her working hours may continue to be scheduled by the employer. This distinction is of particular importance because in the first case the employee is not entitled to certain obstacles to work, overtime pay and public holiday pay, while in the second case the employee is subject to the same rules regarding obstacles to work and overtime pay and public holiday pay as if he or she worked at the employer's workplace.
- **the employer's ability to control the employee's work:** this will depend on the way the working hours are scheduled (see above). If the employee schedules his/her own hours, the employer's ability to control the work will be significantly limited (e.g. only during an agreed limited period of time when the employee will be required to be available on his/her work email or phone for the purpose of entering or submitting work). Where working hours are scheduled by the employer, the employee may be checked throughout all scheduled working hours.
- **occupational health and safety** (hereafter referred to as: “**OSH**”): As the Labour Code does not provide any special rules in this area, the employer has the same obligations towards the employees working in the home office mode as towards the employees working at his/her work-

place. However, it will be very difficult in practice to comply with all OSH requirements in a home office mode. Above all, the employer should properly **train** his employees. In theory, the home office workplace should also be regularly inspected by the employer. An alternative to physical inspections can be a so-called **remote inspection**, i.e. the employee photographs or films his/her workplace and let the employer to pre-approve it on the basis of this documentation. The employer's OSH obligations can also be partially replaced by, e.g. an **affidavit** from the employee confirming that his/her workplace in home office meets all OSH requirements.

- **liability for accidents at work:** When setting up the home office mode (in particular when defining the place of work), the employer must be aware that he is liable for accidents at work in relation to home office employees to the same extent as to his employees working in his workplace. It is therefore important to train employees on how to prevent and deal with accidents. As the employer has a duty to investigate the circumstances of the accident, it is advisable to secure the employee's consent to enter the employee's home/place of residence for such cases in the home office agreement.
- **reimbursement of costs connected with the performance of work in a home office mode:** With regard to the fact that the dependent work must always be carried out at the employer's expenses, the employer is also obliged to reimburse the employee for costs incurred in connection with home office work. This may include costs for electricity, water, heat, internet, wear and tear on the desk, chair, etc. The employee cannot validly waive these costs. However, under

current legislation, reimbursement can only be made on the basis of the employee proving the actual costs incurred, which can be very difficult in practice. It may be difficult for the employee to distinguish which costs and in what amount were incurred in connection with the performance of his/her work and which were incurred for private reasons. The possibility of paying costs in a lump sum is, for the time being, allowed only in relation to wear and tear of work equipment.

- **protecting confidential information and personal data:** The employer should require that the employee working in the home office mode also protects the data to which he or she will have access, e.g. ensuring that he or she only works in a place where his/her family members are not present, etc.
- **delivery of documents to the employee in home office mode:** The Labour Code does not provide any specific regulation in this area either, so its general rules shall apply. Pursuant to Sec. 334 of LC, the employer is obliged to deliver certain important documents to the employee primarily at the employer's workplace in person in his/her own hands, but if the employee works in the home office mode for a long period of time, any of the other methods of delivery may be used, i.e. wherever the employee can be found, via an electronic communications network or service, via a data box or a postal service provider. However, these methods of delivery require the employee's cooperation, which can sometimes cause difficulties in practice.

- **negotiating the possibility to terminate the home office agreement:** In case the home office arrangement is not successful (e.g. the employee breaches his/her obligation to work only at a place approved in advance by the employer), it is advisable to negotiate in the agreement the possibility to terminate the home office arrangement, e.g. by giving the notice, including the notice reasons and the length of the notice period.
- Clearly setting out the rules, which would be captured in a **written agreement** between the employer and the employee and, where appropriate, **in the employer's accompanying internal regulations**, can therefore only be recommended, as this may prevent later problems or misunderstandings between the employer and the employee. **So what does this mean for the employers?**
 - **verify the current home office mode settings,**
 - **conclude written home office agreements with employees who regularly carry out home office,**
 - **regulate any further details of the home office in an internal regulation,**
 - **ensure that the employees concerned are properly trained in the OSH aspects of the home office mode.**

If requested, we will be happy to assist you with the preparation of the relevant documents.

We hope the above summary will ease your orientation in the valid legislation. We are available for any of your additional requests or information or legal assistance in this area.

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