

NEED OF REGULATION OF THE TELEWORKING CONTRACT IN THE ROMANIAN LEGISLATION

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Abstract

In the Romanian labour legislation there is no legislation on telework, which is the activity performed by a person in other place than the place determined by the employer. It differs from domestic work, which is governed by the Labour Code (Art. 108-110) because the employer is not entitled to check directly the activity of the employee and the working can be done outside the home of the employee. A practical application is teleworking, a form of ongoing recent work, characterized by the fact that the employee operates regularly external from the employer using information technologies in connection with the employer's computer network, but with a very low scope, only on distance education or in computer programming or activity which does not yet know its own national legislation, at European level being only a framework agreement concluded in 2002 between the social partners who use this form of deployment of labour.

There is a need for appropriate regulation of such activities, covering not only work from home (home office) but also via computer work, that work carried out through information technology because there is growing interest in this area, which is very useful in Romanian government, public power prerogatives, we think they could be successful through telework.

Key Words: *telework, work at home, home office work, teleworking.*

1. Introduction

In the Romanian labor legislation there is no regulation on telework¹, which represents the activity conducted by a person in a place other than the one established by the employer.

The labor place is concretized through the locality and the employer where the work is done², being necessary to specify if the employee will work in one place (at the employer's headquarters, at home), in a determined area (sites, work points), or in other localities than the one in which the employer is³.

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¹ D. Top, *Tratat de dreptul muncii*, Wolters Kluwer Publishing House, Bucharest, 2008, p. 35.

² A. Țiclea, *Tratat de dreptul muncii*, Universul Juridic Publishing House, Bucharest, 2014, p. 389.

³ D. Top, *Dreptul muncii - Dreptul securitatii sociale*, Bibliotheca Publishing House, Târgoviște, 2013, p. 115.

Law no. 76/2002⁴, defines the work place as “the frame where an activity is conducted and from which income is obtained and where are materialized the work legal relations or service legal relations”.

The kind of work and the work place are stipulated in the contract by observing legal dispositions, without possibility of ulterior modifications, except through parties’ approval and within the conditions established by the law⁵.

Telework is different from work at home, which is regulated by the Labour Code (art. 108-110), because the employer is no longer entitled to check the activity of the employee or to directly supervise him, and work can be conducted also outside the employee’s home.

According to the regulations in the field, presently there is only the work at home option, as a specific situation of conducting work, outside the employer’s headquarters (headquarters or other work points), but this kind of work requires mandatory that the work to be conducted at the employee’s domicile.

Despite all these, in practice we can find, because the labour legislation does not prohibit, other forms of conducting activities than the employer’s headquarters, not only at the domicile of the employee, but also in other places chosen by him or agreed with the employer.

There is increasing interest in this area, and this is evident when we see reality around us, namely that the increasing number of organizations using more and more applications of the information and communication technologies; spectacular growth of the level of utilization of the Internet network, personal computers and mobile telephones; the existence of a vision on the Information Society and a governmental strategy in this regard; the high level of the collaborators and the appreciation that the Romanian sector of information technology is enjoying in the developed countries.

Telework is the activity conducted by a person in a different place from the person who has the responsibility to supervise him directly and who pays him for the effectuated work.

Teleworking can exist in many forms, like: work at home and work outside the domicile of the employee.

2. Work at home

Excessively brief, and more restrictive⁶, the Labour Code provisions, art. 108-110, on work at home, are broadly in accordance with the regulations in other European countries in the same matter.

The employees working at home are those who perform, mandatorily at their home, the tasks specific to their position by signing a specific work at home contract.

The work contracts of the employees working at home, which can be signed for a determined or undetermined period, full-time or part-time work program, by

⁴ Published in the Official Monitor of Romania, Part I, no. 103 of 6 February 2002, with the ulterior modifications.

⁵ A. Țiclea, *Tratat...op. cit.*, p. 663.

⁶ O. Tinca, *Contractul individual de muncă la domiciliu* “Dreptul” no. 8/2003, p. 34.

itself or cumulated, contain, besides the common clauses of any work contract, the express specification that the employee works at home, the program during which the employer is entitled to control the activity of the employee.

The work contracts of the employees working at home are registered by the employer at the territorial work inspectorates within the same conditions as other work contracts, being mandatory their conclusion in a written form (*ad validitatem*).

Even if the provisions of the Labour Code do not mention anything about supporting the expenses of the employee in the work process (electricity, heating, water etc.) or about supporting the counter value of the transportation for raw materials or finished products, it is obvious that, usually, such costs shall be borne by the employer in order to avoid a drastic reduction of the wage income.

In order to fulfill their respective work duties, the employees working at home, as specified in art. 108 paragraph 2 of the Labour Code, establish themselves the work program.

The employer is entitled to check, according to art. 108 paragraph 3 of the Labour Code, the activity of the employee working at home, within the conditions established in the individual work contract, so there is not an absolute freedom of the employee, but he conducts his work at home under the authority of the employer⁷.

The employee working at home enjoys according to the provisions of art. 110 paragraph 1 of the Labour Code, all rights recognized by law and collective work contracts applicable to the employees whose work place is at the headquarters of the employer, as consequence, and the legal symmetry principle, they also have the obligations of the other employees⁸, except of course the one regarding the work program.

The work at home employee cannot receive meal tickets, because the employees can get a meal ticket for each working day that they actually conduct their activity, being present at work in the unit, meaning at the headquarters of the employer or in the place designated by him.

We consider though that nothing opposes the fact that the employees working at home should receive in exchange, gift certificates or vacation vouchers.

In the collective work contracts and/or individual work contracts can be established, it is showed expressly in art. 110 paragraph 2 of the Code, other specific conditions regarding the work at home, according to the law in force.

Although not expressly regulated as existing possibility (as for France), it was deemed⁹ that nothing opposes the fact that the person framed with work at home can use an auxiliary employee, especially that the provisions of art. 107 paragraph 2 in the Labour Code provide that in the applicable collective contracts can be established other specific conditions regarding the work at home.

3. Work outside the domicile of the employee

⁷ D. Top, *Tratat...op. cit.*, p. 28.

⁸ S. Beligrădeanu, *Legislatția muncii comentată*, vol. I/2003, Lumina Lex Publishing House, Bucharest, 2003, p. 117.

⁹ D. Top, *Tratat...op. cit.*, p. 28.

A practical application is teleworking, working by computer, a recent form of conducting work, characterized by the fact that the employee conducts his activity, regularly outside the employer's headquarters, using information technologies found in relation to the information network of the employer, but with a very reduced area of application, only in open distance learning or programming activities, which does not yet have a proper regulation at national level, at European level being only a Framework Agreement, concluded in 2002 between the social partners using this form of work.

At international level, neither the rules of the International Labour Organization (conventions and recommendations), nor those of the European Union (regulations and directives) make any comprising references to this kind of work¹⁰.

Convention no. 177 (1996) of the International Labour Organization, unratified by Romania, provides the possibility of conducting work in another place determined by the employee, provided that it does not belong to the employer.

At European level on July 16, 2002 was concluded, between U.N.I.C.E. – from the employers – and U.E.A.P.M.E., C.E.E.R. and C.E.S. – from the professional organizations of the employees – the *Framework Agreement on telework*¹¹. It has as purpose “the modernization of work organization, including flexible work commitments and achieving the required balance between flexibility and security”¹².

From the entire economy of the Framework Agreement results that, for telework, the usual clauses of the individual work contract regarding the “work place” and “the type of work” should be those which are specific. This is because – as already specified – the object of the contract involves the provision of work by electronic means outside the work places inside the unit.

It so appears obvious the fact that in terms of the type of work only certain categories of activities can be the subject of telework, especially those that are suitable to processing, transformation, handling and dissemination of information (such as, for example, activities conducted by analysts, programmers, persons whose activity involves the introduction of data related to primary accountancy, managers).

Results that, *sine qua non*, the teleworkers must have knowledge in the information field; moreover, they must be able to use the modern means of communication.

If teleworking is conducted regularly, the employer shall bear the costs related use of modern means of communication, such as cost of subscription to the internet, phone, fax etc.

For the situation in which the employee's own equipment or those offered by the employer would suffer any technical malfunction, the employer is required to grant technical assistance.

In terms of “work place”, from analyzing the provisions of the Framework Agreement, results that teleworking can be conducted in any place by the employee,

¹⁰ B. Vartolomei, *Telemunca - o nouă formă de organizare a muncii* in Dreptul no. 2/2008, pp. 62-70.

¹¹ I.T. Ștefănescu, *Tratat de dreptul muncii*, Wolters Kluwer Publishing House, Bucharest 2007, p. 328

¹² O. Tinca, *Preocupări pentru amplificarea dialogului social in Uniunea Europeană, Acordul-cadru asupra telemuncii*, in Revista de drept comercial, no. 5/2003, p. 64.

other than the one organized by the employer including the domicile of the employee or even transportation means.

In order to gain the legal status of teleworker, a person must fulfill the following conditions¹³: the work report must not have occasional character (to be employed at least for a determined period of time); the work must be conducted, regularly outside the headquarters of the employer, but to be conductible also at the employer; the activity must be developed through information technologies.

The employer has the obligation is to provide, install and maintain the equipment that the employee is about to use in the development of the activity, except the situation when the teleworker uses his own technical equipment.

In principle, teleworkers manage themselves the working time according to the legal provisions, contractual - individual or collective provisions - or internal regulations existing at the level of the employer in this matter.

It was mentioned in the specialty literature¹⁴ that this form of conducting work cannot be done also at the domicile of the employee because it implies the allocation of a special space which may not be accessible to anyone, and the work is realized through information means installed and maintained by the employer.

The development of the activity does not imply the interdiction for the employee to be present, from time to time, at the employer's headquarters to establish a direct link with the collaborators in the exercise of his work attributions and neither to exchange information with them.

Moreover, the employer has the obligation to take suitable measures to prevent isolation of the teleworker, providing him the opportunity to meet regularly with colleagues and to have access to information of the unit.

4. Conclusions

It is necessary an adequate regulation of such activity, which would comprise not only the work at home (home office) but also work through the computer, meaning the activity conducted through information technologies because there is a growing interest in this area, being very useful also in the Romanian public administration, the exercise of public power prerogatives, we believe could be successfully achieved through telework.

¹³ I.T. Ștefănescu, *op. cit.*, pp. 328-329.

¹⁴ O. Macovei, *Conținutul contractului individual de muncă*, Lumina Lex Publishing House, Bucharest, 2004, p. 181.