

Labor, Social Security and Immigration Practice Group Newsletter



“Home Office”, a pending legislation

The Covid-19 pandemic has generated enormous challenges in the areas of health, public policy, economics, migration, and certainly in the area of labor. Many of us carry out most activities from home. Nevertheless, the Federal Labor Law does not have clear provisions that adequately regulate telework or “Home Office”.

Perhaps for this reason, the draft of the decree that would amend Article 311 and add Chapter XII Bis of the Federal Labor Law regarding telework (as it calls “Home Office”), is currently under discussion at the Mexican Congress.

In general terms, the draft of the decree establishes the following provisions:

- » Telework will be defined as the performance of paid services, without requiring the physical presence of the worker in a specific work site, using as support information and communication technologies for the interaction between the worker and the employer.
- » The teleworker will be the person who uses the information and communication technologies as means or for the purpose of carrying out his/her work activity away from a company worksite.
- » Teleworking must be documented through an agreement, which includes at least:
 - ◇ The conditions of the services, as well as the technology and infrastructure required;
 - ◇ The way in which the services will be carried out in terms of time and space;
 - ◇ The responsibilities of custody of equipment, programs and information management;
 - ◇ The procedure for requesting, supervising and delivering the work to be performed;
 - ◇ The policies and conditions to measure productivity and information security that the worker should be aware of; and
 - ◇ Other responsibilities and provisions agreed to by the employer and employee.
- » The employee must be guaranteed decent work and on equal conditions in terms of payment, training, education, social security, and access to work-related opportunities, as other employees who provide their services on-site for the employer.
- » A Mexican Official Standard must be created and published to establish the obligations of the employer

in terms of health, safety and professional risk prevention for the activities carried out in the "Home Office" modality.

Nevertheless, the above will not enter into force until the reform completes the full legislative process and is published in the Mexican Official Gazette.

As the Traffic Light System to Determine the Epidemiologic Risk will continue to be in place for an uncertain period of time and will keep complicating the performance of on-site activities in many sectors, it will be very important for companies to stay alert to the publication of this decree, in order to prepare or align the current telework policies to what is established in it, and to avoid any risk for breach.

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Labor, Social Security and Immigration Practice Group

This practice advises clients on compliance with labor and social security laws, and in the design and implementation of labor structures to avoid risk. We assist in processing immigration documentation for top-level executives and their families, with employment agreements, terminations, and fringe benefit planning, and represent clients in employment litigation.

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