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Labor, Social Security and Tax Practice Group Joint Newsletter



Remote Work

On January 11, 2021, the decree on “Remote Work”, which regulates this mode as a new form of labor organization, was published in the Official Gazette of the Federation.

Important aspects include the following:

- a. The figure of “remote work” is permanent and not temporary, working in a place other than the workplace.

Hence, this regulation only applies to those workers who work remotely and permanently under this modality.

- b. To be considered remote work, the worker must perform 40% of his or her work at home or any other place the worker chooses.
- c. The remote work modality must be formalized in writing and contain, amongst others, the following special requirements:
 - i. Working hours;
 - ii. Mechanisms for communication and supervision between employer and worker;

- iii. Work tools provided to the worker for the performance of his/her duties;
- iv. Description and remuneration amount for the provision of the subordinate labor service by the worker;

- d. Likewise, remote work must be included in the clauses of the collective bargaining agreement (if the company has a collective bargaining agreement). The reform does not establish that this obligation is to be fulfilled even if there is no unionized employee performing work remotely.

If the company does not have a collective labor agreement, it is important that the conditions for the performance of remote work are contained in the Internal Labor Regulations, which must be filed with the competent authority.

The most relevant employer obligations are:

- a. Provide the worker with the necessary work tools to execute the job remotely, such as ergonomic chairs or printers.

- b. Assume the costs related to the execution of the work in a remote fashion, including telecommunication services and proportional payment of electric energy. For this purpose, it is important to institute an internal policy that establishes the conditions of this subsidy, with its limitations to make the reimbursement with previous justification by the invoice issued by the Federal Commission of Electricity.
- c. Implement a policy for the appropriate use of information in the performance of its functions.
- d. The right to the disconnection of workers at the end of their working day in a remote location.
- e. Provide workers with training in the use of communication technology.

The most relevant obligations of the employees are:

- a. The care of the work tools provided by the employer.
- b. Informing the employer in a timely manner of the costs of telecommunications, including internet, telephone, electricity.
- c. Complying with safety and health protocols to be established by the employer.
- d. Comply with the policies of protection, use and storage of information.

The change from on-site to remote work may be made at any time on a voluntary basis, except in cases of force majeure.

The Ministry of Labor and Social Welfare must issue the Official Mexican Standard ("NOM") within the next 18 months to regulate the implementation of safety and health in the workplace, as well as the factors and other risks associated with working remotely.

Once this regulation is issued, labor inspectors will have the power to verify that employers have appropriate records of the workers that perform their work under this modality and that the measures arising from this NOM are complied with, as well as that the remuneration is equitable in relation to the workers that perform their work on-site.

Tax implications

The foregoing Labor Law amendments and additions have relevant tax implications, specifically the new employer obligation of assuming the costs of remote work, which include the payment of telecommunication services and the proportional share of the electricity bill.

The implications include the income tax and value added tax treatment of the payments that the employer must

make for these costs. At first glance, the payments must be deductible and creditable for the employer and not taxable income for the employee.

Nevertheless, currently there is no specific tax regulation for these new employer payment obligations.

In consequence, we recommend companies to thoroughly analyze the tax treatment of these expenses and costs, as well as the way that they will document them.

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