



DISTANCE WORKING AND TELEWORKING: TWO SIDES OF THE SAME COIN?

The pandemic caused by COVID-19 brought a new paradigm to the organisation of work paradigm. It has set trends for change within the digital transition and the provision of work in this context.

Besides the "reactivation" of the incidence of telework (with the approval of a new law regulating this form of work, Law no. 83/2021, of 6 December), phenomena work provided through digital platforms has also gained space in Portugal. New realities that have made more pressing issues of new opportunities, but also new associated risks, such as the training and qualification of qualification of people, conciliation of professional, family and personal life.

This whole situation has undoubtedly brought a new challenge also to the Law, namely in the area of Labour Law. In fact, if there is one thing that the pandemic did not stop or confine, it was in the legislative activity in the field of Labour Law.

With the establishment of new realities and new forms of work, now that the most troubled period has passed, it is now important to make a more assertive analysis of this situation. Thus, the question arises:

is teleworking synonymous with distance working?

In our opinion, these are undoubtedly two forms of digital work (remote work), however, taking into account all the incidences that these forms have on workers rights and duties, it is clear that they cannot be synonymous.

What they have in common is that the workplace is no longer the "company" (in its traditional concept), but this does not mean that the two forms of work merge.

Let us say that, in a brief analysis, that telework will be that which, despite everything, will have a subordinate work place, constitutive of guarantees for the worker and employer, namely those foreseen in article 168 CT, as well as for the purposes of other circumstances such as accidents at work. It will always be a form of work subject to the formalization of a written employment contract, with a limited work schedule, only guaranteeing the also new right of dismissal and the use of work tools, which may (or should) belong to the company, with the added financial costs of this modality also being charged to the employer.

In telecommuting, the now also very popularized "digital nomad", there is no such subordination of the workplace, on the contrary, there is a freedom of choice for those who work independently of the place where the employer is located that best suits the personal and family interests of the worker, which brings with it a factor of greater complexity in the application and adaptation of labor laws - think, for example, of the tax and social security regimes of different social security regimes in different countries. Therefore, the worker will be able to perform his work from any location, anywhere in the world, and his employer does not necessarily have to know or approve where you will perform your function. Also, as to the working hours and the contact you will have with your employer, you will not have this rigidity factor associated, the condition is that the task be completed within a predefined plan.

The practical implementation of these forms of work organization are still a challenging problem, both in terms of labour law and the management of human resources themselves, since the era of digital work is here to stay.



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