

# **The teleworked employment relationship asks for a plain legal – technological frame as an efficient regulation**

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## **ABSTRACT**

The impact of the ICT has caused the shift of the boundaries of the enterprise, beyond the precise physical one, according to which has traditionally been identified.

The protagonists of this new scenario have become Internet and computers (in all its versions and sizes) - dependents.

The employment relationship is no stranger to this paradigma shift. Its effects are integrated with the action of new players that exceed the employer and the employee.

Telework innovates in the organization of work within the company and in the relationship of this with its peers.

Its particularities justify abandoning the conceptualization of work as a collective phenomenon, capable of being reproduced in lists of tasks, replicable in diverse economic activities and collective labour agreements.

With the return to an individual employment contract, the framing requires a comprehensive legal – technological approach.

The unique base in the labor law, even as a minimum standard is not suficiente. It needs contributions of other branches of law such as civil and criminal ones, in order to resolve conflicts that occur.

All this must necessarily rely on the assurance of the Internet access because the teleworked employment relationship is unthinkable without it; therefore, it should be held its joining the Universal Public Service category.

Only the balanced harmony of technology with the different branches of the law, will allow removing the obstacles to the development of telework and compliance with the undeniable social function to which it is intended.

## **KEYWORDS**

Telecommuting - employment contract - information technology and communications – Law -Internet - Universal Service

## PAPER

Teleworking gives a clear innovation in business organization, both internally and in the relations of the company with its peers.

The type of work performed requires a precise combination of the mass use of Internet and the increasing bandwidth with the contribution of the more and more sophisticated mobile telephone systems and computers( fixed or portable) and the mailing and electronic payment services.

Only then it makes available the performance of duties by the employee, who is physically outside the company, but virtually and even, often in real time, presents and remains in constant communication with it. The employer can control, giving direct instructions to receive at once the fruits of his labor, direct it, modify it, ecc.

Both for employers and, employees and the law in general, present a paradigms shift.

It should replace the idea of control by the confidence. The employer must trust that the employee is going to do what it should do and this, in turn, he must comply satisfactorily with the company.

It requires the evaluation of results over time spent on a job.

It is replaced, even temporarily, the traditional workplace in the company for an alternative, also physical, which interacts with a mail address. This is a two-dimensional home, which is center of rights and obligations, agreed with the employer, which may not necessarily match the worker's own private residence.

The shift of the work done outside the company incorporates the rules that belong to the different areas through which it passes. New players are added with bounded but active interference, whose entity is different from the employer and the employee.

These changes were not accompanied by labor legislation. We agree that it urgently needs to be adapted, in order to reflect the impact of new technologies, which were not considered by the legislature of 70, when it was drafted the Employment Contracts Act.

The marked absence does not mean that the conflicts generated during the development of teleworked relations can not be resolved meantime.

A first look at the substantive law, shows that it is established a broad field of protection of an employment agreement in relation to dependency, where it is ruled the rights and obligations of both the employer and the employee.

The framework of the relationship does not go through the spraying of borders, or for the use of teleworking techniques or the use of the benefits of technology and the Internet. As long as the link between employer and employee is working and low dependency shall be governed by SYSTEM OF EMPLOYMENT CONTRAC, provided by law N ° 20 744.

In the light of a harmonious interpretation of the general principles that make a priority of the reality on the forms of contract (art. 23 LCT) and the standard more favorable to the worker (Art. 9 of LCT), provided that the Telework involves a lawful activity and constitutes an onerous provision in favor of whoever has the power of direction, it must be considered as falling within the definition contained in Article 4 of the LCT.

The required legal and economic subordination is not confined to the traditional employment relationship but on the contrary, are shared with similar teleworked one.

Assembled with this general regime, is the law 24 557 of Job Hazard, which also must be upgraded to the new circumstances. The benefits reach teleworkers, because the dependency ratio sets the pattern of regulation of any work accidents that may occur during the development of it.

Continuing with our exposure, we note that the venue of the contract gives way to the significance of the place of execution (art. 3 LCT). There are no derogations apply where the work performed is not met within the premises of the company (art. 2 LCT), constituting core source of rights and obligations of telework, which may or may not coincide with the headquarters employer or the worker's habitual residence.

The labor law also provides an additional tool to protect the employee against possible fraudulent behavior. It is the obligation of solidarity shared by third parties responsible for the employment relationship, in the case assignees, contractors or subcontractors for personnel who will occupy in the provision of work or services that correspond to normal activity and specifies their own establishments.

Interestingly, this process has been accompanied by an amusing task accomplished by the courts, which have to force themselves to interpret existing laws and accommodate it to this new era. This has been submitted to analogously applicable laws, and not always appropriate to these innovative labor relations, in search of solutions for the workers involved.

Without prejudice to assert that we can not label as poor to telework for not having a specific regulation, it does not make us forget that there are far-reaching issues that must be addressed so that its development reaches the expected dynamic..

The marked absence does not mean that the conflicts generated during the development of the teleworked relations can not be resolved meantime.

It appears as necessary:

**\* The redefinition of the concept of the enterprise contained in Article 5 of the Labor Contract Law.**

The reference to the company reminds us, necessarily, to a media organization personal, tangible or intangible, ordered under a direction to obtain an end.

As totalizing contractual network that originates from the development of it, must be defined from the structure factor, not its manifestations.

**\* The regulation of conflicts of jurisdiction and when employer and employee does not share the same residence.**

It imposes the principle pro indubio operator, ie, there will always be resolved in the most favorable way to the worker.

When the employer and employee were nationals of a country the solution should come from the codes of procedures, which are matched to allow workers the choice between his settlement or the company residence to promote its action

In the case of permanent address in different countries, should be the rules of private international law in charge of resolving the conflict.

**\* Respect to the employee's right to privacy and due consideration for their dignity.**

The protection of the employee's personal data should be prioritized to prevent inappropriate activities that make use of them and as such it does not cause unacceptable negative implications.

**\* Adequate attention to the so-called expanded responsibilities quote for acts of subordinates.**

The employee, who telecommutes, manipulates data, sometimes personal data, other time sensitive ones.

This particularity splashes to the employment relationship with wider responsibilities. This expanded responsibility is justified in the articles of the Law on Protection of Personal Data (Law 25326)

The human resources do diverse tasks with different levels of authorization and empowerment to access and use of them.

All people involved have potential ability to cause damage voluntary or involuntarily, with possible injury to your employer or others.

The company will respond for the crimes that occur, because it have the lordship of the elements used, ie, computers, data and Internet Access; even so it should give adequate attention to the issues involved to avoid unjust punishments.

**\*Coverage of work accidents requires the update of the scale including conditions compatible with remoting work.**

Above we have marked that work accidents are covered by the Occupational Risks Act.

It would be simplistic to exhaust the topic in a simple recommendation to change that legislation, knowing that coverage is provided on the basis of a Schedule of date, which is abundant in normal pathologies in industrial society and serves as a basement for policies, as such they have not updated with new ways of working.

**• Acceptance of the interaction of the registered mail with the physical address for the purpose of the existence of rights and obligations.**

Telework requires the use of a registered mail regularly, interacting with the physical address where the worker is temporary. This topic is not covered by the basic legislation, which deals with home in Articles 89 to 102 of the Civil Cod, Title VI (home) of Section One (Of the people in general) First Book (From people).

Notwithstanding the foregoing, we find Article 94 of the above mentioned legal body, which marks the prevalence of the place where “the family is established”, as it was not consistent with the residence of the business.

Curiously, this legal rule is compatible with the reality that requires the use of ICTs and overcrowded Internet Access, as son as it is possible to take care of personal, business and labor where the protagonist lives, losing the necessary force attendance to an unique physical place, characteristic of industrial society.

Arises with the sufficient entity, the conceptual separation between the particular location and the temporary physical residence. Therefore, this issue should be well defined because it is denied that there are new multidimensional spaces in which it is possible the exercise of rights and fulfillment of obligations.

Just like real home is reported in the personnel file, you must do the same with an electronic mail.

It is key to validate the electronic reporting system of communications to be exchanged by the parties.

**\* The repositioning of company regulations as law for the parties**

The questions posed by the technology must be responsive to company regulations, so as to allow the employee knows to do and how to do upon receipt by delegation lordship over the hardware, software and other tools that the company provides him.

The regulation should no longer be a form, which was passed from hand to hand, applied to any section of the company, to become a manual contingency which is expected to indicate the behavior to take in case of theft, loss or forgetfulness of the password, such as requiring the help of the help-desk, the confidentiality of the data being manipulated, in short all those possible setbacks that can occur in the daily task of telework.

Therefore, we believe that in front of this new type of work performance, which is inserted into a stage characterized by the revaluation of human capital, the internal regulations requires to companies to reflect the new technological reality and its implications on the future of the employer-employee relationship, establishing clear

definitions to the role to be fulfilled by each of the involved subjects at the time of commencement of employment, with the proper respect for all principles in the workplace and the resulting inequality deserves assistance between the parties in conflict.

**\* Encourage participation of unions in the new working arrangements dependent on TICs.**

It is clear that the new economy, information highways, global networks, technology networks and Internet portals has led to a different society.

The changes have not fully entered into the strategies of unions and a handful of leaders have begun to reflect on the consequences that they may bring to the world of work.

In essence, it leads to rethinking the ways to come into direct contact with employees in the cyber-space.

Whatever name we use, the classes struggle in the digital society will be the same as ever, labor standard against only change the domains and tools used.

Ultimately what it is to promote democracy in the network, recognizing the rights of workers to use the tools and opportunities that the Internet offers.

The unions are actors who can not be absent, therefore, should be encouraged to take part in this discussion ..

**\* The categorization of Internet access as a universal public service is urgent.**

Internet is critical and must operate at full capacity.

The penetration of broadband grows intiringly.

The Universal Service is a set of telecommunications services that are of specified quality and affordable prices, regardless of their geographical location. It encourages people to have access to essential telecommunications services, despite the regional disparities, social, economic and those on disability.

As a dynamic concept, shall be periodically reviewed, analyzing the services which include the conditions of supply under the demand for services, technological developments and unmet needs.

It is inconceivable to proceed with the legislation of the early 90s, when having access to the Internet was almost a luxury, ignoring the displacement of landline use as a communication tool and the use of the Internet as a tool.

Declare Internet access as a Universal Service not only promote the development of telework, but also will allo to fulfill a social function in areas where to have Internet is unthinkable.

**\* To raise the discussion of the transnational management of teleworkers.**

A teleworker who develop his activities for companies in different countries, faces a number of additional difficulties arising from the diverse regulations or legislation in different countries. These differences are seen in all areas: type of contract, health and safety at work, social security and taxation.

The existing schemes are not prepared to respond to new changes in work organization.

Both labor taxes and social security are linked to wage levels of workers.

We believe that through international agreements, it should address the adoption of social security systems and taxation to suit the new environment, reflecting the work organization models emerging, including different models of teleworking.

In this way, it will be able to ensure that transnational teleworkers are not vulnerable.

IN CONCLUSION, we note that from the time the employment relationship goes outside the company by the rule, the shift of the company limits because of the impact of ICTs, it embodies a return to the individual employment contract as the regulating system relations, which unfolds in a new environment characterized by diffuse areas.

Therefore, it is advisable to develop telework and fulfill the social role which is assigned to the Bicentennial Argentina, the adoption of a comprehensive legal- technological frame, which can be limited to a minimum floor from the labor law, but it must be underpinned with concrete actions in different areas of law involved, even with the addition of Internet access as a Universal Service.