



COVID-19 Remote Working Latin America Guide

Week commencing: October 19, 2020



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W/C October 19, 2020

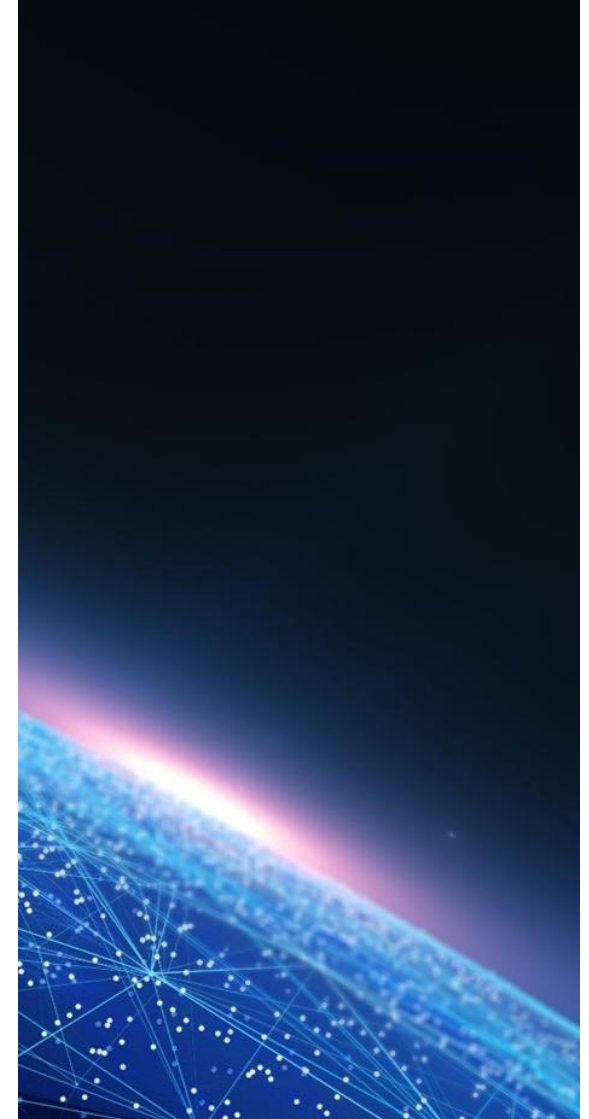


The COVID-19 pandemic has accelerated the need to reshape employment models and more companies are examining extended remote work policies to provide flexibility for the benefit of both people and organizations.

The regional Employment & Compensation team is pleased to present the Latin America Remote Working Guide considering that organizations are in favor of remote working models and governments are responding to this increased trend.

Our aim is to answer some of the most pressing questions and provide you with the most up to date information on changing laws and regulations across 7 jurisdictions in Latin America.

The high level guidance in this document is not intended to be comprehensive legal advice.



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Argentina



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1. Is there specific legislation regulating remote working?

Currently the only obligation for the employer is to report to the Workers' Compensation insurer the full name of each teleworking employee, the address from where he/she will working remotely, time schedule and job description.

However, on 13 August 2020, the National Executive Branch enacted Law No. 27,555, which regulates teleworking in Argentina. Law No. 27,555 will become effective 90 days after the end of the social isolation measures. The social isolation is still current and there is no indication as to when it would expire.

It includes provisions that require working hours to be agreed in advance in writing or through collective bargaining; establishes a "right to disconnect" outside of working hours and during leave periods; gives certain rights to employees with care responsibilities, and allows employees to revoke their consent to teleworking at any time, amongst other requirements.

2. What health and safety obligations apply whilst employees work remotely?

A Superintendence of Workers' Compensation's Resolution was suspended while the COVID-19 lockdown was in force, which required employers to provide a kit of safety elements to employees working remotely full or part time, including a fire extinguisher, ergonomic chair, first aid kit, mouse pad and Superintendence's best-practices manual.

The Workers' Compensation Superintendent will issue the regulations relating to health and safety for teleworking, probably when the new law dealing with teleworking becomes effective.

3. Are there any specific requirements in relation to employee benefits and expenses for remote working?

Employers are obliged to provide the working tools, equipment and support necessary for working remotely and this is to be confirmed in detail by the amendments to the law made by the different offices and agencies of the Executive, and by collective bargaining, where appropriate. The employer must also reimburse or assume the cost of installing, maintaining and repairing such equipment and tools, as well as the additional costs the employee may incur through working remotely.

In addition, under the new normal, many employers have been forced to implement the payment of money amounts in replacement of the lunch benefit that was given at their offices/sites.



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- 1. Is there specific legislation regulating remote working?**

Work under the home office modality is regulated by the Brazilian Labor Code since 2017 and should follow specific rules for health and safety as provided in the Ordinances of the Secretariat of Employment.
- 2. What health and safety obligations apply whilst employees work remotely?**

The employer can be deemed as responsible for on-the-job diseases or accidents that happen at home. Rules for health and safety should be followed as provided in the Ordinances of the Secretariat of Employment.
- 3. Are there any specific requirements in relation to employee benefits and expenses for remote working?**

There are no specific obligations to provide assets, although the general rule is that business expenses shall be borne by the employer. Case law regarding the provision of assets and payment of cost to the employees is evolving as more employers are implementing permanent work from home assignments. We recommend to refresh this review on a regular basis.



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1. Is there specific legislation regulating remote working?

Yes, law N° 21.220 regulates Remote Work and Telework.

The law provides the rules for this type of employment. The employment agreement must include the following provisions:

- Express indication that the parties have agreed to teleworking, specifying whether it will be full-time or part-time;
- The place or places where the services will be provided;
- The duration, which can be indefinite or for a specific time;
- The supervision or control mechanisms the employer will use;
- Disconnection time. In the case of remote employees who freely distribute their hours the employer must respect at least 12 continuous hours in a 24-hour period where employees will not be obliged to respond to requests;
- Schedule. The law provides separate rules for remote work and telework.
 - a) In the case of remote work, the parties may agree that the employee freely distribute working hours at times that best suit their needs (always respecting the maximum break times).
 - b) In the case of telework, the parties may agree to exempt employee from working hours (no overtime).

2. What health and safety obligations apply whilst employees work remotely?

The following applies:

- 1) At the beginning of the services, the employer must inform employees about the risks inherent to the job, the preventive measures and the correct means of work.
- 2) The employer also must communicate conditions of safety and health. It is necessary to determine where the services are rendered from:
 - a) Services rendered from home or from a place previously determined: The employer must communicate the conditions of safety and health which the position must comply with, for which purpose it will prepare a "template identifying the dangers and evaluating risks".
 - b) Services rendered from a place freely chosen by the employee: In this case, it is not necessary to have a template identifying the dangers and evaluating risk.
- 3) Training must be provided to the employee on the principal safety and health measures. Training can be made presently or remotely, and must be at least eight hours. It can be carried out directly by employer or through the Insurance Manager.



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2. What health and safety obligations apply whilst employees work remotely?

4) The employer must deliver personal protection equipment, as applicable.

5) The employer must update Internal Regulations. For example, sanctions on employees who do not complete the self-assessment instrument; sanctions on employees who unreasonably deny inspection of home; and it must incorporate a general prohibition to render services under the influence of alcohol or illicit substance or drugs.

Coordination with Insurance Manager: The Regulations provide the assistance of the Insurance Manager throughout the rules. For example, training can be made through the Insurance Manager; the latter also provides assistance and the preparation and revision of the Template; etc. The Regulations even go one step further by establishing that the employer can require the technical assistance of the Insurance Manager in order to comply with its obligations. However, in this case employers must back up all the relevant information and keep it in paper or electronic format for possible review by the respective administrative agency, the Labor Bureau.

3. Are there any specific requirements in relation to employee benefits and expenses for remote working?

The employer must provide the equipment, tools, and materials to carry out this type of employment, including personal protective equipment. Likewise, the costs of operation, maintenance, and repair of the equipment must be borne by the employer.

The law does not specify the costs and this has brought a lot of questions. Most employers are dealing with this by paying an allowance which covers costs such as internet, power, and similar others.



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1. Is there specific legislation regulating remote working?

The Colombian Government has expressly stated that work from home due to COVID-19 is not considered as teleworking or subject to applicable teleworking rules and laws currently in place (Law 1221 of 2008).

The general rule, under ordinary circumstances, is that:

- Remote working for two or more days per week is considered as teleworking.
- If employees only work remotely one day per week, this would not amount to teleworking.

In principle and according to current legal provisions, if the Colombian Government removes these emergency measures, and employers continue to implement remote working two or more days per week, this will be considered formal teleworking and therefore, the following obligations would need to be complied with:

- a) Employers would be obliged to report teleworking arrangements to the Ministry of Work and the Labor Risks Administrator.
- b) Employers would have to perform visits in employees' homes (with prior authorization).
- c) Expressly agree with the employees if the employer will assume or subrogate a percentage of the expenses incurred for the home-based work, such as telephone bills, internet and stationery supplies, by giving a fixed amount of money or refunding the total or partial amount. Or, if any and all expenses will be covered by the employee.
- d) Employees and employers would need to enter into an addendum to formalize the teleworking arrangements.

It is worth mentioning that our Congress is currently reviewing certain modifications to regulations regarding remote working in Colombia.

2. What health and safety obligations apply whilst employees work remotely?

Under remote working, the employer is still under the obligation to provide a safe working environment and take an active role in safeguarding employees' health.

3. Are there any specific requirements in relation to employee benefits and expenses for remote working?

The National Government issued a temporary Decree, subject to the existence of the health emergency, ordering employers to acknowledge a 'connectivity allowance' to employees who are legally entitled to the transportation allowance, in lieu of the latter.

The connectivity allowance should be acknowledged for employees earning up to two times the statutory minimum wage (for 2020, Col. Pesos \$1.755.606 - USD 475 approximately).

In terms of other expenses, if the Colombian government removes the current emergency measures, and employers continue to implement remote working two or more days per week, it must be expressly agreed with employees whether the employer will assume or subrogate a percentage of the expenses incurred for the home-based work - such as telephone bills, internet and stationery supplies - by giving a fixed amount of money, or by refunding the total or partial amount. The employer and employee must also agree if any and all expenses will be covered by the employee.



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1. Is there specific legislation regulating remote working?

Yes, specific rules have been issued for teleworking arrangements during the COVID-19 period. On June 2020, the Government issued a Guide for the Implementation of Remote Work in the context of the actions to face the COVID-19, that establishes the definition and principles of remote work and the processes for its implementation.

Work under the home office modality is defined (in article 311 of the Federal Labor Law) but not specifically regulated and therefore the general obligations established in the Law are applicable.

2. What health and safety obligations apply whilst employees work remotely? None.

3. Are there any specific requirements in relation to employee benefits and expenses for remote working?

In general terms, employees performing activities from home are entitled to the same compensation as other employees performing work at the employer's premises.

Employment conditions may not be modified because employees are performing work from home. The employer has the obligation to provide the employee with working tools as well as to pay for the associated costs (electric power, telephone and internet).



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1. Is there specific legislation regulating remote working?

Yes - remote work is allowed until 6 December 2020.

During the Health Emergency (until December 6) remote work has temporarily replaced teleworking. This flexible working modality does not require an agreement between the parties, nor compensation for the working tools (equipment, internet, ergonomic chair, etc.) provided by the employee.

Remote work allows employers to unilaterally implement remote working as a preventive measure to face COVID-19. The main characteristics of this are that:

- It is temporary.
- It must be informed by any means: email, text messages, etc.
- It could be implemented unilaterally by the employer.
- The employer must train their employees in the use of technological tools if needed.
- The employer must inform employees about the mechanism to report and supervise the work.
- The employer must inform employees about their working time.

2. What health and safety obligations apply whilst employees work remotely?

The Labor Authority requires employers to comply with health and safety recommendations during remote work. It is important to implement internal guidelines, as well as to constantly monitor the health of employees that are working from home.

During the Health Emergency (until December 6) employers are allowed to change or suspend some labor benefits and obligations. For instance, some obligations related to health and safety, like trainings and occupational medical exams, are suspended.

3. Are there any specific requirements in relation to employee benefits and expenses for remote working?

Whilst employers are not obliged to compensate for the tools and equipment provided by the employee, it is common that companies provide the pc or laptops, ergonomic chairs, cell phones, among others.

During the Health Emergency (until December 6) employers are allowed to change or suspend some labor benefits and obligations. For instance, the Compensation for Time of Services (payable in May 2020) may be deferred until November.



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1. Is there specific legislation regulating remote working?

Currently, remote working is regulated in Venezuela by the provisions of the Organic Labor and Workers' Law (the "Labor Law") governing work at the employee's home or domicile. However, these provisions are general in nature, and refer to a special law that must be enacted in order to regulate this type of employment in more detail. In addition, these provisions indicate that when working from home is the result of technological advances, this type of work may be further governed by special regulations to be issued by the Ministry of Labor. So far, no special law or regulations have been enacted.

Among other obligations, employers must keep a registry of employees working from home, containing several pieces of information pertaining to the employment relationship. According to the Labor Law, failure to maintain this registry implies the recognition of the data pertaining to the employment relationship the employee asserts in any instance (e.g.: litigation). Consequently, employers are advised to maintain this registry.

It is important to mention that Resolution 090 issued by the Ministry of Health as of June 1, 2020, which contains the rules of social responsibility for dealing with the COVID-19 pandemic and preventing contagion, explicitly provides that employers must promote teleworking.

2. What health and safety obligations apply whilst employees work remotely?

The Organic Law on Occupational Prevention, Conditions and Environment and all other provisions issued thereunder contain several obligations employers must comply with in order to ensure a safe work environment and prevent occupational illnesses and accidents. For example, among many other obligations:

- i. employers must notify employees about their work conditions, the risks inherent in the work they must perform, and the measures they must use in order to prevent said risks; and
- ii. employers must provide instructions and training to employees with respect to the promotion of health and safety, the prevention of occupational accidents and illnesses, and the use of personal safety and protection devices.

3. Are there any specific requirements in relation to employee benefits and expenses for remote working?

In essence, employees working from home are entitled to the same benefits and have the same rights as employees working at the employer's work centre. With respect to expenses, the Labor Law provides that employers must compensate employees working from home for the expenses relating to their work, such as those relating to the consumption of utilities and maintenance of work equipment and machinery.



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