

On 23 September 2020, Royal Decree-law 28/2020 of 22 September, on remote working (“**RDL 28/2020**”), was published in the Official State Bulletin. RDL 28/2020 incorporates a new regulation applicable to remote working, amending Article 13 of the Workers' Statute, which previously regulated this matter, in its entirety. The guiding principles of RDL 28/2020 are the willingness of the parties to implement remote working and the principles of equality and non-discrimination. RDL 28/2020 will enter into force 20 days after its publication (with some exceptions). It is worth paying particular attention to (i) the First Transitional Provision, concerning remote working that was already taking place on the date of entry into force of the legislation and (ii) the Third Transitional Provision, concerning remote working used as a health containment measure due to COVID-19.

CONTENT	ROYAL DECREE-LAW 28/2020 ON REMOTE WORKING
<p>General considerations (Arts. 1 to 4)</p>	<p>Scope of application. All workers who work remotely on a regular basis, i.e. at least 30% of their working day in a 3-month reference period.</p> <p>Definitions:</p> <ul style="list-style-type: none"> (i) Remote working: Working in the home or in another chosen place, for the whole working day or part of it, on a regular basis. (ii) Teleworking: Working remotely either exclusively or predominantly using computers and other telematic and telecommunication resources and systems. (iii) On-site working: Working in the workplace or in a place determined by the company. <p>Limitations. For employment contracts entered into with minors, and contracts for internships, training and learning, at least 50 per cent of the work must be conducted on site.</p> <p>Equal treatment and opportunities and non-discrimination. Workers who work remotely must have the same rights as they would have had if they were working on site (except for those rights that are inherent to working on site).</p>

<p>Voluntary nature of the remote working agreement. (Arts. 5 to 8)</p>	<p>Voluntary nature of remote working. Remote working must be voluntary for the worker and the employer, and requires the parties to sign an individual work agreement in writing. It may not be imposed by the company as a substantial modification of working conditions, without prejudice to the right to remote working which may be recognised by laws or collective bargaining. A worker's refusal to work remotely, the reversal of the arrangement or not adapting does not justify the termination of the employment contract.</p> <p>Reversibility of remote working. The company or the worker can reverse the remote working arrangement in the terms of the collective bargaining or, failing that, in the individual remote working agreement.</p> <p>Formalities of the remote working agreement. The remote working agreement must be entered into in writing before the worker starts to work remotely. The company must deliver a copy of this agreement to the workers' representatives within 10 days of signing it.</p> <p>Minimum content of the remote working agreement. (i) Inventory of the resources, equipment and tools – including consumables and furniture provided–, (ii) expenses that the worker may have and the method of calculating the compensation that must be paid by the company, (iii) hours and rules of availability, (iv) percentage and distribution of on-site and remote working, (v) the workplace to which the worker is assigned, (vi) location chosen for remote working, (vii) length of notice periods for reversing the arrangement, (viii) means of corporate control, (ix) procedure for resolving technical difficulties, (x) corporate instructions on data protection, (xi) instructions on information security, (xii) duration of the remote working agreement.</p> <p>Amendment of the remote working agreement. The remote working agreement must be amended in writing and brought to the attention of the workers' representatives.</p> <p>Order of priorities. Workers who work remotely from the beginning of their working relationship and for the whole of their working day have priority to fill job openings that are fully or partially on site. By collective agreement, criteria can be established to give preference to teleworking in certain circumstances.</p>
<p>Rights of remote workers (Arts. 9 to 19)</p>	<p>Career and training. The right to participate in training activities and to receive promotions under the same conditions as on-site workers. The right to receive training to be able to carry out their work correctly while working remotely.</p> <p>Provision of resources and compensation for expenses. The company must provide sufficient resources, equipment and the tools needed to carry out their work, and cover the costs related to these means which are linked to working remotely. Collective bargaining must establish the mechanisms for determining and compensating for or paying expenses.</p>

<p>Rights of remote workers (Arts. 9 to 19) (Cont.)</p>	<p>Working day. Someone who works remotely will be able to make their established working hours more flexible. In addition, they must record their working day in the terms of Article 34.9 of the Workers' Statute, faithfully reflecting the time spent working, and the time their working day begins and ends.</p> <p>Health and safety when working. Someone who is working remotely has the same right to adequate health and safety protection as on-site workers. A risk assessment and activity planning must take into account the typical risks associated with working remotely. With the consent of the workers, the company may visit the home or the place from which the person works for occupational risk prevention purposes. If permission is not granted, the preventive activity must be carried out on the basis of the determination of risks arising from the information collected from the worker.</p> <p>Right to privacy and data protection. These rights must be guaranteed in the terms provided for in the Organic Law on the Protection of Personal Data and in accordance with the principles of suitability, necessity and proportionality of the means used. The Company may not require workers to install programs or applications on their personal devices or to use such devices to work remotely. Companies must establish criteria for the use of digital devices and the workers' representatives must be involved in the preparation of such criteria. Personal use of such devices may be regulated by collective bargaining.</p> <p>Right to disconnect. Someone who works remotely has the right to disconnect from digital devices outside of their working hours in accordance with the terms established in Article 88 of the Organic Law on Data Protection. After consulting with the workers' representatives, the company must draw up an internal policy for exercising the right to disconnect.</p> <p>Collective rights. Someone who is working remotely has the right to exercise collective rights with the same content and scope as other workers in the workplace to which they are assigned. The company must provide the workers' representatives with the necessary elements to carry out their activity as representatives.</p>
<p>Powers of organisation, management and business control in remote working (Arts. 20 to 22)</p>	<p>Data protection and information security. Workers who are working remotely must comply with the instructions established by the company for data protection and information security.</p> <p>Use and maintenance of equipment. Workers must comply with the conditions and instructions for use and maintenance established by the company in relation to computer equipment, within the terms established in collective bargaining, where appropriate.</p> <p>Corporate supervisory powers. The company may adopt the monitoring and control measures which they deem most appropriate to verify that the worker is fulfilling their duties and obligations, including the use of telematic means, giving due consideration to the worker's dignity in the adoption and implementation of such measures.</p>

--	--

ADDITIONAL, FINAL AND TRANSITIONAL PROVISIONS	ROYAL DECREE-LAW 28/2020 ON REMOTE WORKING
Remote working in collective bargaining (1 st Additional Provision)	Collective agreements. In view of the specific nature of the particular activity that falls within their scope, collective agreements may identify jobs and functions that can be performed remotely and other specific features in this regard.
Contract staff of the Public Administrations (2 nd Additional Provision and 2 nd Transitional Provision)	Non-application of RDL 28/2020 to contract staff working for the Public Administrations. Article 13 of the Workers' Statute will apply, in the wording that was in force prior to the entry into force of RDL 28/2020, until a specific regulation is adopted in this regard.
Remote working arrangements that are already in place when the law enters into force 1 st Transitional Provision	<p>RDL 28/2020 will be fully applicable to remote working arrangements existing prior to its publication, in the following terms:</p> <ul style="list-style-type: none"> (i) If the previous teleworking arrangement is regulated by collective agreement and a period of duration of teleworking had been established, RDL 28/2020 will apply when the previous agreement loses force. In the absence of a period of validity, RDL 28/2020 will apply once 1 year has elapsed since its entry into force (with the possibility to extend to 3 years in the event an agreement is reached). (ii) If there is no prior collective agreement, it must be governed by an agreement within 3 months of the entry into force of RDL 28/2020. <p>In no case may the application of this regulation result in the offsetting, absorption or disappearance of more beneficial rights or conditions enjoyed by persons who worked remotely previously.</p>
Remote working used as a health containment measure due to COVID-19 3 rd Transitional Provision	<p>Non-application of the system provided for in RDL 28/2020. Remote working which is introduced exceptionally in application of Article 5 of Royal Decree-law 8/2020, of 17 March, or as a consequence of the health containment measures relating to COVID-19, and for as long as these remain in force, will continue to be governed by the ordinary labour regulations.</p> <p>Obligation to provide resources, equipment, tools and fuel, and the necessary maintenance.</p>

	<p>Compensation of expenses. Where appropriate, collective bargaining will establish the form of compensation for expenses incurred by the worker as a result of working remotely, if they exist and have not already been compensated.</p>
Other issues related to working remotely	<p>Repeal. Article 13 of the Workers' Statute is amended to read as follows: “workers may work remotely under the terms provided for in RDL 28/2020”.</p> <p>Legal procedure. A special legal procedure is established for claims regarding access to, as well as the reversal and modification of, remote working arrangements.</p> <p>Infringement and penalties. Failure to comply with the obligation to enter into a remote working agreement is defined as a serious infringement.</p> <p>Entry into force. The Royal Decree-law is expected to enter into force within 20 days of its publication (except for certain provisions which enter into force after its publication).</p>

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 23 September 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

For more information,
please contact:

Isabel Moya

Employment Partner

imoya@perezllorca.com

T: +34 91 436 04 20