



GRATA
INTERNATIONAL



REMOTE WORK

(including remote work
of foreign workers)

2021





INTRODUCTION

The interaction of the employee and the employer in the conditions of remote work in many jurisdictions is already a very familiar phenomenon. In the context of the COVID-19 pandemic and the gradual transition of labour relations to the digital space, remote work has become the universal response of employers and employees to the external and internal challenges of 2021.

The issues of concluding an employment contract on the terms of remote work including foreign employees still remain relevant.

Within the framework of the labour committee, a team of partners, leading lawyers and managers of the GRATA International labour practice prepared a brief overview of the legal regulation of distance work in Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Russia, Ukraine, and Uzbekistan:

- concept, mechanism of remote work, special duties of the employer and employees;
- procedure for transferring employees to remote work;
- pros and cons of the remote work mechanism (the need to improve this mechanism);
- the possibility of remote work for foreign workers.

The article describes how to avoid violations of labour legislation when hiring a foreign employee, the pros and cons of remote work are given. In addition, you will learn about the mechanism of remote work, the special duties of the employer and employees in the jurisdiction of interest.



Content

About GRATA International	4
Belarus	5
Georgia	10
Kazakhstan	12
Kyrgyzstan	17
Russia	19
Uzbekistan	22
Ukraine	25

About GRATA International



GRATA International is a dynamically developing international law firm which provides services for projects in the countries of the former Soviet Union and Eastern Europe: full coverage of the entire region with network of offices, highly qualified team of professionals suited for cross-border projects. Firm's reputation and expertise are confirmed by testimonials from transnational clients and leading international ratings.

A wide network of office operating under one system and platform delivers great convenience for our clients. Any office can act as a "one-stop-shop" for its clients and provide them with access to services in other cities and countries. If necessary, inter-office teams with relevant experience are assembled to provide solutions to complex tasks. Service quality is assured by a clear system of organisation of this process.

GRATA International is present in the following jurisdictions: Azerbaijan (Baku), Belarus (Minsk), Georgia (Tbilisi), Kazakhstan (Aktau, Almaty, Atyrau, Nur-Sultan, and other cities), Kyrgyz Republic (Bishkek), Moldova (Chisinau), Mongolia (Ulaanbaatar), Russia (Moscow, St. Petersburg, Rostov-on-Don, Samara), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Turkey (Istanbul), Ukraine (Kyiv) and Uzbekistan (Tashkent).

In addition to its offices, GRATA International has representatives in the UK (London), Germany (Frankfurt), the USA (New York), China (Beijing, Hong Kong), UAE (Dubai), Malaysia (Kuala Lumpur), Turkmenistan (Ashgabat) and Switzerland (Zurich).

GRATA International is regularly acclaimed by leading international rankings: Chambers Global, Chambers Asia-Pacific, Legal 500, IFLR1000, WWL, Asialaw Profiles, and is featured in Deals of the Year Awards by China Business Law Journal.

Key Industry Sectors:

- Banking & Finance
- Construction & Infrastructure
- Industry & Trade
- Mining
- Oil & Gas
- Pharmaceuticals & Healthcare
- Technology, Media & Telecommunications
- Transport



250+
professionals



20
countries of presence



6000+
clients



11000+
projects

BELARUS



Oxana Shakhlai

Head of Employment
practice, Associate
Minsk, Belarus

T +375 (29) 313 51 82

E oshakhlai@gratanet.com



Vladislava Kuznetsova

Junior Associate
Minsk, Belarus

T +375 (29) 114 9099

E vkuznetsova@gratanet.com

Normative and legal regulation of remote work

Chapter 25-1 of The Labour Code of the Republic of Belarus (hereinafter - LC) provides specific regulation of the work of employees performing the remote work.

The concept, the mechanism of remote work, the special obligations of the employer and employees

According to Article 307-1 of the LC, remote work means work which an employee performs away from the location of the employer through the use of information and communication technology to perform such work and coordination with the employer.

Distinctive features of remote work

1. remote work is a type of employment relations, i.e. the employee is subject to social and labour guarantees, compensations, rights and obligations established by the general norms of labour legislation (provision of leaves, establishment of the duration of the workday, remuneration, compensation payments, etc.);
2. a remote employee performs his / her work function away the employer's location, which means that there is no workplace conditions in the employment contract, and the employee has the right to choose it at his / her own discretion. In this regard, the employment contract shall specify that the work is remote. The place where the employment contract is concluded (additional agreements on changing the terms of the employment agreement defined by the parties) is the location of the employer;
3. to perform his/her work function and interact with the employer, the remote employee uses information and communication technologies (the Internet, various data transmission systems, computer devices (computers, tablets, smartphones, etc.).

Thus, remote work will be considered as a work that allows to transmit the results of intellectual work through the use of information and telecommunications networks, including the Internet. Remote employees will perform work, the result of which is not material product,

but information, data, objects of intellectual property. Such employees are, for example, accountants, IT sector employees, lawyers, educators, and marketers.

During the period of remote work, the employer:

- 1.has the right to provide the employee with equipment that is the property of the employer, to install software and technology means for ensuring security of information on the employee's personal computer and other means necessary for the employee to perform his / her work functions;
- 2.shall regularly calculate and pay salaries;
- 3.acquaint the employee with the instructions on labour health and safety, as well as with the requirements for occupational safety of working with the equipment and means provided by the employer.

During the period of remote work, the employee is obliged to use the equipment that is the property of the employer, software and hardware recommended by the employer, solely for the purpose of performing their work duties, not to transfer or allow use by third parties.

In accordance with Article 307-2 of the LC, concluding a contract with an employee who performs remote work shall be permitted only in the actual presence of that employee. . Additional agreements concerning modifications determined by the parties of the terms and conditions of an employment contract for an employee who performs remote work may be concluded by exchange of electronic documents or in the actual presence of the employee.

In the event that an agreement concerning modifications determined by the parties of the terms and conditions of an employment contract has been concluded by means of exchange of electronic documents, then the employer shall dispatch within two workdays from the day of concluding the agreement with the employee who is performing remote work a duly executed hard copy of the agreement by registered mail with notice of delivery.

Informing an employee who performs remote work of the employer's order concerning termination of the employment contract shall be by means of exchange of electronic documents or in the presence of the employee. In the event that notification of the employee is by means of exchange of electronic documents, the employer shall on the day of termination of the employment contract dispatch to the employee who is performing remote work a duly executed hard copy of the agreement by registered mail with notice of delivery.

The employment agreement regulates:

- 1.the procedure and terms of providing employees with the necessary equipment, software and technology means for ensuring security of information and other means for the performance of their work duties;
- 2.terms of exchange of electronic documents or messages in electronic form (including SMS messages, files and records) containing written (technical) tasks between the employer and the employee performing remote work;
- 3.methods and frequency of working contacts of the employee performing remote work;
- 4.the condition on the employee's obligation to use equipment, software and hardware, information security and other means provided or recommended by the employer in the performance of their work duties;
- 5.the amount, procedure and terms of payment of compensation for the use by employees performing remote work of their own or leased equipment, software and technology, information security and other means.

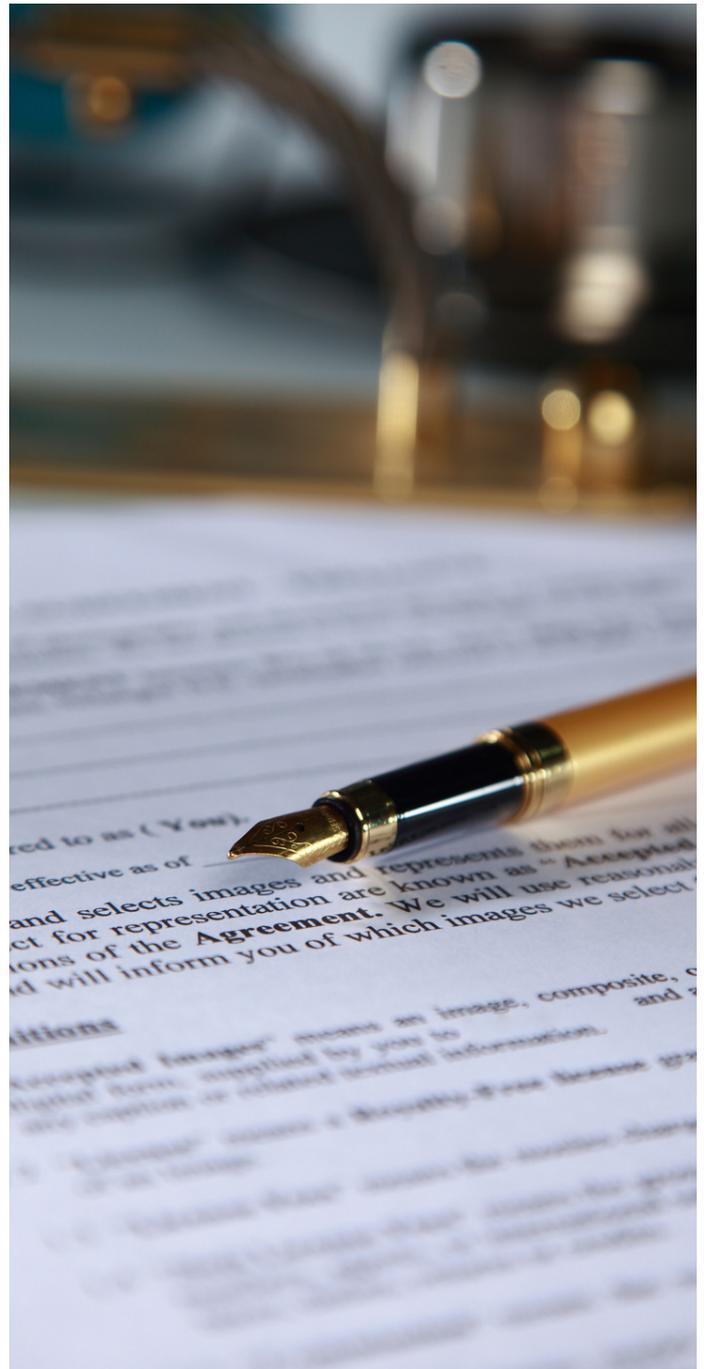
Assignments in writing, other information for performing work duties, results of work performed, notifications and explanations by the employee, and also other documents not requiring signed acknowledgement from the employee may be sent by exchange of files with texts of the documents in electronic form.. At the same time, In the event that need arises for employees who perform remote work to acknowledge documents with their signature, they may be informed of them by exchange of electronic documents or files with the texts of such documents in electronic form with subsequent dispatch to the employees within two workdays of hard copies of the documents by registered mail with notice of delivery.

Procedure for transferring employees to remote work

The transfer of employees to remote work with the consent of the employee is carried out on the basis of an application and an administrative order, then an additional agreement to the employment agreement is drawn up.

In accordance with article 32 of the LC, the employer is granted the right, due to justified manufacturing, organizational or economic reasons, to change the essential working conditions without the employee's consent when the employee continues to work in the same specialty, qualification or position defined in the employment agreement. In this case, the employer is obliged to justify the reasons for which the essential working conditions change, and to notify the employee in writing no later than one month in advance.

If the transfer of an employee to remote work is caused by justified reasons for the adverse impact of the epidemiological situation on the employer's activities, then he can do this by notifying the employee one calendar day in advance.



If the employee refuses to switch to remote work, the employment agreement is terminated in accordance with clause 5, Part 2, Article 35 of the LC. In this case, the employee is paid severance benefits in the amount of at least two-week average earnings.

Pros and cons of the remote work mechanism

Pros	Cons
<ul style="list-style-type: none"> 1. reduction of industrial injuries; 2. lack of requirements for the organization of workplaces in accordance with the legislation on labour protection; 3. loyal decision of employers to retain personnel during crisis situations (unfavorable epidemiological situation); 4. implementation and improvement of electronic document management. 	<ul style="list-style-type: none"> 1. lack of proper control over the work of employees; 2. reduced performance discipline; 3. inconsistency of employees actions (the problem of employees communication, registration, transfer and approval (signing) of administrative and other documents); 4. reduced productivity (delayed decision-making terms, failures in the exchange of information, deterioration of the quality of completed work).

The possibility of remote work for foreign workers

The labour legislation of Belarus does not contain prohibitions on hiring foreign workers remotely.

The peculiarity of the employment of foreigners in Belarus is that they can work only if the employer has:

1. a permit to attract foreign labour (it is necessary to obtain if the employer employs more than 10 foreigners or as a result, more than 10 foreigners will work in the aggregate). Highly qualified employees, foreigners who are employed as the head of a commercial organization in the creation of which they participated, if the employer is a resident of the Hi-Tech Park (HTP), persons who are not covered by the Law on External Labour Migration, are not taken into account;
2. a special permit to engage in labour activity (it is necessary to obtain for each foreigner, except in cases where the employer is a resident of the HTP; the foreigner is a citizen of the Russian Federation, the Republic of Armenia, the Republic of Kazakhstan, the Kyrgyz Republic; the foreigner is a person who is not covered by the Law on External Labour Migration).

The conclusion of an employment agreement with a foreign worker performing remote work is allowed only in the personal presence of such an employee. Employment is carried out in accordance with the requirements of the labour legislation of Belarus.

Features of the documents presented during the employment of a foreigner:

1. legalization of educational documents (legalization is not required if an international agreement on mutual recognition and equivalence of educational documents, academic degrees and titles issued on the territory of Belarus and foreign countries is concluded);
2. the work record of a foreigner can only serve as a source for obtaining information about work experience or seniority. The Belarusian employer must issue a work record of the established sample for a foreign remote worker;
3. the presence of a compulsory medical insurance contract or a medical insurance contract concluded with a foreign insurance company in case of emergency medical care provided to them by medical institutions (except for citizens of the CIS countries, etc.).



In addition, apart from the requirements provided for in Article 307-2 of the LC, the employment agreement of a foreign remote worker shall include the conditions on the procedure for changing and terminating the employment agreement in the event of cancellation of a special permit, the conditions for moving the remote worker to Belarus, insurance, and his/her residence on the territory of Belarus. The period of the employment agreement must not exceed the period of validity of the special permit if such is required, i.e. such an employment agreement cannot be indefinite. The employment agreement must be drawn up in Russian or Belarusian, as well as in a language that is understandable to the employee.

This agreement must be registered with the citizenship and migration authorities within 1 month from the date of its conclusion. HTP residents do not have to register an employment agreement, but must notify the governmental subdivision within three working days that such an agreement has been concluded and attach the appropriate copies.

Please note that a national visa is required for a foreign citizen to enter the territory of Belarus. A foreigner can apply for an entry visa of type C or D. The purpose of the trip is work *praca*(праца).

Type C entry visa:	Type D entry visa:
Single, double, multiple	Multiple
Term - no more than 90 days	Term - more than 90 days, but not more than 5 years

GEORGIA



Tea Tadashvili

Senior Associate
Tbilisi, Georgia

T +995 577 77 77 88

E tea.tadashvili@gratanet.com

To date, the issue of regulating remote work in Georgia are not regulated by the Labour Code or other legal acts. Due to the Covid-Pandemic situation, a large number of people employed in both public services and private business in Georgia have been transferred to remote work mode. The use of the remote labor regime continues to this day due to the epidemiological situation in the country. Covid-Pandemic situation highlighted the pros and cons of remote labor, as well as the need for legal regulation of remote labor. The arguments presented in this article are based on the legal norms that are in force in Georgia today and which, in our estimation, are close to the topic of remote labor. There are no clear rules for remote work in Georgia yet.

The recipient of the remote work (employer) can be an enterprise registered in Georgia or a citizen of Georgia, as well as a foreign enterprise, or a citizen of a foreign country.

An employee who is permanently or temporarily present in Georgia and performs labour duties remotely can be a foreign citizen, as well as a stateless person.

The distance labour relationship between the employer and the employee may be regulated by the labour legislation of the country in which the employer is registered or the country of employer's citizenship. The Labour Code of Georgia does not regulate the issue of remote work, which means that if the person receiving the remotely performed labour duties is an enterprise registered in Georgia or a citizen of Georgia, the employment relationship between such employer and employee must be regulated by the provisions of the Labour Code that are most suitable and does not contradict the true nature and features of remote work.

To perform remote work, a Georgian employer can hire Georgian citizens or a foreigners (foreign citizens, stateless persons). Labour relations between employers and foreigners (migrant workers) in Georgia are regulated in accordance with the rules approved by the Resolution of the Government of Georgia N417 of 07.08.2015 ("Rules of labour arrangement and remunerative work with a local employer"). Although the Resolution N417 of the Government of Georgia dated 07.08.2015 regulates traditional labor relations and the purpose of this document was not to regulate remote labor issues, the norms of this legal act may be applied to those foreign employees who have entered the territory of Georgia and who perform labor duties remotely in favor of Georgian employers.

According to the Resolution N417 It is obligatory to conclude an employment contract between the employer and the migrant worker in compliance with the requirements of the Labour Code of Georgia. The employer is obliged to send a notification to the administrative body – «the State Employment Promotion Agency» about the employment of a migrant worker legally residing in Georgia within 30 calendar days after the conclusion of the employment contract. The employment contract shall contain the contact details of the contracting parties, as well as all other conditions agreed upon by the parties. The employment contract must be concluded only for a definite period of time and in writing, in the native language or in another language understood by the immigrant legally residing in Georgia. A labour migrant enjoys all the rights that Georgian citizens have while being in a similar legal relationship.

Labour migration, as well as remote labour, is directly related to the issues of legal entry and stay of foreigners and stateless persons in Georgia, which are regulated by the Law of Georgia on the Legal Status of Foreigners and Stateless Persons. According to this law, work migrants hired by local employers can enter Georgia with an immigrant visa (D1 category visa); In addition, labour migrants can enter Georgia without a visa if they are citizens of countries whose special list is approved by a resolution N255 of the Government of Georgia of 05.06.2015. In this case, foreigners can enter Georgia without a visa and stay in any 180-day period for a period of 90 calendar days.



Work migrants hired by local employers can enter Georgia with an immigrant visa (D1 category visa).

However, a person (foreign citizen or stateless person) who intends to work remotely for a foreign employer during his / her stay in Georgia, is not subject to a work visa (D1 category). Remote workers who want to work remotely for a foreign or Georgian employer while staying / living in Georgia, can enter Georgia without a visa if they are citizens of countries whose special list is approved by a resolution N255 of the Government of Georgia of 05.06.2015. In this case, foreigners can enter Georgia without a visa and stay in any 180-day period for a period of 90 calendar days. Also, a remote worker can enter Georgia on a short-term or long-term visa, the types and rules of issuance of which are established by the Law of Georgia on the Legal Status of Foreigners and Stateless Persons.

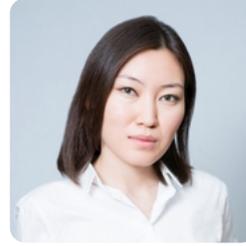
KAZAKHSTAN



Marina Kolesnikova

Counsel
Almaty, Kazakhstan

T +7701 915 0650
E mkolesnikova@gratanet.com



Aruzhan Aimak

Senior Associate
Nur-Sultan, Kazakhstan

T +7701 532 9480
E aaimak@gratanet.com



Can remote work completely replace the office for everyone?

- No. But it definitely creates an alternative, forcing offices to evolve and transform.

A. Mezin



Against the backdrop of the COVID-19 pandemic and prolonged quarantine restrictions, the issues of teleworking in Kazakhstan have acquired particular relevance. According to the publication of the MK-Kazakhstan newspaper, in Kazakhstan in 2020 the number of employees working remotely increased 100 times - from 60,000 to 6,000,000[1]. Another source, Forbes Kazakhstan [2], reports that as of May 2020, 70% of civil servants were using telecommuting.

At the same time, teleworking was reflected in Kazakhstan's labour legislation long before the coronavirus crisis, back in 2012, but before the pandemic, the method of work in question was not widely used.

At this time, telecommuting is regulated by Article 138 of the Labour Code of the Republic of Kazakhstan No. 414-V 3PK dated November 23, 2015 (hereinafter referred to as the "Labour Code").

According to this article, telecommuting is a special form of the work process outside the employer's location using information and communication technologies in the process.

Also, in the context of telecommuting, the Labour Code provides for the following obligations for the parties to an employment relationship:

The employer is obliged to:

- provide the employee with means of communication (means of communication) and bear the costs of their installation and maintenance;
- pay compensation to the employee if the employee uses his own means of communication on an ongoing basis. In this case, the amount and procedure for payment of compensation are established by agreement with the employee. By agreement of the parties, the employee may be reimbursed for other expenses related to the performance of work (the cost of electricity, water and other expenses);
- develop an act defining the procedure for compliance with labour safety and health requirements, as well as ensuring the safe performance of labour duties.

[1] <https://mk-kz.kz/social/2021/03/17/v-kazakhstane-v-sto-raz-vozroslo-chislo-lyudey-rabotayushhikh-udaleno.html>
[2] https://forbes.kz/news/2020/05/08/newsid_224965

The duties of an employee include:

- performance of work taking into account the fixed accounting of working hours;
- compliance with labour safety and health requirements in accordance with the act developed by the employer.

As noted above, for workers engaged in telecommuting, a fixed record of working time is established, the specifics of control over which are determined in the employment contract. At the same time, the Labour Code does not specify which particular features of control over working time can be used in this case.

In this connection, in practice, employers independently determine various methods of monitoring the working time of remote workers, including:

- holding regular videoconferences with employees;
- the requirement for the employee to be "online" during the working day in order to timely respond to all messages received by e-mail, as well as calls from colleagues, management;
- use of special software that records the time spent by an employee in the employer's corporate information system.

Taking into account the above, we can confidently say that the regulation of teleworking in the Labour Code allows the parties' labour relations, when concluding an employment contract, to reflect the main specifics of teleworking, as well as the obligations of the parties arising from it.

At the same time, the transfer of workers during their working life from the standard mode of work (office work) to telecommuting causes certain difficulties for companies, especially when this transfer is initiated by employers on the recommendation of government agencies, as in the case of the COVID-19 pandemic.



In particular, the transition to a remote work format implies a change in the place of work of the employee specified in the employment contract, as well as the need to include additional obligations of the parties in the employment contract, which, in turn, obliges the parties to amend the employment contract. In this case, changes must be carried out in the manner prescribed by Article 33 of the Labour Code, through the following actions:

1. the employer sends the employee a notification with a proposal to work remotely (at the place of residence or in another location), as well as an additional agreement reflecting all relevant changes to the employment contract;
2. the employee reviews the notification and informs the employer of his decision within 5 working days from the date of receipt of the notification. In case of a positive decision, the employee signs an additional agreement to the employment contract, and in case of refusal, he informs the employer about this separately.

Considering the above, the employee has the right to refuse the telecommuting offered to him, which is acceptable under standard conditions (not all employees are comfortable with teleworking due to housing, family circumstances), but not in a pandemic, when continuing to work in the office, moving around the city may pose a threat to the life and health of the employee. However, in practice, employers have faced similar refusals from workers.

That is, the Labour Code does not take into account force majeure situations when the transfer of employees to a remote mode of work is inevitable due to exceptional circumstances and should not depend on the opinion of employees. We believe that for the type of transfer under consideration, the order of the employer with the appropriate justification for the transfer, the procedure for reimbursing workers' costs caused by teleworking, as well as indicating the methods of fixed recording of working hours instead of drawing up the documents provided for in Article 33 of the Labour Code is quite sufficient.

Also, the existing procedure for transferring to teleworking involves personal interaction between the employee and the employer when signing an additional agreement, which, as practice has shown, is impossible with an urgent transfer of employees to teleworking due to quarantine restrictions.

The study of the international practice of introducing remote work made it possible to identify another disadvantage in the mechanism of remote work in Kazakhstan's current legislation. In particular, the Labour Code does not provide for the possibility of combined teleworking, when an employee can alternate work from home with office work. In our opinion, the presence of combined work is quite reasonable, since a sharp transition to remote work can affect the psychological state of the employee, cause the risk of loss of social, communication, and professional skills. In this regard, it is worth citing as an example the definition of teleworking, contained in the European Framework Agreement on Telework

(Framework Agreement on Telework) of July 16, 2002 (hereinafter - the "European Agreement"), according to which "telework" is - "the form of organisation and / or performing work using information technology in the context of an employment contract / relationship, where work, which may also be performed on the employer's premises, is carried out outside these premises on a regular basis".

In order to eliminate the existing shortcomings in the mechanism for regulating remote work, legislative bodies have developed a draft Law of the Republic of Kazakhstan "On Amendments and Additions to the Labour Code of the Republic of Kazakhstan on Improving the Legal Regulation of Remote Work" (hereinafter - the "Draft Law"), which is currently at consideration of the Mazhilis of the Parliament of the Republic of Kazakhstan. The bill is aimed at detailing the existing mechanism for regulating remote work, including its differentiation by type, clarifying the procedure for interaction between an employee and an employer, etc. For example, the Draft Law provides for the following:

1. Availability of three types of remote work:

- remote (permanent) work - a special form of the implementation of the labour process outside the employer's location using information and communication technologies in the process of work;
- temporary teleworking is the implementation of a labour process that provides for the temporary performance of the labour function of an employee working on the basis of an employment contract outside the location of the employer;
- combined teleworking - implementation of the labour process by combining work duties both at the employer's location and through teleworking.

In accordance with the Draft Law, all specified types of remote work can be established only by agreement of the parties. Thus, for temporary teleworking, even in connection with emergencies, the written consent of the employee will be required,

which, unfortunately, does not solve the above problem of transferring employees to teleworking without their consent in exceptional cases (emergency situations, pandemic, etc.).

2. The use of an electronic digital signature when submitting notifications, familiarising the employee with the collective agreement and acts of the employer, providing the employee with explanations on the fact of the committed disciplinary offense.

The introduction of the above amendments will facilitate the procedure for personnel workflow, which is especially important in remote work and quarantine measures, when the parties to labour relations do not have the opportunity for personal interaction.

3. Establishing a flexible working time for the employee in addition to the fixed working time (during which the employee must be available for communication with the employer within working hours, observing the limitations of the daily working hours), flexible working hours using the summarised accounting of working hours.

Establishing flexible working hours is the best option for many teleworkers who need to combine work with household duties and childcare. In this regard, the International Labour Organisation (hereinafter referred to as "ILO"), in its practical guide "Remote work during and after the COVID-19 pandemic" (hereinafter referred to as the "Guide") provides an example from the practice of a financial services company in Poland, in which the employer allowed one of the employees to work from 6 a.m. to 2 p.m. for one week and from 2 p.m. to 8 p.m. the next week, thus giving her the opportunity to take turns caring for the baby with her husband.

4. Conclusion with a remote worker of an agreement on the preservation of confidential information in order to protect the confidential information of the employer.



In addition to the new provisions contained in the Draft Law, and aimed at honing the existing mechanism of remote work, in our opinion, it would be advisable to include the following norms in the Labour Code:

1. Obligation of the employer to periodically conduct trainings (training) for workers engaged in remote work, as, being isolated from the team, the usual working atmosphere, employees risk reducing their professional skills (such an obligation is reflected in the European Agreement).

The ILO also recommends employers to conduct courses focusing on "the effectiveness and behavioral aspects of teleworking" that will help reduce potential stress, the risk of emotional and professional decline, and blurring the boundaries of work and personal life. "Adequate exercise, proper nutrition and good sleep, and turning off digital devices are just as important, if not more, in the context of telecommuting during a pandemic," says the ILO.

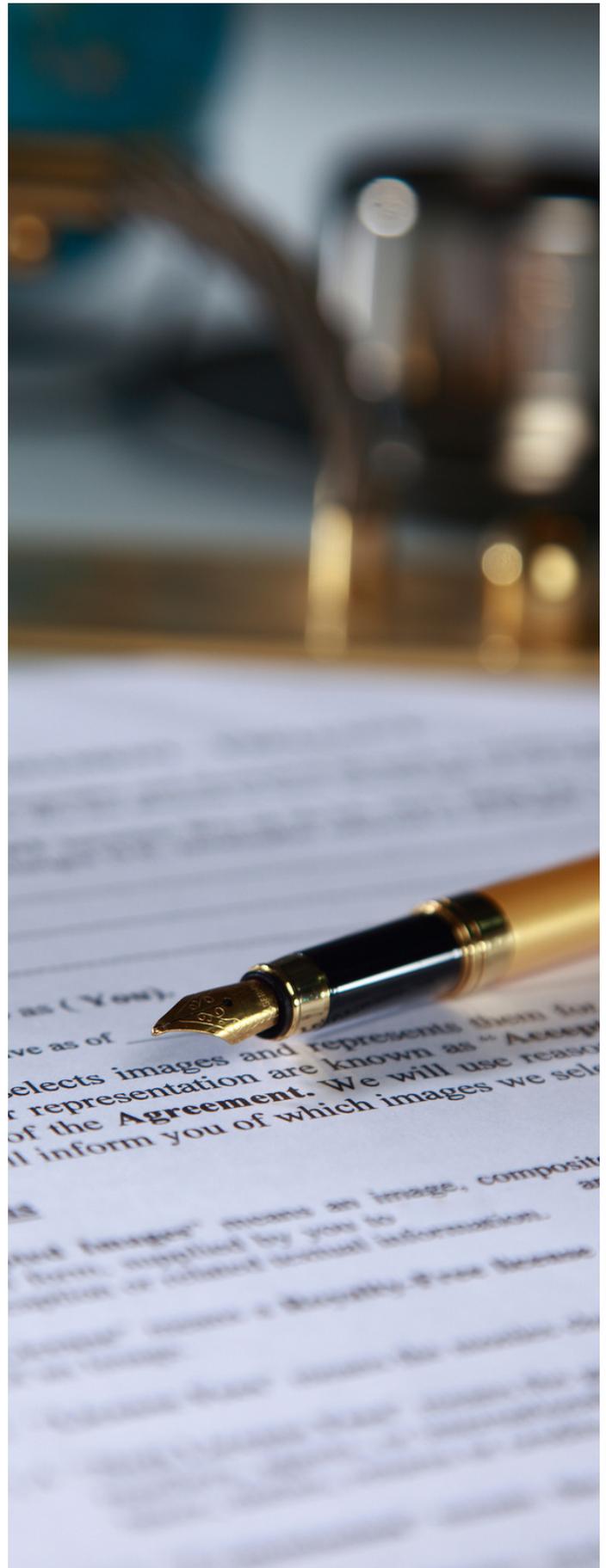
2. Regulations on the possibility (impossibility) of foreign workers employed by Kazakhstani companies to work remotely at their place of residence (country of permanent residence).

This measure is due to the fact that now, during a pandemic, when the entry of foreign labour is difficult due to quarantine restrictions, the issue of remote work by foreign specialists is extremely relevant, but at the same time, lawyers, employers, and a number of state bodies do not have a consensus on this issue, so as:

On the one hand, the Ministry of Labour and Social Protection of the Population of the Republic of Kazakhstan gives written explanations that remote work in the situation under consideration is possible and the legislation of the Republic of Kazakhstan will be applicable legislation (however, the explanations of the ministries are not normative legal acts and, accordingly, are not mandatory).

On the other hand, in accordance with paragraph 2 of Article 8 of the Labour Code, the Labour Code applies to employees and employers who are located on the territory of the Republic of Kazakhstan, including branches and (or) representative offices of foreign legal entities. At the same time, foreign workers in this case do not carry out their activities on the territory of Kazakhstan, but on the territory of a foreign state. The lack of settlement of this issue raises controversy as to whether employers in this case need to obtain work permits for foreign workers or not.

To sum up, we can conclude that the main aspects of telecommuting are regulated by the Labour Code. Moreover, at this stage, measures are being taken to improve the mechanism of remote work in Kazakhstani legislation. However, in our opinion, introducing innovations related to remote work, the legislator should place greater emphasis on measures to prevent desocialisation, professional burnout of workers, taking into account the experience and practice of countries where remote work is already an established mechanism in labour relations.



KYRGYZSTAN



Elvira Maratova

Partner

Bishkek, Kyrgyzstan

Dushanbe, Tajikistan

T +996 312 31 4050

E emaratova@gratanet.com

To date, the issue of regulating remote working under the labour legislation of the Kyrgyz Republic is relevant and important. It should be noted that this issue was an pressing long before the current situation and before the pandemic, and subsequent declaration of a state of emergency in the country last year.

The situation in 2020 prompted the Ministry of Labour and Social Development to issue a bill presenting provisions regulating remote working. All of Kyrgyzstan's business communities were interested in and supported this initiative and participated in the development of the document in one way or another. Thus, the Ministry of Labour and Social Development submitted for public discussion the draft Law of the Kyrgyz Republic "On Amendments to the Labour Code of the Kyrgyz Republic" and the draft Resolution of the Government of the Kyrgyz Republic "On the draft Law of the Kyrgyz Republic "On Amendments to the Labour Code of the Kyrgyz Republic" on 4th May 2020. The justification statement declares that the current provisions of the labour legislation do not regulate this issue, but "at present there is an urgent need to regulate remote working of various categories of workers. The amendments provide an opportunity to legally fix the relationship with such workers." However, for all its importance and necessity, this bill remained "on hold". But, since no one has cancelled the importance of this topic, we will consider the proposed draft amendments to the Labour Code.

The bill is designed to regulate the remote working of an employee. First, it supplements the definition of a workplace, which now means a place at which the employee must be present or to which he/she needs to arrive in connection with his/her work and which is directly or indirectly under the control of the employer, except for remote work and home-based work. Previously and now, this definition has carried and threatened the employer and the employee, who have agreed to establish a remote working regime arrangement now, because it ties to the workplace in conjunction with Article 54 of the Labour Code, which regulates the content of the employment contract. Therefore, under the framework of remote working, it is important to decouple the performance of labour duties by the employee from the workplace and define such performance outside the workplace.

The provisions on concluding an employment contract have also been amended. Now the employment contract in written form can be concluded by drawing up one document on paper signed by the employee and the employer, or in the form of an electronic document signed by electronic

signatures, or by exchanging electronic documents signed by the employee and the employer with their electronic signatures. That is, starting from the conclusion of an employment contract, the draft law provides for the need to organize communication between the employee and the employer using information and telecommunications networks, including the Internet, to perform work and interaction.

The separate chapter 32, which comes immediately after the chapter on regulating the labour of home-based workers is devoted to features of remote workers' labour regulation.

Labour legislation and its specific provisions concerning the remote workers covers the main scope of regulation. Thus, for example, the employer's obligations to ensure safe working conditions and labour safety of remote workers are covered to a limited extend. The mode of remote working shall be established by the employment contract and the employer's order. The consent or application of the employee is not required to establish the remote work regime in the following cases:

- the declaration of a state of emergency;
- proclamation of martial law;
- emergency situation or
- the onset of force majeure.

In accordance with the proposed provisions, it is necessary to stipulate with the employee working remotely the following conditions in the employment contract:

- regime of working hours and time off. Unless otherwise stipulated by the employment contract on remote work, the regime of working time and rest time of a remote worker is set by him/her at his/her own discretion;
- the procedure and conditions for using means of communication and other equipment, software and hardware, information protection tools and other means provided or recommended by the employer;
- the procedure and conditions for reporting on the work performed;

- the procedure and conditions for compensation for the use of communication facilities and equipment, software and hardware, information protection tools and other means belonging to the employee;
- the rules for compensation of other costs which the employee incurs in connection with the performance of remote work.

The termination of an employment contract with the remote worker shall done based upon the grounds provided by the labour legislation. On the day of termination of the employment contract, the employer shall send to the remote worker a duly executed hard copy of the said order (instructions) by a registered mail with notification. Although in case of getting a remote worker acquainted with the order (instruction) on termination of the remote working employment contract it shall be sent in the form of the electronic document.

The proposed bill will still be further developed and amended, but the main objectives of the employer-employee relationship in remote working are defined and provided already. I would like to stipulate again the importance of the remote working regulation, the need for making amendments and additions to the labour legislation. As it conditioned by the current tendencies and rapid growth of digital technologies in various spheres of life and production. Recently, the Kyrgyz Republic has made tremendous steps towards the development of digital transformation. Moreover, the government's policies have been aimed at the digitalization of life.

The adoption of provisions on remote working into the labour legislation will increase the flexibility of the employment, and also the use of digital technologies in labour relations.

RUSSIA



Michael German

Partner

Saint Petersburg, Russia

T +7 812 384 4838

E mgerman@gratanet.com

At the end of 2020, the labour legislation of the Russian Federation was supplemented with a new version of Chapter 49.1 of the Labour Code of the Russian Federation, which regulates the work of telecommuters.

With the onset of a pandemic of a new coronavirus infection around the world, the approach to labour relations and the human resource management system has been revised and rethought, the shortcomings of the regular work of employees working directly in offices, gaps in the regulation of teleworkers, and the pros and cons of telecommuting have been revealed.

The demand for teleworking has opened up new business opportunities and expanded the labour market boundaries for employers, which were previously limited by the employer's territory and a radius of 100 km.

Companies now have the opportunity to attract highly qualified specialists not only from other regions of the country, but also from other countries, without additional costs for moving and living a much needed employee and specialist.

However, in practice, the question arose of the applicability of Russian labour law to relations with foreign employees operating remotely, but outside of the Russian Federation.

In the opinion of the majority, based on the provisions of Article 11 of the Labour Code of the

Russian Federation, according to which, on the territory of the Russian Federation, the rules established by labour legislation and other acts containing labour law norms apply to labour relations with the participation of foreign citizens, stateless persons, organizations created or established by foreign citizens, stateless persons or with their participation, international organizations and foreign legal entities, unless otherwise provided by this Code, other federal laws or an international treaty of the Russian Federation, concluding an employment contract with an employee located abroad and intending to perform its function outside the Russian Federation is impossible.

Such relations can be formalized only by a civil law contract.

A similar position was expressed by the Ministry of Labour of Russia in its letter No. 14-2 / OOG-10811 dated December 7, 2016, according to which the Labour Code of the Russian Federation (hereinafter referred to as the Code) does not provide for the possibility of concluding an employment contract on remote work with a citizen of the Russian Federation, with a foreign citizen or stateless person working outside the territory of the Russian Federation, since, taking into account the provisions of Article 312.3 of the Code on the employer's obligation to provide safe conditions and labour protection for teleworkers, as well as the provisions of Article 13 of the Code that federal laws and other regulatory legal acts of the Russian Federation containing labour law are valid only on the territory

of the Russian Federation; it is not possible for the employer to provide safe working conditions for remote workers working outside the Russian Federation. Thus, according to the department, cooperation with such citizens should be carried out within the framework of civil law relations.

However, let us turn to the content of Chapter 49.1 of the Labour Code of the Russian Federation as amended, effective from January 01, 2021.

The first paragraph of Article 312.1 of the Labour Code of the Russian Federation stipulates that remote (remote) work (hereinafter referred to as remote work, performance of the labour function remotely) is the performance of the labour function specified by the employment contract outside the location of the employer, its branch, representative office, other separate structural unit (including located in another area), outside a stationary workplace, territory or facility, directly or indirectly under the control of the employer, provided that information and telecommunications are used to perform this job function and to interact between the employer and the employee on issues related to its performance: networks, including the Internet, and public communication networks.

At the same time, taking into account the provisions of Article 312.2 of the Labour Code of the Russian Federation, which determine that an employment contract with a remote worker can be concluded by exchanging electronic documents between an employee (a person applying for a job) and an employer in the manner prescribed by part one of Article 312.3 of this Code, i.e. ... by exchanging electronic documents using enhanced qualified electronic signatures, we can say that the current labour legislation of the Russian Federation does not contain a prohibition on attracting foreign employees to perform a certain labour function for a Russian company, without taking into account the provisions of Article 11 of the Labour Code of the Russian Federation and the established this regulation of restrictions.

Thus, a certain conflict of law arises in this issue, due to which, on the one hand, there is a restriction on the territory of the Russian Federation, and on the other, taking into account the specifics of remote work, such a restriction does not apply in this case.

For the sake of fairness, it should be noted that the employment contracts for such employees, nevertheless, are subject to certain rules established by the national legislation of the Russian Federation:

- a foreign employee who is not a resident in the understanding of taxation must have an account with a Russian bank to which wages will be transferred;
- the employment contract itself must be subject to Russian labour law;
- the amount of wages, in any case, must be established and paid in ruble equivalent, even if the parties agreed upon wages in foreign currency at its conclusion.

Subject to these rules, such an agreement will be considered lawful and reasonable.

As for the issue of compliance with labour protection requirements, with the emergence of the requirements of Article 312.7 of the Labour Code of the Russian Federation, the employer's obligation in this matter was reduced to familiarizing employees with the current provisions in this area, the employee's social insurance obligations, the obligation to investigate industrial accidents and fulfill regulations of the authorities.

Other legal requirements currently do not apply to remote employees.

Of course, with the issue of investigating accidents and compulsory insurance of such workers, there will be a lot of questions about the procedure for their implementation, especially if the employee is on the territory of another state, however, in our opinion, in this case there is a possibility of applying the relevant provisions regulating the work of journalists and diplomatic employees in aggregate with the principle of analogy (law).

It is the regulations governing the work of these employees that provide for the procedure for investigating accidents that occurred on the territory of foreign states.

Of course, in this case, the employer will require the formation of a local act defining the relevant features for employees working on a remote basis outside the Russian Federation.

Regarding the issue of whether the employer has a duty to notify the migration service about the admission and / or dismissal of foreign employees, if such an employee is recruited on a remote basis, such an obligation disappears, since the employee and the employer are located in different regions, while the obligation on notification of employment, by virtue of the current legislation, arises only if the employee is hired in the region where the employer is present.

Thus, we believe that the amendments to the current labour legislation of the Russian Federation that have entered into force, in this case, expand the opportunities for Russian employers to attract highly qualified personnel from other countries, subject to certain conditions.



UZBEKISTAN



Dilorom Yuldasheva

Council
Tashkent, Uzbekistan

T +9 9871 23024 22
E dyuldasheva@gratanet.com



Parvina Bashirova

Associate
Tashkent, Uzbekistan

T +9 9893 457 50 55
E pbashirova@gratanet.com

Today, the situation with the COVID-19 pandemic around the world is making changes in almost all spheres of people's lives, which in turn leads to the need to adopt additional mechanisms in the regulation of labour relations aimed at solving employment problems and improving the welfare and safety of the population. To some extent, the coronavirus pandemic has become a shift for the further digitalisation of labour relations, as well as the massive introduction of remote work in our republic.

Currently, the regulatory legal act governing remote work in the Republic of Uzbekistan is the Regulation on the temporary procedure for transferring workers to work remotely, on a flexible working schedule or at home during the period of quarantine measures, approved by order of the Minister of Employment and Labour Relations Of the Republic of Uzbekistan No. 3228 dated March 28, 2020. This procedure was introduced during the period of quarantine measures associated with the COVID-19 pandemic.

In accordance with the said Regulation, the term "teleworking" means a mode of work in which the employee's obligations stipulated in the employment contract are performed outside the employer's location, permanent workplace, territory or facility, directly or indirectly under the control of the employer.

In the remote form of work, the employer and the employee are responsible for observing the safety rules and working conditions provided for by labour

legislation. In addition to this, the employer, in the presence of an additional agreement to the employment contract, is obliged to provide the employee with equipment and office equipment for the performance of his job duties and provide communication means for interacting with him. The employee, in turn, bears the obligation to respect the provided equipment and machinery, and also bears the risk of compensation for any damage caused.

When an employee is temporarily transferred to remote work, the employer issues an appropriate order indicating the period for the temporary transfer. At the same time, the basis for the transfer of an employee to remote work is amending the employment contract by concluding an additional agreement. In this case, for the transfer of an employee to a remote mode of work, a prerequisite is mutual agreement of both parties.

According to the aforementioned Regulation, in the supplementary agreement to the labour contract, along with the conditions provided for in Article 73 of the Labour Code of the Republic of Uzbekistan, the following must be indicated:

- the procedure for interaction between the employee and the employer through electronic document management;
- the procedure for providing the employee with equipment and (or) office equipment necessary for the employee to perform his official duties, if there is an agreement between the parties on the use of the employee's equipment and (or) office equipment;
- the procedure for providing the employee with means of communication, including access to the Internet, to ensure constant interaction with the employer;
- conditions for compensation of harm by the employee to the employer in the event of harm caused by the employee to the equipment and machinery provided by the employer;
- conditions and procedure for reimbursement of expenses to an employee in the event that the employee uses personal equipment and (or) office equipment, as well as communication facilities, including the Internet, in order to fulfill their official duties;
- obligations of the employee and employer to comply with the necessary conditions and labour protection;
- conditions for the transfer of a remote worker from remote work to a permanent place of work, in the event of a production need.

In turn, the procedure for electronic document flow between an employer and an employee transferred to a remote mode of work is carried out in accordance with the Law "On electronic document flow" No. 611-II of April 29, 2004 and other legislative acts.

An employee transferred to remote work independently sets the duration of working hours and work schedule for himself based on the scope of the task and the terms of the employment contract. With this in mind, the work is compensated in a single amount, without observing the rules of payment for overtime work, night work, work on weekends and holidays.

As noted, at the expressed request of the employee and with the consent of the employer, the employee can also be transferred to a temporary mode of work at home. The grounds for working at home are also the order issued by the employer and the supplementary agreement to the employment contract concluded between the employee and the employer.

In addition, according to the said Regulation, in accordance with the concluded employment contract, the concept of "work at home" means work performed by an employee at his place of residence or in other premises belonging to him or his family members, for the production of goods or the provision of services on orders employer. This form of work is allowed if the employee has all the necessary conditions for doing work at home, including living quarters.

Moreover, the supplementary agreement to the employment contract must provide for the following conditions:

- the types of work that the employee must do at home;
- the procedure for the provision of equipment, inventory, components, raw materials, materials, semi-finished products, as well as production assignments for the performance of the employee's official duties;
- obligations of the employee and employer to comply with the necessary conditions and labour protection;
- conditions and procedure for reimbursement of expenses when an employee uses personal equipment, tools and inventory for the performance of official duties, as well as expenses for electricity, water and communications;
- other conditions in accordance with the legislation.

It should be noted that teleworking of foreign workers is also regulated by the above Regulation. According to the Labour Code of the Republic of Uzbekistan, the subjects of labour relations can be both citizens of the Republic of Uzbekistan, and foreign citizens, and stateless persons who have reached the established age and have concluded an employment contract with an employer.

One of the important requirements for foreign citizens to work on the territory of the Republic of Uzbekistan is to obtain a permit for the right to work (hereinafter referred to as a labour permit) in Uzbekistan, issued by the Agency for External Labour Migration under the Ministry of Employment and Labour Relations of the Republic of Uzbekistan in accordance with the Regulations on the Procedure attraction and use of foreign labour in the Republic of Uzbekistan, approved by the Resolution of the Cabinet of Ministers No. 244 of March 25, 2019.

To obtain a labour permit for an employee, the employer applies with an application to the Center for Public Services or registers on the Unified Portal of Interactive Public Services of the Republic of Uzbekistan to submit an application and relevant documents online. The term of validity of the labour permit is one calendar year with the possibility of extension by one calendar year an unlimited number of times.

In accordance with the Regulation, the priority right to transfer to the listed work modes is granted to pregnant women, the elderly, persons with disabilities and employees suffering from chronic diseases. It is also worth noting that the procedure for transferring workers to teleworking mode, flexible working hours or work at home, set out in the Regulation, is temporary. Nevertheless, developing IT technologies open up new opportunities and emphasize the need for the development of a remote mode of operation in the Republic of Uzbekistan.



UKRAINE



Mykola Aleksyuk

Partner
Kiyv, Ukraine

T +38 050 932 6219
E maleksiuk@gratanet.com

On February 27, 2021 the Law of Ukraine "On Amendments to Certain Legislative Acts Concerning Improving the Legal Regulation of Teleworking" came into force, the adoption of which was dictated by the need to provide additional social and economic guarantees in connection with the spread of coronavirus disease (COVID-19).

In addition, the previous legislation of Ukraine regulating the issues of remote work (Regulation on working conditions of homeworkers, approved by the decree of the USSR State Committee on Labor and Social Issues and the All-Union Central Council of Trade Unions Secretariat dated 09.29.1981 No. 275/17-9, approved by the protocol of the Ministry of Labor of Ukraine dated 06.21.1995 No. 4) was too outdated and absolutely did not meet the modern challenges of the labor market.

Thus, by the above law, the Code of Labor Laws of Ukraine was supplemented with articles on "Homework" and "Distance work".

Below are the definitions of the above legal institutions, as well as the main features and differences between home work and distance work.

Home work is a form of work organisation in which work is performed by an employee at his place of residence or in other premises specified by him/her, characterised by the presence of a fixed zone, technical means (basic production and non-production assets, tools, devices, inventory) or their combination necessary for the production of

products, the provision of services, the performance of work or functions provided for by the constituent documents, but outside the production or working premises of the owner of the enterprise, institution, organisation or his authorised body.

Features of home work:

1. the employee's workplace is fixed and cannot be changed at the initiative of the employee without agreement with the owner or owner's authorised body;
2. employees are subject to the general working regime of an enterprise, institution, organisation;
3. performing work at home does not entail changes in rationing, wages and does not affect the scope of labor rights of workers;
4. the provision of the means of production, materials and tools necessary for the worker to perform home work is assigned to the owner or his authorised body;
5. for the time of the threat of the spread of an epidemic, pandemic, the need for self-isolation of an employee in cases established by law, and / or in the event of a threat of armed aggression, natural or man-made disaster, or emergency of other nature, home work may be introduced by order (decree) of the owner or his authorised body without the obligatory conclusion of an employment contract for home work in writing;
6. pregnant women, workers with a child under the age of three or caring for a child in accordance with a medical report until they reach the age of six, workers with two or more children under the age of 15 or a child with disabilities, parents of

a person with disability from childhood of subgroup a of group I, as well as persons who have taken care of a child or a person with a disability since childhood of subgroup a of group I, can work at home work, if possible, taking into account the work performed, and the owner of the enterprise, institution, organisation or the body authorised by it has the appropriate resources and means for this.

Remote work is a form of work organisation in which work is performed by an employee outside the work premises or the territory of the owner or his authorised body, at any place of the employee's choice and using information and communication technologies.

Features of remote work:

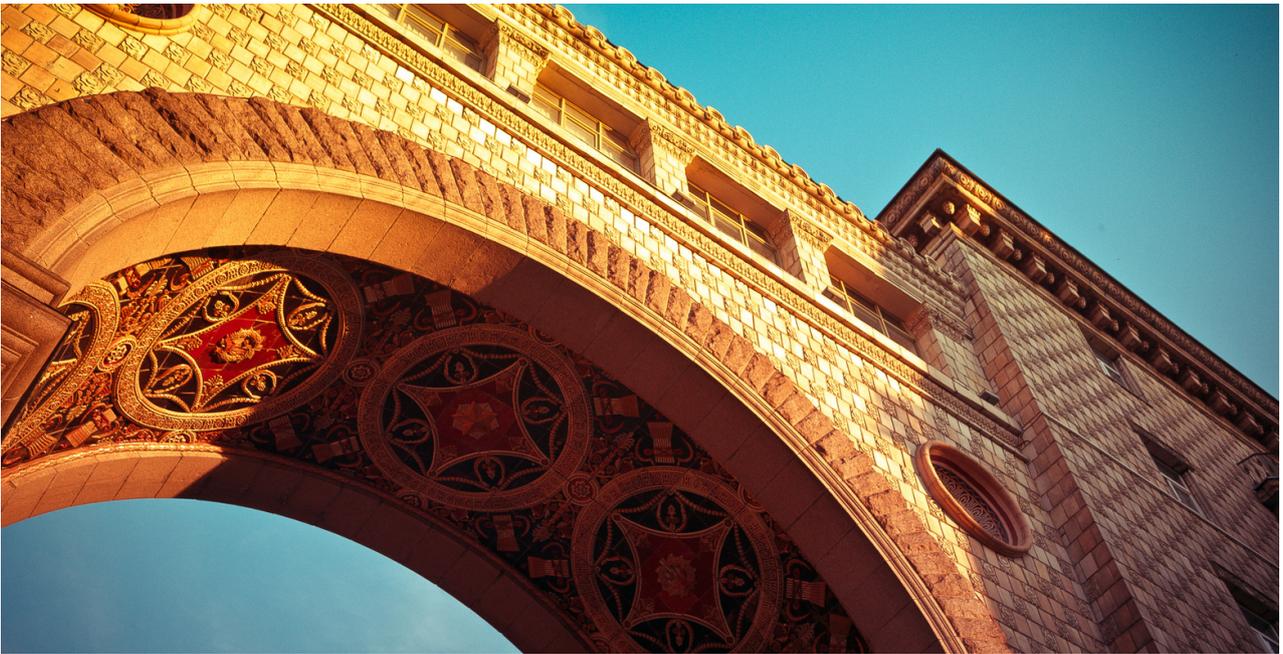
- 1.the employee independently determines the workplace and is responsible for ensuring safe and hazardless working conditions in the workplace;
- 2.the employee distributes working time at his own discretion, the internal labor regulations do not apply to him, unless otherwise specified in the employment contract;
- 3.performance of remote work can be combined with the performance by the employee of work at the workplace in the premises or on the territory of the owner of the enterprise, institution, organisation or body authorised by him;
- 4.the procedure and terms for providing employees who perform work remotely with the equipment, software and hardware, information security and other means necessary for the performance of their duties, the procedure and terms for submitting reports on the work done by such employees, the amount, procedure and timing of payments to employees compensation for the use of equipment belonging to them or rented, software and hardware, information security and other means, the procedure for reimbursing other expenses related to the performance of remote work are determined by an employment contract for remote work;

5.an employee who performs teleworking is guaranteed a period of free time for rest (disconnection period), during which the employee can interrupt any information and telecommunication communication with the owner or his authorised body, and this is not considered a violation of the terms of the employment contract or labor discipline;

6.an employee may demand from the owner of an enterprise, institution, organisation or his authorised body a temporarytransfer to remote work for a period of up to two months, if actions containing signs of discrimination were committed against him/her at the workplace. At the same time, the owner of an enterprise, institution, organisation or a body authorised by him may refuse such a transfer to an employee if it is impossible to perform remote work, taking into account the employee's job function, and also if the employee did not provide facts confirming that discrimination, sexual harassment or other forms of violence had taken place;

7.at the time of the threat of the spread of an epidemic, pandemic, the need for self-isolation of an employee in cases established by law, and / or in the event of a threat of armed aggression, natural or man-made disaster, or emergency of other nature , remote work may be introduced by order (decree) of the owner or his authorised body without the obligatory conclusion of a labor contract for remote work in writing;

8.pregnant women, workers with a child under the age of three or caring for a child in accordance with a medical report until they reach the age of six, workers with two or more children under the age of 15 or a child with disabilities, parents of a person with disability from childhood of group I, subgroup "A", as well as persons who have taken care of a child or a person with a disability since childhood of group I, subgroup A "" can work remotely, if possible, given the work performed, and the owner of an enterprise, institution, organisation or an authorised body has the appropriate resources and means for this.



At the same time, it should be noted that the above-mentioned norms and features apply to the working regulations of both citizens of Ukraine and foreign workers.

Taking into account that the new law has been in effect for less than a month, the law enforcement practice of applying the legal regime of home and telecommuting is extremely insignificant (not to mention the judicial practice of interpretation and application of the above norms, which is not yet available at all).

At the same time, the consolidation of the above institutions in the Labor Code of Ukraine, of course, has become an adequate response of the legislator to modern challenges.

Local Knowledge for Global business

Global Presence



Integrated Offices

Azerbaijan
Baku

Belarus
Minsk

Georgia
Tbilisi

Kazakhstan
Aktau
Almaty
Atyrau
Nur-Sultan, etc.

Kyrgyzstan
Bishkek

Moldova
Chisinau

Mongolia
Ulaanbaatar

Russia
Moscow
Rostov-on-Don
St. Petersburg

Tajikistan
Dushanbe

Turkmenistan
Ashgabat

Ukraine
Kyiv

Uzbekistan
Tashkent



Associate Offices

Russia
Samara

Turkey
Istanbul



Representatives

China
Hong Kong
Beijing

Germany
Frankfurt

Malaysia
Kuala Lumpur

Switzerland
Zurich

UAE
Dubai

UK
London

USA
New York