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Remote work in Belarus (including remote work of foreign workers)

Normative and legal regulation of remote work

Chapter 25-1 of The Labor 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 labor guarantees, compensations, rights and obligations established by the general norms of labor 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:

- ▶ 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;
- ▶ shall regularly calculate and pay salaries;
- ▶ acquaint the employee with the instructions on labor 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:

- ▶ 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;
- ▶ 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,;
- ▶ Methods and frequency of working contacts of the employee performing remote work;
- ▶ 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;
- ▶ 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
<ol 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 labor protection; 3. loyal decision of employers to retain personnel during crisis situations (unfavorable epidemiological situation); 4. implementation and improvement of electronic document management. 	<ol 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 labor 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:

- ▶ a permit to attract foreign labor (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 Labor Migration, are not taken into account.
- ▶ a special permit to engage in labor 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 Labor 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 labor legislation of Belarus.

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

- ▶ 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);

- ▶ 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;
- ▶ 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:

Single, double, multiple

Term - no more than 90 days

Type D entry visa:

Multiple

Term – more than 90 days, but not more than 5 years

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