

PANORAMIC NEXT

# Remote Working

FRANCE

LEXOLOGY



# Remote Working

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Contributing Editor

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SpringLaw

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Through a series of interviews with prominent practitioners in major jurisdictions, *Panoramic Next: Remote Working* explores the legal and practical implications of managing a remote workforce. Addressing diverse issues including cybersecurity, tax, health and safety, and remote hiring, it offers useful takeaways for employers of all stripes.

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# France

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## Summary

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What are the most consequential issues that an employer should consider when determining its post-covid-19 remote work policies?

Pragmatically speaking, is there a threshold to determine when working remotely (from home or otherwise) requires local rules to apply?

If employees voluntarily move away from their main work location, can employers unilaterally impose locally appropriate compensation packages?

Do you anticipate a rising trend of employers hiring remote workers as opposed to managing office-based employees who subsequently go remote? What practical issues should employers bear in mind when considering remote hiring?

Do local laws provide remote employees with more generous leave entitlements, such as sick leave? Can employees avail themselves of leave entitlements in both the primary work location and the remote work location?

What are some best practices for protecting confidential and proprietary information in a remote work environment?

How does a remote employee affect the employer's tax obligations? Do the employee's activities render the employer to be 'doing business' in the remote location? Will these activities create a taxable presence for the foreign employer in the local jurisdiction?

What are some best practices for tracking remote work arrangements?

### THE INSIDE TRACK

What do you think are the most exciting and promising opportunities of remote working? How do you think it will affect the future of work?

In your view, what are the most difficult challenges raised by the rise of remote working? How do you think employers should tackle these challenges and adapt accordingly?

What do you enjoy most about practising and advising in this area?

## Profiles

### ABOUT

Joëlle Hannelais joined Vivien & Associés in 2012 after previously working at Bredin-Prat (1987–1989), Moquet Borde & Associés (1989–2004), and Latournerie Wolfrom & Associés (2004–2012).

Joëlle has recognised expertise in labour and social security law and is particularly well suited to handle the social aspects of restructuring and business transfers, as well as all matters relating to employee and union representation within companies.

Joëlle also conducts outsourced internal investigations following reports of harassment, discrimination, unfair competition involving employees, breaches of internal ethics rules, and more broadly in disciplinary matters. The firm intervenes at all stages of the investigation: from the initial verification of allegations and conducting hearings to drafting the final report and its delivery, including recommendations in the event of internal procedural deficiencies revealed by the investigation. We also advise companies on how to communicate the investigation results to both the whistle-blowers and the employees implicated.

### Q&A

#### **WHAT ARE THE MOST CONSEQUENTIAL ISSUES THAT AN EMPLOYER SHOULD CONSIDER WHEN DETERMINING ITS POST-COVID-19 REMOTE WORK POLICIES?**

Remote working in France has become a preferred solution, implemented urgently by companies during the covid-19 health crisis. Studies (DARES – Analyses, November 2024, No. 64 ‘How teleworking has evolved since the health crisis’) show that, between 2019 and 2023, the proportion of employees working remotely at least occasionally increased from 9 per cent to 26 per cent. While intensive remote working (three or more days per week) related to only 1 per cent of employees in 2019, the proportion rose to 18 per cent in 2021 during the health crisis, before falling back to 5 per cent in 2023. Today, intensive remote work is much less common, with regular remote working one or two days a week or more occasional remote working becoming more widespread. Another finding is that the increase in remote working mainly concerns managers, including a large proportion of women, young people and those with higher education qualifications. Blue-collar workers remain largely excluded, mainly because the nature of their jobs is not compatible with this way of organising work. Companies are now deciding whether to maintain, adapt and sometimes reduce remote work offerings.

From an employment-law perspective, remote working is subject to a more structured legal framework that requires employers to consider implementing a sustainable, well-defined organisation supported by the necessary digital tools. The key issues to consider when implementing a remote working policy can be summarised as follows.

**Importance of social dialogue and consultation with employee representatives**

In principle, the implementation of remote work must be implemented through a collective agreement negotiated at company level or, failing that, a charter drawn up by the employer after consultation with employee representatives (ie, the social and economic committee), if they exist.

The collective agreement or charter must specify, in particular: the conditions under which employees may transition to remote working; the terms and conditions for acceptance by the employee; the terms, conditions and methods for monitoring working time or regulating the workload; the time periods during which the employer may contact the employee; and finally, the conditions for granting remote work to disabled workers, pregnant employees, and employees who are caregivers (ie, employees who regularly care for a dependent relative who is facing illness, disability or loss of independence due to age).

In the absence of an agreement or charter, remote working may also be implemented individually, by written agreement between the employer and the employee. This is typically done through an amendment to the employment contract specifying the conditions for switching to remote working and the conditions for returning to on-site work, and the designated contact hours.

#### **Remote workers have the same rights as on-site workers**

The French Labor Code expressly provides that remote workers must benefit from the same rights and benefits as employees who perform their work on the company's premises. Courts regularly reaffirm this principle. For example, meal vouchers cannot be limited to employees working on site. Remote workers must receive them under the same conditions when they work the same hours as their colleagues on site and are entitled to take a lunch break.

#### **Coverage of professional expenses related to remote working**

Expenses incurred by an employee for the purposes of their work must be covered by the employer. This rule applies fully to remote workers, whether remote working is implemented by collective agreement, charter or individual agreement between these employees and the employer. Remote workers must therefore be reimbursed for expenses incurred in the context of remote working. This coverage may take the form of either reimbursement of actual expenses incurred or a lump-sum allowance, the amount of which may be deducted by the employer within the limits set by regulations. To avoid disputes and ensure compliance with the principle of equal treatment between remote and onsite employees, it is essential for employers to clarify in the collective agreement or charter the terms and conditions for covering remote working-related expenses (nature of the expenses, supporting documents to be provided, amount and frequency of compensation, conditions for allocation). We recommend including a clause providing for periodic review of reimbursement amounts to reflect changes in costs and practices.

#### **Justifying any refusal to allow remote working**

A refusal to grant remote working is often poorly received by employees. Employers must therefore provide objective, serious and non-discriminatory grounds when rejecting a request from an employee who meets the established eligibility criteria. The reasons

must be communicated in writing, detailing the basis for the decision. This is an important safeguard against arbitrary decisions. The factors to be taken into account may relate in particular to the nature of the position held, organisational and technical constraints, the configuration of the team to which the employee belongs, the possible need for the employee to be physically present on the company's premises, or the employee's inability to work remotely, provided that this inability is factually substantiated. In this regard, a mere 'lack of trust' in the employee is not a lawful basis for refusal.

To minimise disputes, employers should include clear, objective eligibility criteria in the collective agreement or charter, such as minimum seniority, compatibility of the employee's home office with the technical requirements, or the need to maintain team cohesion.

#### **Provide for the reversibility of remote working**

The post-pandemic period has been marked by the desire of some companies to return to a more traditional, in-person work organisation. This shift, which is a growing phenomenon in French companies, has triggered a rise in disputes relating to the reversibility of remote work. In fact, the return of employees to the workplace cannot happen overnight, and employers cannot unilaterally decide to revoke remote working arrangements that were put in place by mutual agreement.

This highlights the importance of drafting a reversibility clause in the collective agreement or charter, which must specify the conditions for returning to work at the company's premises (when and under what circumstances a return to on-site work may be required, the procedural steps, and any supporting conditions). If remote work has been implemented by individual agreement with the employee, the employer must then comply with the conditions for reversibility provided for in the employment contract or in the addendum to that contract. In the absence of any written provision governing reversibility, requiring an employee to return to on-site work constitutes a modification of the employment contract, which cannot be imposed by the employer.

#### **Monitoring the working hours of remote workers**

Although remote workers are not physically present on the company's premises, they remain subject to the employer's authority. Employers must therefore ensure that these employees comply with their working hours but also that they do not exceed them. In practice, working time often encroaches on personal time in remote work arrangements, and many employers sometimes fail to monitor remote workers' workloads effectively.

However, French labour law stipulates that, in the event of a dispute over the number of hours worked, the employer must be able to justify the hours actually worked by the employee and provide all appropriate evidence in this regard. Overtime claims, in which employees are demanding back pay, are particularly common.

It is therefore essential that the remote working agreement or charter provides for methods of monitoring working time (use of tracking software or electronic time clocks, self-reporting systems such as timesheets completed by the employee and validated by the manager, or any other means that allows for effective tracking of working time) and that employers actually implement such monitoring. It should also be noted that it is the employer's responsibility to ensure that employees' right to disconnect is respected.

**Ensuring health, safety and occupational risk prevention**

Remote work is simply a way of organising work that does not exempt employers from their obligations towards employees working on company premises. Employers must therefore assess the specific risks associated with remote working, taking into account both organisational and psychosocial risks (workstation ergonomics, equipment, work overload, right to disconnect, professional isolation, loss of workplace reference points for employees who are distant from the work community, etc) and also technical risks (confidentiality, data security and information systems). This assessment must be included in the single document for the assessment of occupational risks (DUERP), which is mandatory for all companies with at least one employee. This assessment should lead to concrete measures to prevent occupational risks specific to remote working, with the ultimate goal of ensuring the health and safety of remote workers, as simply developing best practice guides or questionnaires for remote workers alone is insufficient.

We recommend involving the social and economic committee (CSE), if one exists in the company concerned, and, where applicable, the health, safety and working conditions committee (CSSCT) created within the CSE, in defining preventive measures. Remote workers must also receive specific information and training focused on the risks identified. We also recommend regularly monitoring the working conditions of remote workers, ideally through annual individual interviews addressing their workload and their work environment. Training managers in the prevention of psychosocial risks is particularly important, as remote working makes it more difficult to detect warning signs.

All these measures must be properly documented, enabling employers to demonstrate their adequacy and implementation in the event of a dispute or an inspection by the labour authorities.

**Ensuring inclusion, disabled workers, and professional equality**

Remote working policies must incorporate inclusion considerations, particularly for disabled workers. In this regard, employers must ensure that the workstations of disabled workers are accessible and adapted for remote working. The collective agreement or charter must contain specific provisions addressing disabled workers and the particularities of remote working applicable to employees with disabilities. Managers should receive specific training to help identify needs and support disabled employees in defining optimal remote working conditions.

**Ensuring data protection in remote working and raising employee awareness**

Because remote working involves the use of information and communication technologies to perform work outside the company's premises, employers must implement specific safeguards to protect both the professional and personal data of the employees concerned. This includes taking all necessary technical and organisational measures to ensure confidentiality, data security and restricted access to authorised personnel only.

Remote workers must be informed of the restrictions applicable to the remote use of IT tools and the penalties that may be incurred in the event of non-compliance. These rules may

be set out in an IT charter (provided that the charter has been formally communicated in advance to all affected employees and that it clearly details the restrictions on use imposed) or included directly in the collective agreement or remote-working charter.

In conclusion, the implementation of a post-covid remote working policy requires companies to reconcile several imperatives: compliance with the legal framework, the primacy of social dialogue, equal treatment, coverage of professional expenses, prevention of occupational risks, and inclusion of disabled workers. We recommend developing a clear and appropriate policy, negotiated with employees, incorporating the lessons learned from the pandemic and covering all labour law requirements.

### **PRAGMATICALLY SPEAKING, IS THERE A THRESHOLD TO DETERMINE WHEN WORKING REMOTELY (FROM HOME OR OTHERWISE) REQUIRES LOCAL RULES TO APPLY?**

French labour law does not provide for a specific legal framework applicable to remote working performed abroad. However, this situation raises many questions for employers, both in terms of labour law and the applicable social security regime, taxation and risk management. As the employee has entered into an employment contract under French law, this law remains applicable in principle to the employment relationship (unless the parties have mutually agreed to submit this relationship to the legislation of the country in which the remote work is performed).

However, the employer must systematically check for the existence of mandatory local provisions with which compliance is required. In other words, remote work may be subject in part to the employment legislation in force in the host country. The employer must also ensure that employees working abroad have coverage for workplace accidents, which can be more complex to manage.

Regarding the applicable social security system, working abroad cannot be considered a temporary secondment allowing the employee to remain affiliated to the French social security system. Affiliation with the local social security system may be necessary. The situation may differ depending on whether remote working is temporary or long term, but in all cases, a detailed analysis must be carried out in advance to determine the place of affiliation.

The issue of taxation must also be anticipated, as it can have significant financial consequences (risk of double taxation, transfer of the employee's tax residence).

Remote working outside the European Union requires particular vigilance, as steps must be taken to obtain visas or work permits. While these steps are the responsibility of the employee, we recommend that employers ensure that the employee has completed the required formalities.

Finally, international remote working may raise the question of the presence of a permanent establishment in the host country, in which case the company would be subject to tax in that country. The nature of the activities carried out by the employee is an essential factor to consider. For instance, does the employee exercise decision-making power on behalf of the company? Does he or she obtain orders and sign contracts, thereby contributing directly to generating the company's revenue?



## **IF EMPLOYEES VOLUNTARILY MOVE AWAY FROM THEIR MAIN WORK LOCATION, CAN EMPLOYERS UNILATERALLY IMPOSE LOCALLY APPROPRIATE COMPENSATION PACKAGES?**

French labour law does not allow employers to unilaterally impose a change in the remote worker's salary to align it with less favourable local market rates unless the employment contract explicitly provides for this, which is rare. Even then, the employee could claim a violation of the principle of equal treatment, as remote workers cannot be treated differently from employees working on site (including in terms of remuneration) solely because they perform their duties remotely, regardless of the geographical location where they do so. This principle was recently reaffirmed by the Court of Cassation in very clear terms: remote workers have the same rights as employees who perform their work on the company's premises. Any change in remuneration therefore requires the express prior consent of the remote working employee.

Employers may not rely on the controversial 'fire and rehire' tactics, which consists of dismissing an employee and agreeing to rehire them only if they accept a lower salary. In France, the conditions for dismissal are strictly regulated, and employees cannot be dismissed without lawful grounds. Otherwise, employees can challenge their dismissal before the labour court and obtain damages for dismissal without genuine and serious cause.

## **DO YOU ANTICIPATE A RISING TREND OF EMPLOYERS HIRING REMOTE WORKERS AS OPPOSED TO MANAGING OFFICE-BASED EMPLOYEES WHO SUBSEQUENTLY GO REMOTE? WHAT PRACTICAL ISSUES SHOULD EMPLOYERS BEAR IN MIND WHEN CONSIDERING REMOTE HIRING?**

In France, remote working is now so ingrained in corporate culture that it has become a requirement for many candidates, particularly for executive positions that are more demanding in terms of quality of life at work. Remote work recruitment offers can attract a growing number of candidates, particularly executives and highly skilled profiles seeking flexibility and improved work-life balance. However, remote working remains limited in France, as it clashes with a mindset that is still very attached to the physical presence of employees on company premises. Companies recruiting remote workers directly need to bear in mind the practical implications of this new way of working.

### **Are candidates applying for remote working positions suited to working remotely?**

During the recruitment process, it is essential to identify whether candidates can operate effectively in a remote environment from day one, without going through a preliminary phase of on-site work. Autonomy, the ability to organise and prioritise tasks, meet deadlines without supervision, and, of course, proficiency with digital tools are essential qualities for demonstrating an aptitude for remote working. Job interviews are therefore an essential step in identifying employee profiles that are suited to this way of working.

### **What measures have you put in place to address the higher risk of isolation and the greater complexity of remote communication?**

Working remotely without ever meeting your coworkers poses a psychosocial risk that employers should not overlook. It is therefore recommended to set up remote group

meetings, such as weekly meetings during which objectives are discussed and assigned, and schedule regular informal discussions with managers to clarify any issues that may arise and thus avoid future conflicts. These moments of exchange are all the more essential given that remote work deprives employees of the opportunity to chat informally in open-plan offices, over coffee or after work. It is therefore essential to find ways to ensure the smooth flow of information, the challenge being to achieve communication that is as fluid and direct as in the office.

Finally, remote working makes it more difficult to preserve a corporate culture and a sense of belonging to a community with shared values and goals. Human resources managers must therefore design initiatives to promote corporate culture and reinforce shared values and community among this new category of employees.

**Are your managers trained in remote management?**

Remote workers do not have the same needs or requirements as on-site employees. This is inherent not only to this way of working but also to the profiles of the employees concerned, who are more autonomous in their organisation and require less day-to-day supervision. Collaboration can be even more difficult as remote workers may be working from different locations and in different countries, with the resulting time differences. For managers, this collaboration represents a real challenge, which companies need to be aware of. Employers should therefore provide specific management training focused on remote work collaboration.

**Have you anticipated connectivity issues related to distance and the increased risk of data security breaches?**

Equipment needs must be adapted to remote working. Depending on their location, remote workers do not always have a sufficiently stable and high-performance connection, which can result in interruptions during video conferences, slow access to the company network, or difficulties in transferring large documents. The company must therefore develop technical solutions to avoid these difficulties and their negative effects on employees in terms of stress and anxiety. Taking these aspects into account is part of the employer's duty to protect the mental and physical health of its employees, an obligation that takes on particular importance when it comes to remote working.

Furthermore, remote working increases the risk of data security breaches, particularly if remote workers use their personal computers or phones. Having remote workers based in various locations substantially increases the vulnerability of the network and the risk of intrusion into the company's IT system. It is therefore imperative to ensure that remote workers connect to the company's IT network using secure equipment, and clear rules must be established in this regard.

**Are you considering having remote workers work from abroad?**

International remote working raises many legal and practical questions for employers. These questions involve French labour law, social security legislation, taxation and the risks associated with managing employment contracts. The main conclusions to be drawn are that a working abroad policy cannot be implemented without in-depth consideration of the

applicable legislation, the employer's obligations in terms of social security, work permits, taxation and the litigation risks associated with managing the employment contract. Particular attention must be paid to the employee's actual location to prevent legal and tax risks, which can be significant and costly. It is equally important to ensure the transparency of remote working arrangements and compliance with the authorisations or reporting obligations imposed by local legislation.

It is essential to anticipate all these issues prior to recruitment and to seek specialist advice on how to deal with them. It may also be useful to include specific provisions on remote working abroad in the collective agreement or implementation charter. Failing that, it will be necessary to formalise this in detail with the employee concerned.

**Do remote workers fully understand the terms and conditions of remote working? Have they received all the necessary information?**

The company must ensure that employees are fully aware of these terms and conditions, the obligations and responsibilities that arise from them, in particular working hours, the terms and conditions for monitoring and controlling activity, in addition to the resources made available to them for remote working (tools, means of communication, security measures), the restrictions imposed on the use of these resources, and the penalties incurred for non-compliance with the rules.

Ultimately, the various aspects mentioned above show that remote working not only impacts work environments and collaboration methods, but also companies' recruitment strategies.

#### **DO LOCAL LAWS PROVIDE REMOTE EMPLOYEES WITH MORE GENEROUS LEAVE ENTITLEMENTS, SUCH AS SICK LEAVE? CAN EMPLOYEES AVAIL THEMSELVES OF LEAVE ENTITLEMENTS IN BOTH THE PRIMARY WORK LOCATION AND THE REMOTE WORK LOCATION?**

Leave entitlements vary by jurisdiction. The question of determining the law applicable to the employment contract is therefore essential. It is based on a factual analysis of the place where the remote work is performed, the parties' intention regarding the choice of applicable law, and the existence of closer links with a given country that would justify making the employment contract subject to the law of that country.

As it stands, French law does not provide for the possibility for remote workers to cumulatively claim the leave provided for by French law and the more favourable leave provided for by the legislation of the country in which the remote work is carried out, unless contractual provisions to this effect have been agreed with the employer. Employees are therefore entitled to the leave rights defined by the law governing their employment contract, subject to the application of more favourable local mandatory rules on the subject. As a result, each situation requires a case-by-case analysis of the employees' situation, the terms of their employment contract, and local legal requirements.

#### **WHAT ARE SOME BEST PRACTICES FOR PROTECTING CONFIDENTIAL AND PROPRIETARY INFORMATION IN A REMOTE WORK ENVIRONMENT?**

Companies that employ remote staff must take additional measures to secure their data and manage employee access. Implementing rigorous security policies for remote access can help protect personal and confidential data covered by the General Data Protection Regulation (GDPR). Such a policy lists all security standards applicable to employees and equipment used remotely.

It is generally the company's IT or data security teams that develop the remote access security policy, including, for example, the use of virtual private networks, the installation of antivirus software on equipment used by employees, and multi-factor authentication.

#### **Protecting stored data and data in transit**

Any remote access policy should also include protection for data stored on employees' laptop hard drives that is exposed to the risk of unauthorised access, as well as data in transit that is vulnerable to interception. Access control and data encryption (ie, a means of scrambling data so that only authorised parties can understand the information) are fundamental technologies for data protection.

#### **Protecting employee workstations**

Remote work equipment – especially laptops – must, at a minimum, be equipped with antivirus software. The risk of loss or theft of this equipment, or its being left behind in a public place, requires encryption measures to ensure that unauthorised persons cannot access confidential data.

In general, best practices for ensuring data protection in a remote working environment should include measures such as:

- Confidentiality clauses in the employment contract covering all sensitive information, supplemented by an IT charter incorporated into the company's internal regulations, specifically reiterating the prohibition on transferring confidential data to personal devices or email accounts.
- Technical security controls (enhanced authentication requirements, regularly renewed individual usernames and passwords, data encryption, automatic locking of equipment, remote deletion capability in cases of loss or theft).
- Strictly access management, limiting access to confidential information to authorised personnel only and controlling external data transfers (recipient authentication, confidentiality of exchanges, encryption of attachments, etc).
- Employee awareness and training on the risks associated with the disclosure of confidential information, best practices in IT security, and the penalties incurred in the event of breaches.
- Annual reviews with remote workers to address the conditions of the work and their workload, including a specific item on compliance with confidentiality and security procedures for.

**HOW DOES A REMOTE EMPLOYEE AFFECT THE EMPLOYER'S TAX OBLIGATIONS? DO THE EMPLOYEE'S ACTIVITIES RENDER THE EMPLOYER TO BE 'DOING BUSINESS' IN THE**

## REMOTE LOCATION? WILL THESE ACTIVITIES CREATE A TAXABLE PRESENCE FOR THE FOREIGN EMPLOYER IN THE LOCAL JURISDICTION?

French labour law does not contain any specific provisions regulating international remote working. The employer must therefore refer to the general principles of labour law, social security and taxation.

Recognition of a permanent establishment in the country where remote work is carried out may result in the application of local law and being subject to the labour law, social security law and tax legislation of that country. This will have an impact on the obligations of both the employee and the employer.

In terms of social security, the employer may be required to contribute to the social security systems of the host country (including health insurance, work-related accidents and retirement). Taxation in the host country raises the question of the criteria for recognising a permanent establishment. The presence of premises for professional use, even if located at the employee's home, equipped with the necessary equipment to carry out the activity (computer, telephone, internet connection, storage of documents relating to the activity) is a strong indication of the existence of a fixed place of business, characteristic of a permanent establishment. The employee's ability to engage the employer in commercial relations, to conclude contracts, and their autonomy in managing their professional activity from their working location are also determining criteria. The assessment of the permanent nature of the establishment also takes into account the duration and regularity of the activity carried out from the teleworking location. In other words, an activity carried out on a regular and continuous basis, even remotely, may be considered to qualify as a permanent establishment, provided that it is not occasional or sporadic.

Employers must therefore anticipate the risks of permanent establishment when developing their international remote working policy.

More broadly, it is strongly recommended not to allow a remote working situation abroad to continue if its implications have not been properly analysed and the conditions for its implementation clearly defined in advance. In this regard, the particular difficulties posed by international remote working (not only from a legal standpoint but also from an organisational standpoint due to the distance involved) lead to the conclusion that an employee who is authorised to work remotely is not free to settle permanently abroad without the explicit consent of the employer. A 2024 ruling by the Paris Employment Tribunal confirmed this point, holding that an employee who secretly worked from Canada had exposed her employer to significant legal and task risks and thus committed misconduct justifying dismissal.

## WHAT ARE SOME BEST PRACTICES FOR TRACKING REMOTE WORK ARRANGEMENTS?

French labour law strictly regulates the monitoring of employees' activities by employers. Article L1222-4 of the Labor Code specifically states that 'no information concerning an employee personally may be collected by a device without the employee being informed beforehand.' This principle is fundamental when it comes to monitoring remote work, where there is a strong temptation to use automated monitoring tools. Employees must therefore be informed of the existence of such devices prior to their implementation. The same applies to employee representatives (ie, social and economic committees), who must be consulted prior to the implementation of monitoring devices.

The French Data Protection Authority (CNIL) plays a central role in defining best practices for monitoring and supervising remote workers, particularly regarding privacy and the proportionality of the measures implemented. CNIL specifies that monitoring of working time must not unduly infringe on the privacy of employees and that monitoring systems must be proportionate and justified. The CNIL sanctions permanent automated monitoring systems, such as keyloggers or regular screen captures, which are considered disproportionate and infringe on employees' rights (Deliberation of 19 December 2024, No. SAN-2024-021).

Best practices for employers include:

- formalising the terms and conditions for monitoring remote work in a document accessible to all employees concerned (collective agreement, charter, employment contract or amendment to the employment contract);
- informing employees of any monitoring or control measures, specifying the purpose of the measures, the data collected in this context, how long it will be stored, employees' data protection rights, and how to seek redress in the event of difficulties, all in accordance with the requirements of the GDPR;
- using non-intrusive, proportionate and privacy-friendly monitoring tools (such as activity reports, software-based clocking in or the use of shared calendars), and prohibit permanent automated monitoring systems (screenshots, keyloggers).
- organising regular meetings with remote workers to discuss their working conditions, assess their workload, and adapt the organisation if necessary; and
- establishing procedures for exercising the right to disconnect and ensure that they are effectively respected by avoiding any contact outside of scheduled working hours.

In summary, monitoring of remote work must be part of a balanced approach that respects employees' rights and complies with legal requirements and the recommendations of the CNIL. Employers must prioritise transparency, proportionality and security in the implementation of monitoring systems, while ensuring that risks to privacy are prevented.

## The Inside Track

### **WHAT DO YOU THINK ARE THE MOST EXCITING AND PROMISING OPPORTUNITIES OF REMOTE WORKING? HOW DO YOU THINK IT WILL AFFECT THE FUTURE OF WORK?**

Remote working undoubtedly offers several major opportunities for both employers and employees. First, it allows for flexibility in the organisation of work, as remote workers can adapt their schedules and work locations to better accommodate their personal, family or health-related constraints. This way of organising work is particularly attractive to employees who face travel difficulties, family obligations or specific medical needs.

Second, remote working promotes professional inclusion by facilitating access to employment for people with disabilities, pregnant employees, and employees who are caregivers. Third, remote work contributes to improving quality of life at work by reducing commuting time and stress while promoting a better work-life balance.

For employers, remote working contributes to corporate, social and environmental responsibility objectives by reducing greenhouse gas emissions and limiting unnecessary travel. The covid-19 health crisis also demonstrated how remote working opens up opportunities for organisational adaptation, enabling companies to continue their business activity and protect their employees' health in emergency situations.

Since 2023, however, there has been a trend among companies asking their employees to return to the office more frequently and to limit the number of days they work remotely, with the result that intensive remote working (three or more days per week) now accounts for only a very small percentage of remote workers. That said, we believe that completely abandoning this mode of collaboration is not a viable option for the future. Remote working remains a highly valued benefit for job seekers and employees alike and is often viewed as an acquired right.

### **IN YOUR VIEW, WHAT ARE THE MOST DIFFICULT CHALLENGES RAISED BY THE RISE OF REMOTE WORKING? HOW DO YOU THINK EMPLOYERS SHOULD TACKLE THESE CHALLENGES AND ADAPT ACCORDINGLY?**

While remote work offers opportunities for organisation and quality of life at work, it exposes employers to major legal risks in the event of failure to formalise and monitor remote work arrangements, prevent risks and respect employee rights.

Our experience in this area shows that many employers remain reluctant to adopt or expand remote work arrangements. There are many reasons for this, and they all represent challenges that companies must address. These include: the complexity of implementing remote working, a lack of trust in employees and the fear of losing control over their activities, the difficulties inherent in remote management, the fear of a loss of cohesion and collective efficiency, the consideration of psychosocial risks, not to mention technical constraints (efficiency of IT tools, data security and accessibility of workstations, particularly for disabled workers).

To meet these challenges, employers should:

- formalise and secure the legal framework for remote working. This is obviously the first step. Employers must draft precise and comprehensive agreements or charters, taking care to address all the issues set out in article L1222-9 of the Labor Code (ie, conditions for switching to remote working, terms and conditions for returning to work on site, terms and conditions for acceptance by the employee, monitoring of working time, regulation of workload, determination of contact hours, terms and conditions of access for workers in special situations);
- implement measures to ensure that workload is monitored, the right to disconnect is effectively enforced, and a work-life balance is maintained, which requires organising annual interviews with the employees concerned;
- exercise particular vigilance in preventing risks to the health and safety of remote workers, which involves assessing the specific risks of remote working, training employees and managers, and responding quickly to medical alerts;
- manage the granting of employee benefits and company practices with regard to remote workers in strict compliance with the principle of equal treatment with on-site employees; and



- adapt the organisation of remote work to take into account specific needs (disabled employees, employees who are caregivers) and justify any refusal to grant remote work with objective, non-discriminatory criteria.

All of these measures must be documented in writing to prevent disputes specific to remote working, mainly related to changes in working conditions, contract termination or discrimination.

### WHAT DO YOU ENJOY MOST ABOUT PRACTISING AND ADVISING IN THIS AREA?

Remote work has become an essential way of organising work, and we regularly support companies in both advisory and litigation matters relating to it. Effective advice requires a comprehensive understanding of the applicable legal framework, employer and employee obligations, and the specific rights attached to remote work. This enables us to anticipate risks and guide clients strategically.

Our clients expect us to advise them on both the legal and organisational aspects of remote work, considering regulatory requirements and recent developments in case law. One of the most strategic aspects of remote working that we are regularly asked to advise on is, of course, working abroad, given its implications not only in terms of labour law, but also in terms of social security, taxation and insurance. Our teams are able to handle these various issues. We also place great emphasis on the issue of monitoring working hours, as this can pose health risks for remote workers and expose employers to penalties and damages. Failure to monitor working hours also exposes companies to claims for overtime pay, given that the courts generally rule in favour of employees on this issue.

Other strategic advice covers the issue of defining which roles are eligible for remote work, which involves identifying the positions concerned and, for each of them, conducting an objective analysis of the tasks that can be performed remotely, as well as the issue of how to cover professional expenses. We therefore assist companies in developing or updating their remote working policies to ensure that they comply with current legislation and thus prevent any subsequent disputes.

VIVIEN & ASSOCIES

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