

Insights

COVID-19 AND COMPULSORY TELEWORKING: REINFORCEMENT OF LABOUR INSPECTORATE CONTROLS

Feb 05, 2021

We feel it is important to draw your attention to an instruction from the Directorate General of Labour of Feb. 3, which invites labour inspectors to strengthen controls and, if necessary, to resort to coercive measures, with regard to the use of telework, which must apply to all “teleworkable” functions.

In particular, it states:

“Thus, when tasks are ‘teleworkable,’ they must be ‘teleworked,’ which avoids interactions and is one of the preventive measures to avoid exposure to the risk of contamination. The use of teleworking can be total if the nature of the tasks allows it or partial if only certain tasks can be carried out remotely. This preventive measure is the subject of clear recommendations in the different versions of the NAP.”

PNE : Protocole national pour assurer la santé et la sécurité des salariés en entreprise face à l'épidémie de Covid-19

In particular, this circular encourages the monitoring of certain sectors “where telework is more particularly applicable” (including law firms...) and recommends, among other things, that labour inspectors:

“To get back in touch with the most important companies, as you did in early November, to make sure that the recommendations of the national protocol are respected. You are invited to extend this request to other companies (either smaller, for example with 250 or more employees; or in certain sectors where telework is more particularly applicable: law firms, architecture, accounting firms, research establishments, support functions in the banking and insurance sector, the communications sector and where the use of telework has deteriorated in recent weeks...).

You can usefully rely on the ACEMO survey carried out by DARES for the month of January to better target the sectors that require sustained action by your services, taking into account territorial specificities.”

The circular also invites labour inspectors to use coercive measures:

“Where necessary, coercive legal tools such as the formal notice from the DIRECCTE or the judicial summary procedure may be used. Staff may usefully refer to DGT sheet n°2020-27 on the modalities of intervention of the labour inspection system in the implementation of telework. This sheet proposes a DIRECCTE formal notice model.”

As a reminder, in the event of failure to comply with preventive measures, the employer exposes his civil liability under Article L. 1421-1 of the Labour Code (“the employer must take the necessary measures to ensure the safety and physical and mental health of workers. These measures include actions to prevent occupational risks, information and training, and the establishment of an appropriate organisation and resources. It must ensure that these measures are adapted to take account of changing circumstances and aim to improve existing situations”).

The employer also exposes his criminal liability under Articles 121-3 (“deliberately endangering the person of others”) and 223-1 of the Criminal Code (“directly exposing others to an immediate risk of death or injury...”).

We therefore recommended, in anticipation of a possible control, that employers be able to justify employees who are not teleworking. An employee’s presence “on the spot” either should be at their express request (which is allowed to prevent the risk of isolation), or they should be on the spot to carry out tasks which cannot be teleworked.

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