



VERONIKA PÁZMÁNYOVÁ
Partner
GLATZOVA & Co., s.r.o.



MIROSLAV ONDÁŠ
Senior Associate
GLATZOVA & Co., s.r.o.

GLATZOVA & Co.

HOME OFFICE AS THE NEW NORMAL

WHAT IS (AND ISN'T) HOME OFFICE

People refer to any work performed from home, or in fact anyplace outside the office as “home office”. However, there are important legal distinctions between regular work from home, occasional work from home, and working from home during the pandemic.

The concept of regular and occasional work from home, introduced in Slovakia as of March 1 2021, differentiates an employee working from home on a regular basis from those doing so only occasionally or under extraordinary circumstances. An employee may work regularly from home only if the employee’s employment agreement (or an amendment to it) specifically permits it. There is, however, no such obligation with respect to occasional work from home. Although at first glance this may seem like a sensible distinction, the problem lies in determining what “regular” means in this context, as the law somehow fails to define it. As a rule of thumb, if the employer can predict that the employee will work from home a set number of times per some period of time, irrespective of whether it is once per week or once per month, it should be considered as meeting the “regular” standard and must be included in the employee’s employment agreement.

Since working from home is also considered a COVID-19 measure, the Labor Code also includes a specific pandemic home office regime. This regime applies only when the relevant public health authorities issue measures ordering home office. In such a case, the employer may order home office or the employee may demand home office, even if the relevant employment agreement lacks the required clause.



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SCHEDULE OF WORKING TIME

There are a number of possibilities how an employer may schedule employee working hours during home office. Apart

from the standard fixed working time, in cases of regular work from home an employer may also set a flexible working time or grant employees *carte blanche* to set their own schedules, enabling them to practically self-organize their day. For employers there is a drawback to the self-organizing option - they will not be able to predict when an employee is working. For employees, they will not be entitled to some of the benefits resulting from having their working time set by their employer, such as surcharges for overtime and wage compensation for personal impediments at work (e.g., doctor visits). Thus, despite having the option, employers tend to prefer fixed or flexible working times (even setting working time as flexible as possible 6 AM - 22 PM).

PLACE OF WORK FOR HOME OFFICE

Although it is called “home office”, more and more often home office is not actually conducted from the employee’s home, but rather from another place outside the standard workplace. The Labor Code does not restrict the scope of places from where the employee is able to work during home office, however employee’s confidentiality obligations must always be adhered to. Thus, the employer should set strict rules in this regard. If a specific address is defined, employers should at least specify the basic requirements and limita-

The measures put in place due to the pandemic have highlighted many of the legal issues concerning employees working from home prior to the pandemic. The legislature reacted to these issues by adopting multiple amendments to the Slovak Labor Code, dealing with both “home office” during the pandemic and “home office” in general.

tions for the home office workplace. Their requirements and limitations may include (i) a ban on working from abroad, (ii) a ban on working from public places, (iii) access to electricity, and (iv) internet access.

Banning working from abroad or giving individual consideration to each country from which the employee wishes to work is especially important since, in some cases, an employee working from abroad may subject the employer to pay taxes and arrears for the employee in that country. Even more perilous is the possibility of the employee creating a permanent establishment of the employer in that country.

REIMBURSEMENT OF HOME OFFICE EXPENSES

One of the most discussed issues with respect to home office is whether the employer must reimburse the increased expenses the employees incurred during home office. Even though the amendment does not give a simple answer to this question, it may be concluded that yes, an employer should provide compensation for increased expenses. In case an employee uses personal tools and devices for work (e.g., notebook or mobile phone) the employer should conclude a separate agreement on the reimbursement of the increased costs.

Acknowledging an employer’s duty of compensation only raises a thornier

question: How exactly is the employer to provide the compensation? Many employers would like to pay employees with a lump sum compensation, which would include any and all incurred expenses. However, this may be problematic from a tax point of view for both the employer and the employee due to strict requirements regarding how the amount of compensation should be determined. On the other hand, paying all employees individually, based on their actual increased expenses (i.e., employees submitting electricity bills) is administratively burdensome. At the moment, it seems employers have to make a choice between only bad options.

WHAT DOES AN EMPLOYER NEED TO DO?

All employers whose employees are working from home, irrespective of the form of home office, should draft internal regulations on home office. In addition to everything discussed above, there are myriad aspects to be considered, including monitoring employee work during home office, occupational health and safety issues, protection of business secrets, and personal data protection.

At the very least, employers whose employees are regularly working from home should review employment agreements and draft necessary amendments.