

# Resolution No. 23/2020 issued by the Ministry of Labor on the Regulation of Remote Work as a Special Modality

## ● Introduction

Due to the declaration of national emergency in the country due to the COVID-19 pandemic, the Ministry of Labor issued Resolution No. 07/2020 as of March 18th, 2020 whereby it instructed the employers to undertake several measures to assure the social distancing required, including among them, implementing remote work.

Nevertheless, up to that date, within our labor legal framework we did not have any regulation on such topic; reason why the companies that undertook such modality issued policies or entered into special agreements with their employees.

In face of said reality and due to the extension of health crisis in the time which increases the needs on **remote work**, on November 12th, 2020, the Ministry of Labor issues **Resolution No. 23-2020**, based upon the Dominican Constitution, the Dominican Labor Code, the Law that creates the Dominican Social Security, the Rules No. 522-06 on Health and Safety in the Workplace, among other regulations.

Its object is to improve the development of remote work as a special modality of work to leverage jobs creation, to increase productivity and to contribute to the inclusion of productive sectors in the digital economy and the use of technological and communications tools.

## ● I. Definitions

Among other terms, the Resolution defines Remote Work, Teleworker, Digital Disconnection, Reversibility Right; herein below we present those considered most relevant, as follows:

**Remote Work:** Special modality of work that is rendered outside of the company premises, may it be in a partial or total manner, using communication, information, and technology work tools.

**Remote Worker:** Individual who, under a subordination link, renders services to the employer for the development of working activities, using technological work tools and digital means in an establishment different from the usual premises of the employer.

**Digital Disconnection:** Worker's right not to answer any requests or messages outside of the usual working hours.

**Reversibility:** Both parties' right to request the change of the modality of remote work to in-person work in the employer's premises in those employment relationships that initiated as in-person work.



## ● II. Voluntary Character

**This modality or work has a voluntary character.** Nevertheless, its formalization through the signing of an original written employment contract or by means of a written amendment does have a mandatory character.

Based upon the Remote Worker's responsibilities and duties, the employer is entitled to perform the feasibility analysis for implementation of said modality in those positions deemed appropriate.

## ● III. Remote Work Agreements

The **Remote Work Agreement or the Addenda** adopting such modality must include, among other provisions established by the Dominican Labor Code in its Article 24, the followings:

1. **Location** or locations where the work shall be performed.
2. **Remote worker's rests.**
3. **Employer's organization unit or department** to which the Remote Worker shall be assigned, and to which render reports.
4. **Remote Worker's supervisor contact details** to whom address any request of information.
5. **The supervision mechanism or system to be implemented** and covered by the employer to verify the Remote worker's compliance with work shift, which shall respect the latter's intimacy rights.
6. **To establish whether the employer shall verify the conditions of the workplace**, at the start or in during the execution of the contract.
7. **To list the work tools** to be provided by the employer for the rendering of the services, if applicable, and their current conditions.
8. **Possibility of certain in-person work in the company's premises**, to avoid the computer fatigue and to promote interaction with other colleagues at work.
9. **Conditions for reversibility** to in-person work and viceversa.

### **A. Communication to the General Labor Directorate**

These agreements must be communicated to the General Labor Directorate, which shall keep a record for such purposes.

### **B. Prior Remote Work Agreements**

Those remote work agreements entered before the issuance of the Resolution must be adjusted to its provisions in a term of 30 days from its date, and they must be communicated to the General Labor Directorate.

In case of refusal by any of the parties for formalization by means of a written agreement, the other party is entitled to demand the Labor Department or the Local Labor Representation Office to request the presence of the party at their offices for such purposes. In case of lack of appearance or refusal, or if there may be any disagreements, the matter can be submitted to the Lower Labor Court for due verification of the existence of the agreement and its provisions, as indicated by Article 19 of the Labor Code.



## ● IV. Reversibility Rights

**Any of the parties can request the other to reverse the modality of work**, subject to prior notification with a 30 days' term in advance, or within the term agreed upon by the parties. In any case, such reversibility must not operate against the Remote Workers' rights. The employer must communicate any change to the General Labor Directorate.

Nevertheless, when the employment relationship started as remote work, for the reversibility it will be required an agreement between the parties.

Whenever the current employment relationships change to the remote work modality, its essential conditions must be preserved.

### **A. Causes**

The reversibility shall operate in the following scenarios: a) by mutual agreement of the parties; b) Remote Worker's impossibility to continue rendering services under said modality which is subject to the employer's may have the physical conditions for the work to be rendered in-person at its facilities; and, c) Employer's impossibility to continue providing the communication and information technologies, or its damage without being repaired.

### **B. General Labor Directorate intervention**

If there is any disagreement between the parties, a request can be filed at the General Labor Directorate which shall provide a solution in a 15 days' term, and the reversibility shall operate (or not) from the issuance of said decision.

## ● V. Work Tools

**The employer shall assume (a) the responsibility to provide to the Remote Worker the equipment, work tools, materials and the training to perform the agreed upon works; and, (b) the operational, functioning, maintenance and repair costs, for all the equipment and work tools provided to the Remote Worker.**

The Remote Worker shall custody all the equipment, work tools and any materials provided by the employer; and must use them exclusively for the corresponding activities related to the works.

In case the Remote Workers use their own resources and equipment, the parties can agree upon compensations that must be equivalent to the supplies provided by the Remote Workers.

## ● VI. Proper Use of the Information

**The Remote Worker assumes the responsibility of the custody of the information** -may it be provided by the employer or generated during the rendering of the services- as well as to give it a use strictly for the performance of the works.

In another hand, the employer must inform to the Remote Worker on the protection and management of personal data, as well as any risks and sanctions applicable to any improper use, and the prohibition that any third parties may use the computing work tools and equipment.



## ● VII. Working Day

The working day is subject to the provisions of the **Labor Code** and must be communicated to the **Ministry of Labor** through the **General Labor Directorate** using the forms provided by the Ministry platform on the Integrated System for Labor Relationships (SIRLA by its acronym in English language).

In the Remote Work Agreement the parties can ease the working day subject to respecting the minimum standards established by the Labor Code, both for the work shift as well as for the work rests, in case of the latter it must be expressly defined in the Teleworking Agreement.

During the working day, the Remote Worker must be available for any employer's requests; once the work shift has ended, the Remote Worker is entitled to the digital disconnection.

### A. Mechanisms for the Control of the Work Shift

For purposes of the corresponding payment, the employer can install working shift computing control systems in the work tools provided to the Remote Worker that enables to keep record of overtime and night work for proper time of such work.

The employer cannot request that such control mechanisms be installed in the devices that belong to the Remote Worker, as those devices should not be used for the rendering of services except in those cases where the parties expressly agreed upon subject to pertinent compensation.

## ● VIII. Health and Safety in the Workplace

The **workplace** agreed upon by the parties for the rendering of services under the modality of remote work must comply with the health and safety conditions established by the applicable legal provisions, and each party shall assume the respective obligations set forth therein.

The **General Direction on Safety and Health of the Ministry of Labor** shall supervise the compliance with said provisions may it be through the publication of material that provides the pertinent knowledge to the parties, or any other.

The employer must notice to the Remote Worker the requirements, necessary conditions for the rendering of the services, the specific risks of the position and the preemptive measures on health and safety pursuant to in-force regulations, being the Teleworkers mandated to comply with the same.

As per the faculties granted by the in-force legislation, the Ministry of Labor is entitled to perform visits to the workplace where remote work is taking place, previous approval by the Remote Worker and subject to the respect of the Remote Worker's intimacy at home, and safeguarding the privacy.

## ● IX. Social Security

The services rendered in the special modality of remote work are ruled by the provisions of the **Labor Code**, the **Law No. 87-01** which creates the Dominican Social Security System and any other applicable legislation.



## ● X. Equality

**The Remote Workers are granted the same rights and obligations of in-person employees.**

In such sense, the employer must guarantee that the Remote Workers: (a) keep the same level of training as those of in-person employees; (b) performance evaluation policies must not be discriminatory in comparison to those of in-person employees; (c) enjoy their fundamental rights to intimacy, personal data protection as ruled by the in-force legislation.

In addition, the Resolution establishes that Remote Workers shall enjoy the same collective and unionization rights as set forth by the Labor Code, in equal conditions as the in-person workers.

As the circumstances may allow, the employer shall promote the interaction of the Remote Workers with their colleagues to establish relationships among them.

## ● XI. Right to Intimacy

When the remote work is performed in the Remote Worker's home, the employer is not allowed to install video cameras for control of the rendering of services nor to use those already installed in the electronic devices provided to the Remote Worker unless in those cases where the Remote Worker must attend any videoconference and/or must perform any task that requires the use of video cameras.

Video cameras for surveillance can be installed only in those cases that remote work is performed in public spaces paid by the employer which are used for remote work, such as coworking spaces.

## ● XII. Digital Disconnection Right

To assure and guarantee the respect of **work rests, permits, vacations and the balance of Remote Workers' family and working life**, the Remote Worker has the right to digital disconnection beyond the working shift agreed upon by the parties, except in case of any employer's emergency related to the services agreed upon.

Employers are to create and implement digital disconnection policies that include all its Remote Workers, among them, the high-level executives, to support the reasonable use of technological work tools to avoid the computing fatigue of the personnel.

## ● XIII. Entry into Force

Resolution No. 23/2020 enters into force **thirty (30) calendar days** from its publication in digital publication means.



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