

MARIIA DOLYNSKA, NATALIYA MOKRYTSKA, LESYA KHOMKO,
ROKSOLANA BUTYNSKA, LIUBOMYRA MELEKH*

**Some aspects of legal regulation
of remote working conditions in some countries of the
European Union and in Ukraine
during the fight against the Covid-19 pandemic****

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Summary: 1. Introduction. 2. Changes in the legal regulation of remote work relations during the pandemic. 3 Legal regulation of remote work in the fight against the COVID-19 pandemic in certain countries of the European Union and in Ukraine. 4. Conclusions.

1. Introduction

At the present stage of development of both foreign and domestic research on the legal regulation of remote work, the consequences of the introduction of quarantine restrictions, in particular, the need for social isolation of citizens in the fight against the COVID-19 pandemic, have undoubtedly been reflected¹. We agree that the driving force in preserving jobs and the right to work for a large number of people is precisely remote work, which over the past period has undergone significant changes in both methods and ways of its consolidation (including legal)².

The outbreak of the COVID-19 pandemic in late 2019 forced governments, businesses, and individuals around the world to adapt to unprecedented challenges. One significant response to the pandemic was the introduction and widespread adoption of remote work arrangements. This transformation in work dynamics had several implications for curbing the spread of the virus and managing its consequences. Here, we will explore the impact of remote work introduction on curbing the COVID-19 pandemic. The primary benefit of remote work during a pandemic is its

*Lviv State University of Internal Affairs, Lviv, Ukraine

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¹ S. Bruurs - S. Huybrechts, *Telework in Belgium: A patchwork of legal regimes*, *E-Journal of International and Comparative Labour Studies*, 10(2) (2021), 4-45.

² R. Remeikienė - A. Bagdonas, *Covid-19 effects on frontline professionals: A psychological aspect*, *Economics and Sociology*, 14(3) (2021), 264-282.

potential to reduce the risk of virus transmission. By limiting the number of people in physical office spaces, remote work helps maintain social distancing and minimizes close contact, which are critical in preventing virus spread.

Remote work played a vital role in flattening the curve of COVID-19 cases. It contributed to reducing the strain on healthcare systems by decreasing the number of infected individuals seeking medical attention simultaneously. This allowed hospitals and healthcare facilities to better manage resources and provide adequate care.

The adoption of remote work demonstrated a commitment to employee safety and public health. By encouraging people to stay home and work remotely, employers contributed to the broader effort to protect vulnerable populations and reduce the burden on healthcare systems. Remote work helped maintain economic activity during lockdowns and restrictions. Businesses were able to continue their operations, albeit in a different format, which minimized the economic impact of the pandemic. This helped prevent widespread job losses and economic collapse.

In conclusion, the introduction of remote work was a significant factor in curbing the COVID-19 pandemic. It reduced transmission risk, flattened the curve, promoted safety, maintained economic activity, and enabled rapid responses to the crisis. However, it also underscored the need for addressing inequalities and ensuring access to remote work opportunities for all. As the world moves forward, the lessons learned from this experience will likely shape the future of work and pandemic preparedness. Notably, the conceptual framework for the development of legal regulation of teleworking over four decades, including the national experience in its implementation in Argentina, Brazil, India, Japan and the USA, and the countries of the European Union (ten), including its various forms and consequences, was reflected in a comprehensive monographic study of foreign scientists, in particular, by J.C. Messenger³ titled: "Telework in the 21st Century: an evolutionary perspective". Remote work is also characterised by researchers of labour law as an effective method of labour organisation, which provides savings in both labour and financial, including economic resource⁴. At the same time, scientists are increasingly investigating the issue of ensuring a work-life balance, which undergoes most negative changes in the implementation of remote work. We agree that the blurred boundaries of both working hours and rest time create barriers to a full-fledged family life.

³ J.C. Messenger, *Telework in the 21st Century: An evolutionary perspective*, 2019, Cheltenham: Edward Elgar Publishing.

⁴ A. Abdullah, *Legal aspects of regulating remote work: An overview of Qatari and selected comparative models*, *Journal of Legal, Ethical and Regulatory Issues*, 24(Special Issue 1) (2021), 1-7.

Eurofound⁵ plays a significant role in developing recommendations for teleworking regarding ways to overcome the disturbed balance between family and work during remote work (European Foundation for the improvement of living and working conditions) since its systematic research becomes a fundamental source for the development of scientific knowledge on this issue. The latest scientific developments of Ukrainian legal researchers on remote work contain many developments that would contribute to improving legal regulation in this area. In particular, in her doctoral work, which is devoted to the topic of the correlation of security and organizational and managerial relations in labor law, M.V. Danilova⁶ notes that such interaction between the employee and the employer is expressed through appropriate remote HR services that provide the employee with tasks, and the latter, within a certain time frame, must complete them.

At the level of doctoral research of the issue of internal labor regulations, A. A. Padalka⁷ concludes that this Act does not apply to remote workers. The features of working hours of remote workers are also highlighted in the dissertation work by Z.Ya. Malyshevska⁸. However, the issues of legal regulation of remote work remain insufficiently studied in connection with the latest changes in labour legislation, primarily related to the fight against the COVID-19 pandemic.

The purpose of the article is to study acts on establishing conditions for teleworking in some countries of the European Union, including novelties of Ukrainian legislation on the legal regulation of remote work, in particular, during the fight against the COVID-19 pandemic.

2. Changes in the legal regulation of remote work relations during the pandemic

In the countries of the European Union, the European Framework Agreement on Telework⁹ was signed on July 16, 2002 based on long-term cooperation within the framework of social dialogue between employers and trade unions on the legal regulation of remote work relations. The above-mentioned European Act was the beginning of an implementation

⁵ Eurofound, 2020a.

https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19046en.pdf. (Accessed 10.08.2022).

⁶ M.V. Danilova, *Problems of the relationship between security and organizational and managerial relations in labor law*, Kyiv, 2019.

⁷ A.O. Padalka, *Problems of legal regulation of internal labor management in Ukraine*, Kyiv, 2019.

⁸ Z.Ya. Malyshevska, *Legal regulation of working hours in Ukraine*, Kyiv, 2019.

⁹ Framework agreement on telework, 2002. <https://www.etuc.org/en/framework-agreement-telework>.

process to establish remote work in the sphere of labour law. At first, it was the activation of social dialogue at the level of the state or several states, and later – the popularisation of remote work in society by holding various seminars, meetings, and finally, the issue of the possibility of using telework became the subject of collective-contractual regulation at the local level.

The implementation of the principles of remote work in the legislation of the European Union (EU) has been a topic of growing importance, particularly in light of the COVID-19 pandemic. Remote work, also known as telecommuting or teleworking, has become a significant aspect of modern labor markets, and its regulation is crucial for ensuring workers' rights and employers' obligations are adequately addressed. The European Union has a legal framework in place that addresses various aspects of employment and workers' rights, including those related to remote work. The EU's legal foundation for labor standards consists of directives and regulations, which provide guidelines for member states to implement and adapt in their national legislation.

EU member states have different labor market conditions and traditions. As such, there is a need for flexible and adaptable legislation to accommodate various forms of remote work arrangements. Legislation should allow for remote work to be tailored to specific industries, occupations, and individual needs. The EU places a strong emphasis on safeguarding workers' rights. When implementing remote work principles, it is essential to ensure that employees working remotely enjoy the same rights and protections as those working on-site. This includes aspects such as working hours, rest periods, and access to social benefits.

Remote work legislation must address the health and safety of remote workers. Employers have an obligation to provide a safe working environment, even in remote settings. This includes ensuring ergonomic workstations, addressing psychological well-being, and setting clear boundaries to prevent overwork. Employment contracts for remote workers should clearly outline the terms and conditions of remote work arrangements. This includes specifying working hours, expectations for availability, and the use of equipment. Clarity in contracts is essential to avoid disputes. An emerging concern in remote work legislation is the "right to disconnect." This principle acknowledges that remote workers should have the right to disconnect from work-related communications outside of their designated working hours. Some EU countries have already introduced legislation in this regard.

The COVID-19 pandemic accelerated the adoption of remote work across the EU. Post-pandemic, there will be considerations about whether remote work principles should be maintained, expanded, or adapted to address new challenges.

The implementation of remote work principles in the legislation of the European Union is a multifaceted endeavor that requires a delicate balance between promoting flexible work arrangements and protecting workers' rights. The EU must continue to adapt its legal framework to the evolving nature of work and technological advancements while prioritizing the well-being and rights of its workforce.

The concept of remote work (telework) is regulated in Article 2 of the European Framework Agreement on Telework. Analyzing the information contained in the reports of the EU countries, two main ways of implementing this process can be distinguished. The first type is collective bargaining, which is observed, for example, in Belgium and Luxembourg. The second type is legislative regulation, which is used, for example, in Romania, Hungary and the Czech Republic. Notably, the European Framework Agreement on Telework is also based on important principles of labour law: confidentiality and labour protection. Also, if any monitoring system is implemented, it should be proportional to the goal and implemented in accordance with Council Directive 90/270/EEC¹⁰ on minimum safety and health requirements when working with screen devices. Notably, the employer is also responsible for protecting the occupational health and safety of the employee in accordance with Council Directive 89/391/EEC¹¹ on the implementation of measures to improve safe and healthy working conditions of employees of June 12, 1989, national legislation and collective ugos.

In Ukraine, the legal regulation of remote work is provided for in regulatory legal acts, in particular, article 60-2 of the Labour Code of Ukraine¹². From the content of this article, it follows that, following the example of European practice, remote work in the state is carried out only on a contractual basis, in any place-at the choice of the employee himself and using information and communication technologies. It is noted that remote work is performed by an employee outside: the working premises or the territory of the owner or the body authorised by him. This form of labour organization provides the employee with the opportunity to determine the workplace alone, including allocate working hours at their own discretion, etc. At the same time, we note that such an employee bears independent responsibility for ensuring safe and harmless working conditions¹³.

¹⁰ Council Directive 90/270/EEC, 1990. <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31990L0270>. (Accessed 14.08.2023).

¹¹ Council Directive 89/391/EEC, 1989. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31989L0391>. (Accessed 03.08.2023).

¹² Labour Code of Ukraine, 1971. <https://zakon.rada.gov.ua/laws/show/322-08#Text>. (Accessed 12.08.2023).

¹³ O. Miliienko, *Internal migration and displaced persons in Ukraine: Governing policies and protections by the administrative courts*, *Social and Legal Studios*, 6(3), (2023), 94-103.

Notably, the amendments that were made to the Labour Code of Ukraine provide for a number of categories of persons who have a "pre-emptive right" to conclude a contract on remote work (pregnant women; employees who have a child under the age of three; who have two or more children under the age of 15 or a child with a disability; parents of a person with a disability of subgroup A of Group I; persons who have taken custody of a person with a disability of subgroup A of Group I).

According to part twelve of the above-mentioned article 60-2 of the Labour Code of Ukraine, the above categories of employees can work on remote work conditions only if this is possible, considering the work performed, and also if the owner of the enterprise, institution, organization or the body authorised by him has the appropriate resources and means for this¹³. It seems that according to the logic of the legislator, one of the main criteria for determining the categories that have a pre-emptive right to remote work is the performance of family duties. Authors agree that maternity protection has always been the focus of labour legislation, so remote work can to a certain extent ensure the proper course of pregnancy without excessive physical and psychological stress in the workplace. For the same reasons, it is possible to provide for the possibility of working remotely for women who are in the stage of intrauterine insemination. In particular, Article 1 of the Labour Code of the Republic of Bulgaria¹⁴ provides that when a woman is at the stage of treatment by assisted reproduction, including when the period from follicle puncture to embryo transfer is no more than 20 days.

3. Legal regulation of remote work in the fight against the COVID - 19 pandemic in certain countries of the European Union and in Ukraine

It is worth recalling that during 2020, in the fight against the global pandemic, many countries of the European Union have experienced positive and significant changes in the legal regulation of remote work relations, including with the use of information and telecommunications technologies. One of these types of organisations of the use of an employee's ability to work is remote work. It is necessary to highlight teleworking, which is carried out using information and telecommunications technologies). According to the results of an electronic survey of employees conducted by Eurofond¹⁵ and recorded in September 2020, it was found that in Bulgaria, Poland, Slovakia, Croatia and Hungary,

¹⁴ *Labour Code of the Republic of Bulgaria*, 1987. <https://lex.bg/laws/ldoc/1594373121>. (Accessed 20.08.2023).

¹⁵ Eurofound, 2020b. <https://www.eurofound.europa.eu/publications/report/2020/living-working-and-covid-19>. (Accessed 17.08.2023).

every fifth employee worked remotely, more than 40% – in France, Spain, Italy, Ireland and more than 50% in Belgium.

Analysing the legislation of foreign countries, it can be concluded that no less important is the transition to remote work of employees who, to prevent the spread of infectious diseases, stay in contact with a carrier of COVID-19, need this primarily for health reasons¹⁶. The experience of legal regulation of this issue in the legislation of the Republic of Portugal deserves attention. This is one of the few countries that has issued a legal regime to protect employees with weakened immunity for chronic diseases as part of exceptional and temporary measures regarding the epidemiological situation with the new virus – COVID-19. After all, such categories are the most vulnerable to infection and complications caused by it.

In particular, the first category includes employees with immune and other chronic diseases who, according to the instructions of the health authority, belong to the risk group, namely patients with cardiovascular diseases, chronic respiratory diseases, cancer and kidney failure. The state of health of such an employee is confirmed by a medical declaratio¹⁷. The second group includes employees with disabilities and persons whose disability exceeds 60 percent.

The third group includes employees with family responsibilities. In this case, the exercise of the right to remote work belongs only to one of the parents (guardians) with children or any other dependents under 12 years of age or, regardless of age, if the child has a disability or chronic diseases, regardless of the number of children or dependents under guardianship¹⁸. However, only during the period of suspension of education in schools, kindergarten activities, and institutions that support people with disabilities. Also, separate legislative acts can, as a temporary measure in the fight against the COVID-19 pandemic, establish periods of school holidays, during which an employee also has the right to work remotely¹⁹. Therefore, in our opinion, borrowing certain provisions from the legislation of foreign countries will allow extending social and protective

¹⁶ V. Pylyp, *Ukrainian civil society institutions in countering terrorism: International legal standards*, *Social and Legal Studies*, 6(3), (2023), 127-134.

¹⁷ Decreto-Lei n.º 10-A/2020, 2020. <https://dre.pt/dre/detalhe/decreto-lei/10-a-2020-130243053>. (Accessed 12.08.2023).

¹⁸ V. Chervinskyi, *Representation of the victim of a road traffic accident at the subsequent stage of the pre-trial investigation*, *Scientific Journal of the National Academy of Internal Affairs*, 28(3), (2023), 58-72.

¹⁹ Resolução do Conselho de Ministros n.º 40-A/2020, 2020. <https://dre.pt/application/file/a/134889478> [in Portuguese]. (Accessed 16.08.2023).

measures in the fight against the COVID-19 pandemic to employees whose health status makes them the most vulnerable to infection²⁰.

Equally important is the establishment of the employer's obligation to inform employees about the possibility of switching to remote work. For example, the Labour Code of Hungary²¹ provides for the employer's obligation to notify the employee about the possibility of switching to remote work (Article 61). Notably, the wording of the norm on remote work in the Labour Code of Ukraine provides certain categories of employees only with the opportunity to work like this, but does not provide them with an effective mechanism for implementing such a prerogative of transition to new working conditions. For comparison, it is advisable to refer to the provisions regulating the transition to part-time work for certain categories of employees.

Analysis of this provision allows drawing the following conclusions. First, the legislator has identified categories of employees who have the right to establish part-time work, and this list is not identical to the one defined in relation to remote work. Secondly, a significant distance has been made in the legal status of persons who have two children and those who have one child. After all, if an employee is the father (mother) of one child, he cannot apply for a priority application for remote work, if the child does not need medical care until he reaches the age of six.

Third, the formulation of the norm on the allocation of persons who perform family duties and therefore need remote work is carried out without the phrase "including those who are under her guardianship", which allows generalising all employees, including guardians and trustees, or vice versa, separates them from the exercise of the right to remote work. This conclusion follows from the provision according to which persons who have taken custody of a child or a person with a disability from childhood of subgroup A of group I can work remotely. Of course, judicial practice will develop appropriate approaches to ensure the right of this category to remote work, but, in our opinion, the norm needs to be clarified.

Fourth, using in Article 60-2 of the Labour Code of Ukraine such concepts as "employee", "parents" and "persons who took custody", the legislator obviously distinguishes these terms in this way, does not reduce them to one denominator¹³.

We also draw your attention to the fact that parents with children are in a rather unequal position compared to guardians. Following the content of the norm of Part 12 of Article 60-2 of the Labour Code of Ukraine, parents

²⁰ I Rohatiuk - A. Zapototskyi, *Chapter 36-1 of the CPC of Ukraine as a ground for closing criminal proceedings*, *Law Journal of the National Academy of Internal Affairs*, 13(3), (2023), 7-17.

²¹ Labour Code of Hungary, 2012.

<https://www.ilo.org/dyn/travail/docs/2557/Labour%20Code.pdf>. (Accessed 04.08.2023).

who have one child aged from 3 years (from 6 years, if by this time the child needed care according to a medical report) cannot apply for remote work. The only exception is the presence of a child with a disability¹³. The legislator seems to have applied an excellent approach to persons who are guardians of a child, when the age of such a child, given the wording of the norm, does not matter. Notably, the right to part-time work is guaranteed to all employees who care for a sick family member in accordance with a medical report. However, there are significant limitations to remote work. After all, only disability serves as a valid reason for the implementation of care²².

If having a child with a disability grants parents and legal guardians the full right to prioritize remote work, then having an individual with a disability of only group A I should also be considered.

According to clause 27 of the Resolution of the Cabinet of Ministers of Ukraine No. 1317 "On Issues of medical and social examination"²³, subgroup A of disability group I includes persons with an exceptionally high degree of loss of health, which leads to the need for constant outside supervision, care or assistance from other persons and an actual inability to self-care. The criteria for establishing subgroup A of disability group I are the degree of loss of health, which leads to a complete inability to self-care and complete dependence on other persons (the need for constant outside supervision, care or assistance). It is also worth adding that the legislator states only the presence of a person with a disability of group 1 of subgroup A and only parents (guardians). The provision does not mention other persons who may live together or have such dependents. However, in the context of care that must be confirmed by a medical report, it is indicated only in relation to the care of a child up to the age of six. Consequently, in comparison with part-time work, access to the choice of remote work is significantly limited by law²⁴.

It is also worth paying attention to the fact that an objective need to care for someone (permanent or temporary) may arise at any time of the employment contract²⁵. Analysing the legislation in the field of providing social services, outside care may be required by patients (from among persons of working age for the period up to the establishment of a disability

²² S. Kovaliova - O. Svitlychnyi, *Confiscation as a special sign of protection of intellectual property rights*, *Law. Human. Environment*, 14(3), (2023), 91-101.

²³ Resolution of the Cabinet of Ministers of Ukraine No. 1317 "On Issues of medical and social examination", 2009. https://zakon.rada.gov.ua/laws/show/1317-2009-%D0%BF%20%D1%96%D0%B4%D0%B3%D1%80%D1%83%D0%BF%D0%Bo#w1_2. (Accessed 14.08.2023).

²⁴ O. Antipova, *Strategic communications as a component of state information security*, *Law Journal of the National Academy of Internal Affairs*, 13(1), (2023), 44-52. <https://doi.org/10.56215/naia-chasopis/1.2023.44>

²⁵ Law of Ukraine No. 5067-VI "On Employment", 2012. <https://zakon.rada.gov.ua/laws/show/5067-17#Text>. (Accessed 02.08.2023).

group, but not more than 4 months) who are not capable of self-service and need constant outside help²⁶. After all, as it is known, a disability certificate for caring for such persons can be issued for 7 calendar days for such care. Regarding persons who care for persons with a mental disorder, we note the following. Decree of the Ministry of Health of Ukraine No. 667 "On approval of the form of the report of the medical commission of the medical institution on the need for permanent third-party care for a person with disabilities of group I or II due to mental disorder and the Instruction on the procedure for its provision"²⁷ (2013) approved the conclusion of the MAC (Medical Advisory Commission) on the need for permanent third-party care for a person with a disability of group 1 conditioned upon a mental disorder issued to a person living together with a person in need of third-party care, if there is an application from this person. The conclusion of the MAC could be considered evidence sufficient to include such persons in the categories of persons who can primarily work remotely.

4. Conclusions

The owner's refusal is considered justified if the work performed by the employee cannot be done remotely, including if the owner and / or employee do not have the means and resources to introduce remote work. Of course, the employer can meet the employee halfway and set remote working conditions for him if there is a need to take care of a sick family member, however, if there is a legislative requirement, the effectiveness of the legal regulation mechanism in this direction will significantly increase. Indeed, in the absence of a procedure for implementing the employee's will, it is also quite difficult to determine whether there is an imperative for the employer to introduce remote work and whether the refusal is justified when not the employer, but the employee has the appropriate resources and means to perform the labour function remotely. Considering the above, suggest to supplement Labour Code of Ukraine with the following proposals. Based on the application of an employee (who has the right to work remotely), the owner or a person authorised by him is obliged to conclude an employment contract in writing with him for the right to perform remote work, and a corresponding order is issued. The imperative obligation of the employer to conclude an employment agreement with the employee on remote work is set forth in this part of the Labor Code of

²⁶ O. Tkachuk, *The concept and correlation of legal protection and defence of well-known trademarks*, *Law. Human. Environment*, 14(2), (2023), 95-104.

²⁷ Decree of the Ministry of Health of Ukraine No. 667 "On approval of the form of the report of the medical commission of the medical institution on the need for permanent third-party care for a person with disabilities of group I or II due to mental disorder and the Instruction on the procedure for its provision", 2013. <https://zakon.rada.gov.ua/laws/show/z1666-13#Text>. (Accessed 03.08.2023).

Ukraine. This novel deals with the right of an employee who has been subjected to actions in the workplace that contain signs of discrimination to temporarily (up to 2 months) transfer to remote work.

Abstract: The article deals with the issues of legal regulation of remote work in some countries of the European Union and in Ukraine. The main act of the European Union dedicated to remote work is the 2002 European Framework Agreement on Telework. The above European act was the beginning of the implementation process for the introduction of remote work in the field of labour law. Confidentiality and labor protection are important principles of the European Telework Agreement. Problem formulation: The issues of legal regulation of telework in connection with the latest changes in labour legislation, which are primarily related to the fight against the COVID-19 pandemic, remain insufficiently studied. The purpose of the study: The aim of the article is to investigate the acts on establishing the conditions of telework in some countries of the European Union, including amendments to Ukrainian labour legislation on the legal regulation of telework, in particular, during the fight against the COVID-19 pandemic. In Ukraine, the legal regulation of remote work was introduced as a concept only in 2020. The main results of the study: The authors of the article suggest to supplement the twelfth part of Article 60-2 of the Labor Code of Ukraine with the following sentences. Based on the application of the employee (who has the right to work remotely), the owner or a person authorised by him, are obliged to conclude a written employment contract with him for the right to perform remote work, and an appropriate order is issued. The owner's refusal is considered justified in the case when the work performed by the employee cannot be performed remotely, and if the owner and / or the employee do not have the means and resources to introduce remote work.

Keywords: employee - telework - labour protection - work - employment contract