

Post-Covid 19 challenges and new ways of working

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The workplace, and the related issue of virtual hiring, is one aspect of the world of work that was affected by the pandemic and will certainly have consequences post-pandemic.

The effects of the pandemic have not yet been fully mapped by scientists, doctors, psychologists, economists and legal professionals, and there is still no certainty as to when the public health crisis will be under control. The general feeling is that the world has changed and will never be the same as it was pre-pandemic. Unquestionably, there will be challenges in the future and employers will have to reinvent themselves in various ways, with or without government support and changes to the legal framework.

One of the aspects of the world of work that was affected by the pandemic and will certainly have consequences post-pandemic is the workplace, and the related issue of virtual hiring.

Over the past year, companies have upgraded their technological resources to make remote work possible on a large scale. What many companies learned was that remote work is viable: employees continued to be committed and aligned with their employer, and the mishaps inevitable in a new and worrying scenario were overcome. With the adoption of telework came savings (or potential savings) from the reduction in physical space needed to accommodate employees, in providing transportation to and from work (or transportation allowances), national and international travel, and the many other costs that are inherent to maintaining a physical space for large numbers of employees. These savings did not go unnoticed and have been an important factor in reassessing the traditional, in-person work model.

Contrary to the conclusion that might have been reached a short time ago in analyzing the advantages and disadvantages of telework, it now seems fair to say that the pandemic has brought credibility to remote work in many sectors, and it is reasonable to expect that partially remote work arrangements will become not only more common, but more desirable for both employers and employees.

In Brazil, however, the current legislation does not adequately govern the details of the new work models now emerging. Since the Employment Law Reform of 2017, we have provisions that deal with remote work, which require that existing employment agreements be amended to specify employers' and employees' obligations with respect to matters such as the provision of the technological equipment and infrastructure needed for remote work, and reimbursement of work-related expenses paid by employees. The law also provides that employers are not required to record the time worked by employees who work remotely.

The legislation does not contemplate situations where employees work

under a hybrid model, so that part of their job is performed at home and part in person, at the employer's establishment. Although a mixed system of inperson and remote work is legally possible, the legislation does not address questions such as control of time worked (and rights to overtime), provision of work tools and infrastructure, and reimbursement of expenses.

There are other situations that can be expected to arise much more frequently, and are not contemplated in the legislation or in decisions by the courts. For example, by law in Brazil, all employees are represented by labor unions, whose jurisdiction is defined by economic activity and territory. What happens when a company located in one city hires an employee in another city or state to work exclusively on a remote basis? Which union will represent the employee? Which municipal or state holidays apply? Will there be any difference in employee rights when telework is optional? And how will employers monitor confidentiality issues in telework?

The challenges are many, and the law tends not to keep up with the pace of the transformations that are taking place. Now more than ever, employers should ensure that they have clear, express rules in their employment agreements, internal policies, and collective bargaining agreements to govern their relationship with employees in a time of rapid change.

**This content is part of the e-book "A Post-Covid World, the ESG Agenda and Other Trends in 2021: Insights for Foreign Investors in Brazil". [Click here to view all the articles.](#)*

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