

Back to work: on-site work and hybrid schemes

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Who thought that quarantine and social distancing would last so long?

In March of this year, almost all businesses had to rethink the traditional way of working and put many if not most of their employees on a remote work scheme, without much preparation. With a view to addressing some of the uncertainties employers faced at that time, Provisional Measure 927 was issued, making various labor standards more flexible, including the rules on remote work.

Provisional Measure 927 has now lapsed, and with a growing movement toward a return to on-site work, businesses are finding that they have to reinvent themselves once more. We have seen three trends: (i) a return to fully on-site work, especially in businesses that are incompatible with remote work, (ii) maintaining remote work for an indefinite period of time, and (iii) hybrid schemes.

A return to on-site work for all employees may seem simple, but it is not. New occupational health and safety measures have to be implemented and strictly complied to avoid infections among employees, and potential fines and liability for the employer. Joint Directive (Portaria Conjunta) no. 20, for example, requires businesses to revise the layout of their offices to allow for social distancing, and to provide training on the use of masks and hygienic practices, among other things.

Employers that decide to extend remote work until a vaccine becomes available, or for other reasons (some businesses, for example, have seen a reduction in their costs), still must fully comply with the law. In particular, they are required to have their employees sign an employment agreement (or an amendment to an existing employment agreement) that provides for remote work. The agreement must set out the tasks that the employee will perform, allocate responsibility for acquiring, maintaining,

or supplying the technological equipment and infrastructure that the employee will need, and provide for reimbursement of the employee's expenses. Employers are also required to instruct employees on the precautions they should take to avoid occupational illnesses and accidents when working from home, and employees are required to agree, in writing, to follow those instructions.

Hybrid schemes involve a mixture of on-site and remote work. Some businesses have set up shifts to ensure that no more than 50% of their employees are at the office on the same day. Others have adopted a flex model that allows employees to choose the days on which they will work at the office.

The hybrid model requires a little more care. In addition to amending

employment agreements to provide for the new working conditions, including the conditions that apply when the employee is working from home, it is advisable for employers to adopt an internal policy setting out the rules governing hybrid schemes.

The biggest challenge in the hybrid model is keeping a record of time worked, since strictly speaking the employer's obligation to record the time their employees work is only waived when the employee works remotely most of the time. The question is controversial, and employers should not assume that they are not required to keep a record of time worked for employees who work partly from home, or that they are only required to keep time records when employees work from the office. One way around this dilemma is to negotiate a collective agreement to establish that the employer is required to record time worked only for employees who work 100% on-site or, alternatively, to provide for other means of tracking time during remote work days, such as using apps that let employees clock in and out of work.

We are facing new challenges, but by taking into account the peculiarities of each business and the tasks performed by employees, safe and creative solutions are possible.

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