



International Employment Lawyer

New Ways of Working

Poland



Contributor:

Bird & Bird

Poland

Paulina Grotkowska
and Bartosz Mazurek

Bird & Bird

Remote working

1. Has the government introduced any laws and/or issued guidelines around remote-working arrangements? If so, what categories of worker do the laws and/or guidelines apply to – do they extend to “gig” workers and other independent contractors?

Remote-working arrangements have been present in Polish law since 2007 as regards teleworking, which requires formalised implementation (ie, an internal policy consulted on with trade unions or employee representatives) or it may be agreed individually (with employees).

All employees (individuals cooperating under an employment contract) may engage in teleworking if their role and scope of duties can be performed remotely. Remote-working arrangements may be introduced at the employer's or the employee's request, but require the consent of the other party. The refusal of an employee to agree to remote-working arrangements cannot constitute grounds for their termination. Also, either party may submit a binding request to opt out of a remote-working arrangement and restore the previous working conditions within three months of the date that remote working begins.

During the COVID pandemic, additional temporary laws were introduced to make remote-working arrangements more flexible for employers. Thereunder, employers may unilaterally (without the employees' consent) request that employees work remotely if they have a suitable working environment at home. The tools and materials needed to work remotely, and logistics support for this, should be provided by the employer. The temporary remote work provisions of law will expire three months after the end of the “epidemic state” in Poland.

Also, the Polish government has recently been working on rules for remote working that would be binding post-pandemic, although the details of the provisions of the bill are not known at this stage.

The above solutions apply to employees only, while other categories of workers, including B2B or other independent contractors, are not covered by them. Such workers may enjoy a high degree of flexibility regarding remote work due to the specific nature of their cooperation, as well as their roles or industry.

2. Outline the key data protection risks associated with remote working in your jurisdiction.

Telework or remote work should be organised in a way that ensures the protection of confidential information and other legally protected secrets, including trade secrets or personal data, as well as information whose disclosure could harm the employer.

Certain risks are present when employees perform work remotely:

- they may use their own private equipment;
- they may use company equipment for private purposes;
- they may use an unsecured internet connection, including without a VPN (Virtual private network) connection; and
- they may work from various unregulated locations, including coworking areas.

Therefore, it is recommended that employers develop instructions regarding data protection and information safety (usually as part of their teleworking policy, which must be introduced with the participation of the employees' representatives) and ensure that these are introduced and applied effectively in the day-to-day work of remote workers.

3. What are the limits on employer monitoring of worker activity in the context of a remote-working arrangement and what other factors should employers bear in mind when monitoring worker activity remotely?

The general provisions regarding employee monitoring also apply to remote workers. According to the provisions of the Polish Labour Code that were introduced regarding GDPR, the scope, manner and aim of any form of employee monitoring (in particular, monitoring the IT or GPS of remote workers' equipment) must be specified in detail in workplace regulations.

Therefore, the use of monitoring and its legal compliance is conditional on appropriate provisions being introduced by the employer upon agreement (consent required) with the trade unions or, in their absence, with employee representatives. The introduction of monitoring should be announced two weeks before monitoring begins.

Employee monitoring conducted without such regulations in place or in an excessive manner may be deemed illegal (eg, a court may reject it as evidence of employee fraud or other non-compliance in the case of a disciplinary action brought by the employer).

4. Are employers required to provide work equipment (for example, computers and other digital devices) or to pay for or reimburse employees for costs associated with remote working (for example, internet and electricity costs)?

There is a general legal obligation for employers to provide remote-working equipment, insure it, and acquaint the employee with how to use it, unless it is agreed individually that the employee may use their private equipment, for which they must be compensated.

The employer has to cover the costs of installing, servicing, operating and maintaining the equipment. Also, the employer must provide employees with technical support and any training they need to operate the equipment.

There is a general legal obligation for employers to reimburse expenses related to remote-working arrangements (including utilities, internet and phone). However, the absence of precise legal guidelines or enforcement mechanisms in this area has resulted in various market practices.

The new remote-working regulations that are expected to come into force in the future are likely to introduce more detailed regulations in terms of compensating the costs incurred by employees when working remotely.

5. What potential issues and risks arise for employers in the context of cross-border remote-working arrangements?

Cross-border remote-working arrangements may expose employers to tax and social risks, especially if employees lose their tax and social security status in Poland by residing and working abroad for a long period of time. In such cases, those employees automatically come under the taxation and social security system of that other country, and the employer must calculate, deduct and pay public dues and fulfil other obligations as required by local law.

Apart from that, cross-border remote-working arrangements may result in risks related to:

- **immigration compliance**, including legalisation of the employee's residence and work rights;
- **employment compliance**, including meeting the minimum requirements laid down in local labour law (eg, as to minimum wage, working time (rest periods and local bank holidays) and OHS requirements); and
- **corporate tax and social security consequences**, including the creation of a permanent establishment of the employer abroad.

Therefore, it is strongly recommended that employers introduce a hard obligation in their remote-working policies that limits remote work to the territory of Poland only, with any exception requiring the prior explicit consent of the employer.

6. Do employers have any scope to reduce the salaries and/or benefits of employees who work remotely?

No. Any such action could be considered as discrimination or other unequal treatment. Remote workers must be remunerated based on the same rules as all other staff, including in terms of their access to other benefits.

Likewise, within the principles adopted for all staff, remote workers may visit their employer's office or premises, communicate with other employees, use the employer's rooms, facilities and company social facilities, and may benefit from social activities organised by the employer.

The return to work and vaccinations

7. What are the key privacy considerations employers face in relation to ascertaining and processing employee medical and vaccination information?

Yes. During the pandemic, to reduce headcount and ensure distancing at the office, employers can order remote work if the employee has a suitable environment for working at home. At the employer's premises, disinfection liquids and social distancing (eg, 1.5 m between desks) help provide safe working conditions. Employees must wear protective masks at work unless employers decide otherwise.

8. Can employers require or mandate that their workers receive a covid-19 vaccination? If so, what options does an employer have in the event an employee refuses to receive a Covid-19 vaccination?

No, a blanket requirement is highly risky for most employers. Employers cannot force employees to be vaccinated.

Consequently, employees cannot be exposed to any adverse consequences for not being vaccinated.

Vaccines are available only via the government-run National

Vaccination Programme, and all employees qualify for the vaccine (individual reasons may disqualify a person from vaccination).

However, all employers may actively promote vaccination. The Polish Labour Inspectorate has confirmed that employers may offer non-financial incentives to promote vaccination (ie, an extra day off to be vaccinated). If this option is chosen, we recommend that you plan ahead, have a clear, consistent communication strategy, and actively engage with employees.

9. What are the risks to an employer making entry to the workplace conditional on an individual worker having received a Covid-19 vaccination?

A general prohibition against non-vaccinated employees coming to their employer's premises (when the premises are not closed to everyone) is risky. Vaccination itself is not a reason to differentiate between employees if this is not objectively justified. Categorising employees based on their vaccination status could be considered a form of discrimination. The Labour Inspectorate could impose a fine for a violation of employees' rights. An employee could file a claim of discrimination against the employer, demanding compensation.

10. Are there some workplaces or specific industries or sectors in which the government has required that employers make access to the workplace conditional on individuals having received a Covid-19 vaccination?

From 1 March 2022, all medical workers will have to be vaccinated. There are no requirements for any other industries or sectors at this stage.

11. What are the key privacy considerations employers face in relation to ascertaining and processing employee medical and vaccination information?

An employee's vaccination status could be processed based on an employee's explicit consent (article 9 (2) (a) GDPR). Under the Polish Labour Code, explicit consent to process special category data must be given at the employee's initiative. The Polish DPA has expressed doubts about accepting consent as a legal basis for the processing of health data in an employer-employee relationship (due to the inequality that exists between the two sides). Therefore, the procedure for collecting such consent should be carefully prepared. Employers should not require their employees to provide information on their vaccination status. However, employers may consider introducing a process by which it would offer employees an option to voluntarily inform them about their vaccination status. It should be entirely up to the employee to provide such information. The employee cannot be exposed to any adverse consequences for not providing such information. In particular, consent or refusal to provide information cannot serve as grounds for discrimination, including denial of access to the workplace. Employers may offer some less restrictive internal procedures for employees who have been vaccinated.

There is no national law that would require employees to provide vaccination, test or immunity records. However, employers can request and retain proof of an employee's vaccination, test or immunity records if it is provided voluntarily by the employee. Proof of an employee's such records could be processed based on the employee's explicit consent (article 9 (2)(a) GDPR). However, we would not recommend doing so, as it may be considered excessive. It is instead recommended to collect declarations by employees or, if that is not sufficient,

verify such declarations with vaccination certificates (or another type of proof) without collecting or storing copies of such certificates. This is because the Polish Labour Code gives preference to employees' declarations over the collection of documents. Also, employees' declarations contain less data than such evidence.

Health & safety and wellbeing

12. What are the key health and safety considerations for employers in respect of remote workers?

The duty to protect the health and safety of employees and provide a safe place and system of work also applies to the remote workplace. Employers should ensure that the working environment of an employee is assessed for risks. Also, the remote workplace may be inspected by an employee (or an authorised person) at the employee's request.

Employees can undertake their own risk assessment on behalf of and under the supervision of an employer; if so, confirmation from the employer regarding health and safety compliance of their workplace (usually their place of residence) is recommended.

Also, there should be procedures in place to allow remote workers to report serious accidents in the course of work.

13. How has the pandemic impacted employers' obligations vis-à-vis worker health and safety beyond the physical workplace?

No, there have been no changes in this regard. Thus, the general rules presented in question 12 apply, although the bills regarding remote work that might be introduced in future may provide for a shift of some health and safety obligations from the employer to the employee, including an employee's responsibility for the proper organisation of their remote work station.

14. Do employer health and safety obligations differ between mobile workers and workers based primarily at home?

No, there is no differentiation in this regard. Please see question 12.

15. To what extent are employers responsible for the mental health and wellbeing of workers who are working remotely?

There are no specific regulations in this regard. Soft recommendations of monitoring the wellbeing of remote-working employees regarding their personal welfare, mental and physical health, and personal security should be considered.

In addition, an employer's universal duties related to ensuring a safe working environment free from discrimination, bullying, harassment and other unlawful behaviour also apply to remote workers.

16. Do employees have a "right to disconnect" from work (and work-related devices) while working remotely?

There is no specific "right to disconnect" in the Polish Labour Code. However, an employer must observe the provisions

related to working time regulations, including minimum rest periods and limitations of overtime. Also, persistent and ongoing communication with employees far beyond their working hours and availability may be deemed as breaching an employee's right to privacy and constitute grounds for potential work harassment claims.

Unions and/or work councils

17. To what extent have employers been able to make changes to their organisations during the pandemic, including by making redundancies and/or reducing wages and employee benefits?

At the beginning of the pandemic in 2020, an employer could decrease working time by 50% and salaries by 20% and receive state aid to protect employees from redundancies; there was also temporary relief from paying contributions to the Social Security Institution (health and rent contributions). These programmes are no longer in force.

18. What actions, if any, have unions or other worker associations taken to protect the entitlements and rights of remote workers?

Trade unions and employee representatives may actively cooperate with employers when they introduce teleworking policies or other remote-working arrangements.

Also, notifications can be filed to the National Labour Inspectorate about any behaviour considered a violation of remote workers' rights caused by the employer.

19. Are employers required to consult with, or otherwise involve, the relevant union when introducing a remote-working arrangement? If so, how much influence does the union and/or works council have to alter the working arrangement (for example, to ensure workers' health and safety is protected during any period of remote work)?

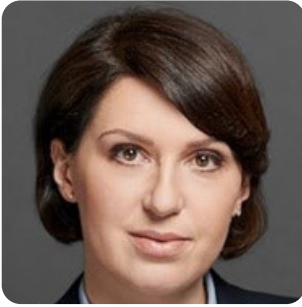
Yes, employers are required to consult and agree with the trade unions or employee representatives on the terms and conditions of teleworking policies. However, if no agreement is reached by the parties within 30 days from the date draft teleworking regulations are presented by the employer, the employer is free to introduce the teleworking policy as prepared, considering the arrangements made with the trade unions or employee representatives when negotiating their terms.

There are no similar requirements related to temporary pandemic-related remote-working arrangements that can be introduced by an employer without consultation, negotiation or other consent of the employees or their representatives.

Visit **International Employment Lawyer** to explore the New Ways of Working comparative reference tool. Research country-specific regulations or build your own report comparing jurisdictions.

[Click here to build your own report now](#)

Authors:



Paulina Grotkowska Bird & Bird

Paulina is a senior associate in the employment team in Warsaw.

She is an attorney-at-law with over nine years' experience providing professional advice on individual and collective employment relationships.

She has taken part in mergers and acquisitions, company admissions to the stock exchange, work establishment restructuring projects, analyses of the compliance of corporate activities with labour law requirements, issues related to transfers of work establishments, group layoffs, voluntary leave programmes and internal allocations.

She also advises clients on all matters relating to their ongoing activities, particularly in connection with hiring managerial staff and delegating personnel abroad. She has extensive experience in representing clients in court proceedings within the scope of employment and social security law.

Paulina is a graduate of the Faculty of Law and Administration at Maria Curie-Skłodowska University in Lublin. She also graduated from the Faculty of Law and Government at Dublin City University, and did an internship at Merrion Legal Trade Marks Agents, also in Dublin.

She is the author of numerous publications, and a speaker at conferences and seminars on individual and collective employment law.

She works in both Polish and English.

[Learn more](#)



Bartosz Mazurek Bird & Bird

Bartosz is a junior associate in the Warsaw employment and intellectual property legal teams.

He has been advising clients since 2019 and specialises in intellectual property as well as new technologies law. He also has experience in working on matters involving individual and collective employment law and mediation.

Before joining us, Bartosz gained professional experience working for a reputable boutique law firm in Krakow.

He graduated from the Faculty of Law and Administration at the Jagiellonian University in Cracow. He also finished two semesters at the University of Heidelberg and graduated from the Faculty of Journalism and Political Sciences at the University of Warsaw.

He is a trainee attorney-at-law at the Warsaw Bar Association.

He works in Polish, English and German.

[Learn more](#)