

European Guide to Support Employers
Remote Work in Europe



Andersen in Europe
February 2023



MALTA

Implementation of Remote Work

In Malta, the term used in legislation is “telework” which is defined as a form of organizing and/or performing work using information technology in the context of an employment contract or relationship, where work which could also be performed at the employer’s premises is performed away from those premises on a regular basis. However, labor laws which make reference to such an arrangement also include the term “remote work”. Currently, a collective bargaining agreement which contains special regulations on remote work with regard to public service employees is in place in Malta. This consists of a Teleworking Policy and Guidelines on its Implementation, which complements the Public Service Management Code and regulates teleworking. Teleworking will be phased out by 3rd April 2023 and will be replaced by Remote Working. Remote Working is defined as a way of performing work which provides employees with full flexibility to work on a regular basis from locations other than their formal office, e.g. from home, from an alternative office closer to home, or at any other location. The policy on remote working deals with the particular rights applicable to employees such as the right to disconnect, the professional standards which must be met by such employees, the provision of equipment by the employer, and data protection issues, among others.

The policy also establishes that an individual remote working agreement is required between the employee and the Head of Department. This is also applicable with respect to employees who are not in public service. Such agreement must be in writing and shall include information such as the location where telework is to be performed and provisions related to the equipment used for telework, the amount of working time to be spent at the place of telework and at the workplace, the schedule by which the employee will perform telework, where applicable, the description of the work to be performed, the department to which the teleworker is attached, his/her immediate superiors or other persons to whom he/she can report, provisions related to monitoring, if any, notice of termination of the telework agreement and, in cases where telework is performed in the course of the employment relationship and there is no reference to teleworking in that employment contract, a reference to the right of reversibility by either party, including the right of the teleworker to return to his/her pre-telework post.

Telework may be required as a condition of employment in an employment contract or, where there is no specific reference to teleworking in the employment contract, by agreement in the course of the employment relationship. Where there is no mention of telework in the employment contract, the employee is free to accept or refuse the



offer of telework made by his/her employer, and such refusal will not constitute a good and sufficient ground for termination of employment, nor can it lead to a change in the conditions of employment. This is also applicable to the employee, i.e. in the event that an employee expresses the wish to opt for telework, the employer may accept or refuse that request, if such an option is not included in the employment contract. However, workers with children up to the age of eight years and caregivers have the right to request flexible working arrangements for caring purposes. The term “flexible working arrangements” refers to the possibility for workers to adjust their working patterns, including by means of remote working arrangements, flexible working schedules or reduced working hours. In such case, the employer is obliged to respond to such request within two weeks and, in the event that the employer refuses the request, s/he must provide reasons for that refusal.

Required involvement of employee representatives and public / immigration authorities

If remote work is introduced by the employment contract or by an agreement following the employment contract, the law does not stipulate that employee representatives need to be involved. In light of this, the potential influence by employee representatives regarding the introduction and design of the remote work is minimal.

In Malta, there is no obligation to notify the introduction of remote work to specific public authorities. However, there is an obligation to include the teleworker in the calculations for determining thresholds for the purpose of worker representation, for the purposes of information and consultation rights, and

for the purpose of determining a collective redundancy, in accordance with the respective regulations of Malta.

Since the participation of the employee representatives and the notification of the remote work to public authorities are not provided for under Maltese law, there are no legal consequences if employee representatives do not participate and the public authorities are not informed.

Third-country digital nomads who work remotely in Malta for their third-country employer are not regulated by specific laws. The Maltese laws which regulate telework are applicable to any employee who performs telework, with no exclusion with respect to nationality. Naturally, third-country nationals who are not citizens of an EU member state require work and residence permits in Malta in order to be able to work here.

Equipment & Compensation for remote work expenses

Unless otherwise agreed upon by the employer and the teleworkers in the written agreement on telework, the employer is responsible for providing, installing and maintaining the equipment necessary for the performance of telework and for providing the teleworkers with an appropriate technical support facility. The teleworker is then responsible for taking good care of the equipment and data provided by the employer and is obliged not to collect or distribute illegal material via the internet.

The costs arising from loss of, damage to and misuse of the equipment and data used by the teleworker will be borne by the employer or by the teleworker in accordance



with the provisions of the law. This means that the costs shall be borne by the party responsible for the damage or loss caused. In such cases, the laws applicable to other scenarios where fault is attributed through negligence or gross misconduct are applied in order to establish the fault of each party and allocate the corresponding costs to such party.

The employer is legally obliged to compensate or cover the costs relating to communication incurred directly by telework. The law does not establish any other reimbursement which the employee is entitled to for costs incurred by remote work. Due to the generality of such provision, employers in Malta are advised to list the costs which are to be reimbursed to the employee in order to avoid any possible doubts and/or conflict. Since the law limits the reimbursement to the 'communication directly caused by telework', it may be presumed that costs incurred by the employee such as rent and electricity are not included in the list of costs which the employer is obliged to reimburse.

At this moment in time, there are no special tax rules in Malta in favor of employees who work remotely.

Working time, performance and right to disconnect

The teleworker has the same collective rights as comparable employees who work at the employer's premises. The teleworker has the right to participate in, and to stand for election to, bodies representing employees. The law does not specify other rights to which the remote employee is entitled deriving from their remote work. However, the law stipulates that the teleworker shall enjoy or continue to enjoy the same rights which would be applicable in an individual

agreement or a collective agreement to comparable employees at the employer's premises. Teleworkers also have the same rights of access and right to participate in training and career development programs provided by, or on behalf of, the employer in the same manner as comparable employees at the employer's premises and be subject to the same appraisal policies as comparable employees. Maltese legislation does not specify particular rights applicable to teleworkers. However, the remote working conditions policy applicable to employees in the public sector establishes the right of remote employees to disconnect. Such employees have the right to disengage from work and refrain from engaging in work-related electronic communications, such as e-mails or other messages, during non-core and non-contact hours. This principle does not apply in cases where a contract of employment specifies otherwise, or where a worker benefits from an allowance to compensate for an irregular work schedule.

The employer must respect the privacy of the teleworker and may only implement any kind of monitoring systems if this is agreed to by both the employer and the teleworker in the written agreement on telework. In such cases, the monitoring system must be proportionate to the objective and must be implemented in accordance with established rules on health and safety requirements for work with display screen equipment. Such rules establish particular requirements which the employer must comply with in terms of the equipment provided to the employee, the environment and the operator/computer interface. The law prohibits covert monitoring and therefore the employees must be notified of any monitoring tools installed on their devices. This can be done via an employee handbook, a policy or a notice circulated internally.



The law does not specifically state whether the employer has the right to access the employee's home. However, given that the employer is under the obligation to respect the privacy of the teleworker, it is presumed that access to the employee's home by the employer would constitute an invasion of the employee's privacy and is therefore not permitted unless the employee gives his/her voluntary consent.

Where both parties agree to a telework arrangement, each party shall have the right to terminate that telework agreement and the employee shall revert to his/her pre-telework post. In such cases, notice needs to be given by either party. If the decision is made during the first two months of the telework arrangement, notice in writing must be given three days in advance. If the decision is made after the first two months of the telework arrangements, the written notice needs to be given two weeks in advance, unless otherwise specified in the written agreement on telework. If the decision is made by the employee, this shall not constitute good and sufficient grounds for the employer to terminate the employment or change the conditions of employment of that employee.

In the event that the employer suspects, or has evidence which proves, that there is an abuse of working time on the part of the employee, the employer is entitled to apply the ordinary remedies established by law, which are applicable in cases where the employee breaches his/her contractual obligations. The custom in Malta is that a written warning is given to the employee in such cases.

Health and safety and data protection

The employer is responsible for the health and safety of the employees at all workplaces. This means that, irrespective of where the employee is performing his/her work, the employer is responsible for his/her health and safety. The employer must take preventive measures in order to ensure the health and safety of the employees, such as conducting appropriate, sufficient and systematic assessments of occupational health and safety hazards and risks, keeping copies of those assessments and updating them regularly, among other measures. These measures are not specifically related to remote working. However, they apply irrespective of where the employee's workplace is located.

It is not yet clear whether the employer may access an employee's home in order to conduct a risk assessment. However, given that the employer is under the obligation to respect the privacy of the teleworker, it is presumed that access to the employee's home by the employer would constitute an invasion of the employee's privacy and is therefore not allowed, unless the employee gives his/her voluntary consent. A Maltese employer may want to include such a provision in the agreement with the employee in order to permit access strictly for health and safety reasons and subject to the prior written approval of the employee.

Whilst Maltese law does not stipulate specific rules to prevent physical health problems in a remote work context, it does establish rules to prevent the psychological stresses of remote work. The employer is obliged to take the necessary measures to prevent the teleworkers from being isolated from the rest



of the workforce, such as giving the teleworker the opportunity to meet with colleagues and to have access to information related to his/her work.

In terms of data protection law, the employer is obliged to take the appropriate measures, particularly with regards to software, to ensure the protection of data used and processed by teleworkers in the performance of their duties. The employer must also inform the teleworkers of the provisions related to data protection and of any measures taken to ensure the protection of the data, including any restrictions on the use of IT equipment, internet or other IT tools and any sanction applicable in the event of non-compliance. The teleworker is also obliged to comply with data protection rules and the measures taken by the employer in respect of such rules.

Liability

Accidents which take place at work in the home office or during remote working are the responsibility of the employer. The laws governing occupational health and safety apply to both employer and employee, irrespective of where the workplace is. In such cases, the company accident insurance policy would need to be reviewed on a case-by-case basis in order to ensure that the policy also covers accidents which occur in the home office or the place where employees work remotely. If the company accident insurance policy does not cover places other than the company's office, it is advisable for the employer to amend the policy or to take out supplementary insurance to ensure that the home office is covered by such policy.

In the event that the property of the employee or of third parties is damaged during the home office or remote working activity, the

normal rules on liability at the workplace will apply. There are no special rules in terms of liability with respect to incidents which occur during remote working. This also applies if it is the company's property which is lost or damaged. In such a case, the costs would be borne by the employer or by the teleworker, depending on whose fault such damage or loss is attributed to.

In such cases, it is unlikely that the company liability insurance policy will cover the loss or damage. However, insurance policies need to be analyzed on a case-by-case basis in order to establish whether the insurance policy will cover such instances or not. To reduce economic risks, it is advisable to clarify the scope of the already existing insurance coverage.



Dr. Charlene Mifsud - *Partner*

Chetcuti Cauchi Advocates

Collaborating Firm of Andersen Global

ccmifsud@ccmalta.com



Dr. Luana Cuschieri - *Associate*

Chetcuti Cauchi Advocates

Collaborating Firm of Andersen Global

luana.cuschieri@ccmalta.com



This guide provides an overview of the termination procedures of remote work by each country as it relates to Employment and Labor Law provisions regulations by local governments. This guide includes information as it pertains to specific countries on general Employment measures, in specific countries as provided by the member and collaborating firms of Andersen Global.

Andersen Global is a Swiss verein comprised of legally separate, independent member firms located throughout the world providing services under their own names. Andersen Global does not provide any services and has no responsibility for any actions of the Member Firms or collaborating firms. No warranty or representation, express or implied, is made by Andersen Global, its Member Firms or collaborating firms, nor do they accept any liability with respect to the information set forth herein. Distribution hereof does not constitute legal, tax, accounting, investment or other professional advice.