

SUBSIDIARY LEGISLATION 452.104**TELEWORK NATIONAL STANDARD ORDER**

28th November, 2008

LEGAL NOTICE 312 of 2008.

1. The title of this Order is the Telework National Standard Order. Title.
2. (1) In this Order, unless the context otherwise requires - Interpretation.
"the Act" means the Employment and Industrial Relations Act; Cap. 452.
"telework" means a form of organising 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 carried out away from those premises on a regular basis;
"teleworker" means any employee carrying out telework.
(2) Subject to the provisions of subarticle (1), terms and expressions used in this national standard order shall, unless the context otherwise requires, have the meaning assigned to them in the Act.
3. (1) 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. Written agreement.
(2) In the case where telework is required as a condition of employment in an employment contract, the conditions of employment relating to telework laid down in the contract of employment shall not be less favourable than those laid down in this Order.
(3) In the case where there is no specific reference to teleworking in the employment contract and telework is undertaken in the course of the employment relationship:
(a) if the employer makes an offer of telework, the employee is free to accept or refuse this offer:
Provided that such refusal shall not constitute a good and sufficient cause for terminating employment, nor shall it lead to a change in the conditions of employment of the employee concerned;
(b) if an employee expresses the wish to opt for telework, the employer may accept or refuse such request;
(c) the passage to telework does not affect the employee's employment status nor his right to revert back to his previous post or, in the event that this is not possible, to another similar post; and
(d) 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 pre-telework post:

- (i) in the first two months of the telework arrangement, by giving three days' notice in writing to the other party, and
- (ii) after the first two months, by giving two weeks' notice in writing, unless a different period is agreed in the written agreement on telework:

Provided that if the decision to terminate the agreement on telework is taken by the employee, that decision shall not constitute a good and sufficient cause for terminating employment, nor shall it lead to a change in the conditions of employment of the employee concerned.

(4) In the case of telework arrangements which are in existence on the date of entry into force of this Order:

- (a) subarticle (2) shall apply to those contracts of employment in existence on the date of the entry into force of these regulations whereby telework is required as a condition of employment in an employment contract; and
- (b) subarticle (3) shall apply to telework agreements which have been entered into in the course of an employment relationship where there is no reference to teleworking in the employment contract.

(5) An agreement for the performance of telework shall, whether required as a condition of employment in an employment contract, or whether it is as an agreement where telework is undertaken in the course of the employment relationship and there is no reference to teleworking in the employment contract -

- (a) be in writing, and
- (b) contain written information as is required by the Information to Employees Regulations, and written information which is particular to telework, including:
 - (i) the location where telework is to be carried out,
 - (ii) provisions related to the equipment used for telework including its ownership, maintenance, liability and costs,
 - (iii) the amount of working time to be spent at the place of telework and at the workplace,
 - (iv) the schedule by which the employee will perform telework, where applicable,
 - (v) the description of the work to be performed,
 - (vi) the department of the undertaking to which the teleworker is attached, the teleworker's immediate superior or other persons to whom the teleworker can report and reporting arrangements,

- (vii) provisions related to monitoring, if any,
- (viii) notice of termination of telework agreement, and
- (ix) in cases where telework is undertaken in the course of the employment relationship and there is no reference to teleworking in the employment contract, a reference to the right of reversibility by either party, including the right of the teleworker to return to his pre-telework post.

4. (1) Whenever there is a telework agreement, whether required as a condition of employment in an employment contract or, where there is no specific reference to teleworking in the employment contract, when this is entered into by agreement in the course of the employment relationship, teleworkers shall:

Rights and training.

- (a) enjoy or continue to enjoy the same rights laid down in the Act, in the regulations issued thereunder, in an applicable individual agreement or in any applicable collective agreement as comparable employees at the employer's premises; and
- (b) have the same rights of access and rights to participate in training and career development programmes 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.

5. (1) The employer shall respect the privacy of the teleworker.

Privacy.

(2) The employer may only put in place any kind of monitoring system if:

- (a) this is agreed to by both the employer and the teleworker in the written agreement on telework as provided in article 3(5); and
- (b) such monitoring system is proportionate to the objective and is introduced in accordance with Council Directive 90/270 on the minimum safety and health requirements for work with display screen equipment.

6. (1) Unless otherwise agreed upon by the employer and the teleworker 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 teleworker with an appropriate technical support facility.

Equipment and communication costs.

(2) It shall be the duty of the teleworker to take good care of the equipment and data provided by the employer and he shall not collect or distribute illegal material via the internet.

(3) Costs for loss, damage to and misuse of equipment and data used by the teleworker shall be borne by the employer or by the teleworker in accordance with the provisions of the Civil Code.

Cap. 16.

(4) The employer shall compensate or cover the costs relating

	to communication directly caused by telework.
Organisation of work.	7. (1) Without prejudice to what may be laid down in the written agreement on telework, the teleworker shall be responsible for the management of his working time. (2) The workload and performance standards of the teleworker shall be equivalent to those of the comparable employees working at the employer's premises. (3) The employer shall take the measures necessary to prevent the teleworker 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 work.
Data protection.	8. (1) The employer shall take the appropriate measures, particularly with regard to software, to ensure the protection of data used and processed by the teleworker in the carrying out of his duties.
Cap. 586.	(2) The employer must inform the teleworker of the provisions of the Data Protection Act and of the measures taken pursuant to subarticle (1), including any restrictions on the use of IT equipment, internet or other IT tools and any sanction in case of non-compliance.
Cap. 586.	(3) The teleworker shall abide by the provisions of the Data Protection Act and by the measures taken by the employer in terms of this regulation.
Collective rights.	9. (1) The teleworker has the same collective rights as comparable employees at the employer's premises. (2) The teleworker has the right to participate in, and to stand for elections to bodies representing employees. (3) The teleworker is to be included in the calculations for determining thresholds for the purposes of worker representation, for the purposes of information and consultation rights in terms of article 38 of the Act, the Transfer of Business (Protection of Employment) Regulations, and of the Employee (Information and Consultation) Regulations, and for the purpose of determining a collective redundancy in terms of article 37 of the Act and the Collective Redundancies (Protection of Employment) Regulations.
S.L. 452.85	
S.L. 452.96	
S.L. 452.80	
