



New Teleworking Agreement

of 20 October 2020

● **NautaDutilh**

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What is teleworking



According to the agreement:

«The organisation or performance of work, generally using information and communication technologies, so that tasks which would normally be carried out at the employer's premises are performed elsewhere.»





The agreement **covers all employees** referred to in the Labour Code
(excluding civil servants and the equivalent)

The following are **excluded** from the agreement on teleworking:

Secondments abroad



The transport sector



Sales representatives



Co-working spaces (so-called spoke offices)



Smart working*

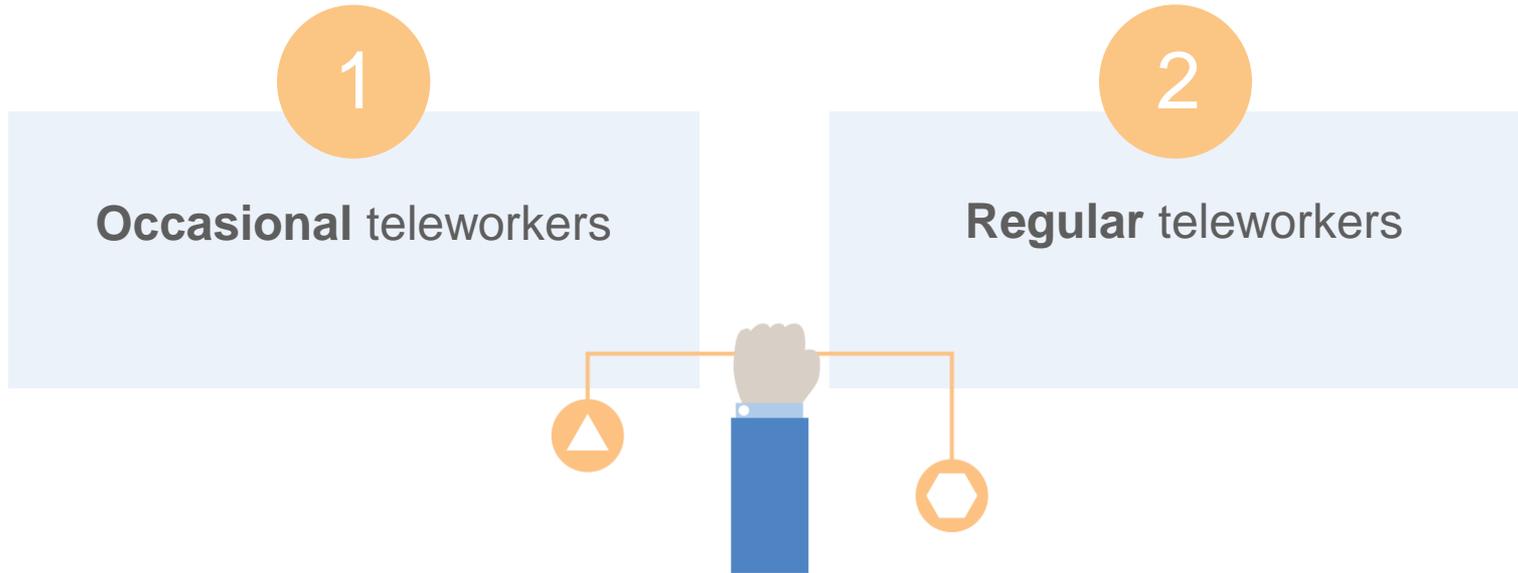


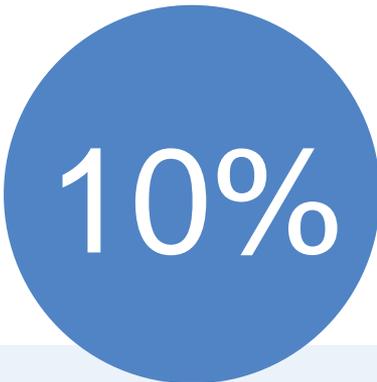
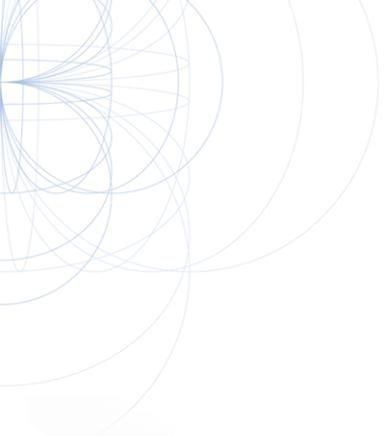
Services provided at the client, outside the employer's premises



* Occasional assistance by smartphone or PC outside the usual place of work/telework

According to the agreement, **two categories** of teleworkers:





10%



on average of the teleworker's normal annual
working time*

Threshold above which teleworking will be considered «regular» rather than «occasional».

Note: teleworking is also considered occasional if carried out «*to deal with unforeseen events*».

* Reference period: calendar year

The agreement recalls that teleworking is voluntary* in nature.



The employer and the employee must agree on teleworking (at the beginning or during the course of the employment relationship). The same goes for a return to the traditional working model.

Refusal may not result in dismissal or a unilateral modification of the employment contract.

** Note: the agreement does not expressly state as such but the voluntary nature of teleworking may be affected by specific circumstances, such as the Covid-19 pandemic. Relevant authorities may thus decide to make teleworking mandatory in order to protect employee's health and safety.*

What are the required formalities



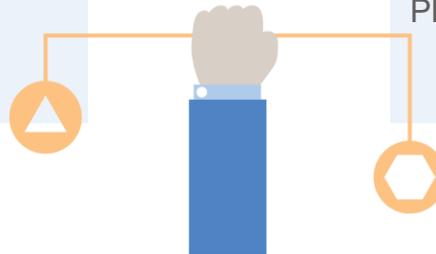
Occasional teleworking

Written confirmation by the employer of the authorisation granted to the employee.

Regular teleworking

Requires a written agreement signed between the employer and the teleworker.

Please contact us for a model.





Which information must be included in the written agreement on regular teleworking



- Place of teleworking.
- Times and days of the week during which the employee teleworks and should be reachable by the employer.
- Compensation arrangements in the event of loss of a benefit in kind.
- Fixed monthly allowance to cover connection and communication costs .
- Arrangements for the transition from or to the traditional working model.

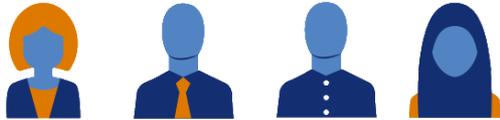


Organisation of work



- ✓ The workload and performance requirements of teleworkers should be identical to those of the company's other employees.
- ✓ Working time is organised in accordance with the rules applicable within the business.
- ✓ The employer and the employee agree on the conditions governing the performance of overtime (should remain exceptional; if applicable, the teleworker has the right to disconnect, like other employees).
- ✓ The employer should take steps to ensure that the teleworker is not isolated from other employees of the business (possibility to meet coworkers, access to training, etc.).

Equal treatment of employees



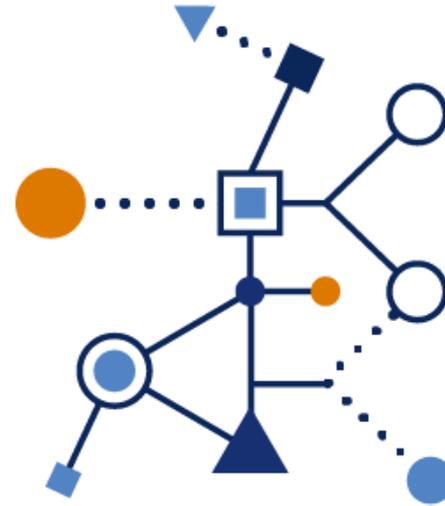
Teleworkers benefit from the **same rights** and are subject to the **same obligations** provided for by the applicable laws and collective bargaining agreements as comparable employees working at the employer's premises*.

* i.e.: working conditions, working time, remuneration conditions, conditions on promotion (career development), training (the teleworker may in particular request specific training on IT equipment and teleworking arrangements), rights relating to privacy and the processing of personal data, the provision of updated information about the company, collective rights, etc.

Data Protection

- ✓ The employer shall take the necessary measures to ensure the protection of data (including personal data) used by the teleworker for professional purposes.
- ✓ The employer must train and inform the teleworker, who must comply with the established rules.
- ✓ In the event of monitoring, specific rules apply and an impact assessment is required.

Contact us for a model.



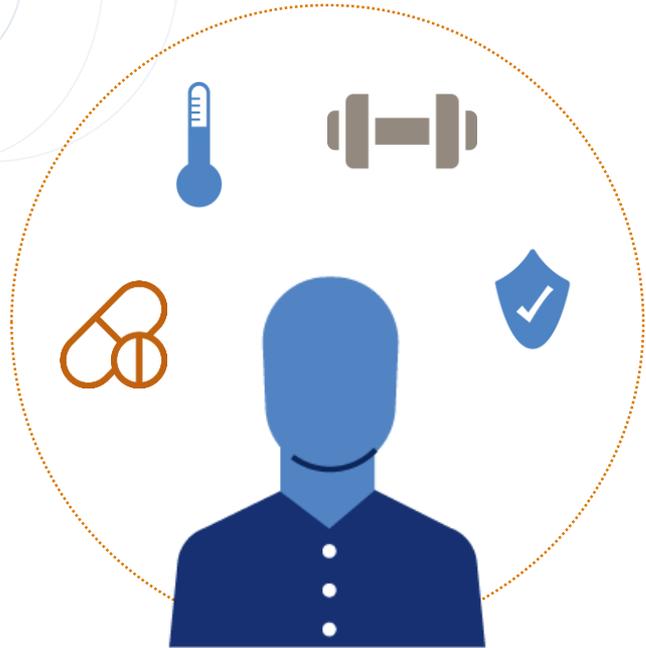
Equipment to be provided in the event of regular teleworking



The employer shall provide the **professional equipment** necessary for teleworking to regular teleworkers, and cover **costs** directly relating to teleworking, in particular communication costs.

The regular teleworker shall take proper care of the equipment provided and notify the employer in the event of a breakdown or other problem. The regular teleworker may request appropriate **technical support** services.

Health & safety



The employer must inform the teleworker of the company's occupational **health and safety policy**. The teleworker must apply this policy.

The teleworker is entitled to request an **inspection** by the company's external or internal occupational health & safety service, the company's safety officer ("*travailleur désigné*") or the Inspectorate of Labour and Mines (ITM).

Involvement of the staff delegation



The staff delegation must be regularly informed of the **number** of teleworkers and the **fluctuation** of this number within the company (in accordance with procedures to be defined internally).

The employer and the staff delegation may agree on "**teleworking rules**" **specific to the company** and adapted to its characteristics, in particular by way of a collective bargaining agreement or subordinate agreement.

What about the tax treatment

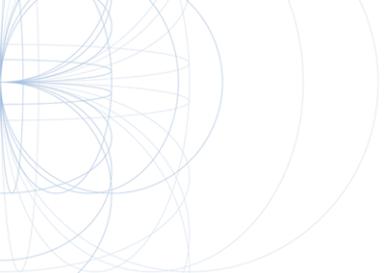


The new agreement does not contain provisions on the tax treatment of teleworking. Therefore, the usual rules will continue to apply.

- ✓ Luxembourg residents: such workers continue to be taxed as usual in Luxembourg (provided the work is effectively performed in Luxembourg).
- ✓ Cross-border workers: if a certain number of teleworking days is exceeded (19 in Germany, 24 in Belgium, 29 in France), the worker is taxed in his or her country of residence.



Special rules apply to teleworking necessitated due to Covid-19 (days worked elsewhere than at the workplace for such reasons are not taken into account to determine the abovementioned threshold of 19, 24 or 29 days).



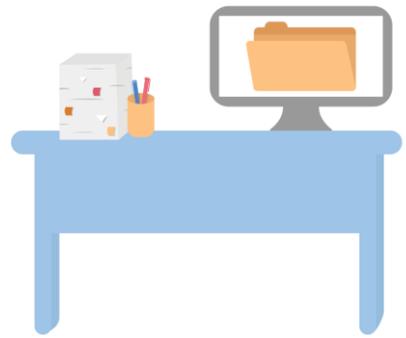
Is there a specific obligation in terms of insurance



The new agreement is silent on this point.

In principle, in the event of an **accident** occurring during or due to teleworking, the employee will be covered by the **Accident Insurance Association** (provided the employee has received an authorisation from the employer or signed a written agreement with the employer, depending on whether the teleworking is occasional or regular).

Nevertheless, employers are advised to contact their insurer to determine whether a **specific insurance policy** should be concluded.



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