

The legal aspects of telework
Legal newsletter



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Deloitte Legal Szarvas, Erdős and Partners Law Firm provides its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.

Retain talented workforce is critical for employers. This can be achieved using various incentives and benefits if the employer is unable to raise salaries to the level desired by the employees. One such benefit could be the introduction of telework. This allows employers to reduce certain costs and administrative burdens. On the other hand, employees can attend to work matters from home in a comfortable and relaxed environment, avoiding up to several hours of travel every day. This can help achieve work/life balance which is a top priority for employees.

The significance of telework has been increasing consistently. For instance, in the Scandinavian countries, furthermore in Belgium and the Netherlands, the percentage of work performed through telework is considerably higher than in Hungary. In our experience, **a number of Hungarian companies are involved in such work arrangements**, but entities are **not always aware of the applicable regulations** and **a lot of practical issues are not regulated by the law.** This edition of our newsletter provides an overview of the key regulations on telework and some of the practical solutions.

Regulation

Within the European Union, telework is regulated by a so-called Framework Agreement which was signed by the Member States involved on 16 July 2002. Hungary adopted the regulations of the agreement in 2004 and **the relevant provisions are currently included in the Labour Code.** Accordingly, **telework is defined as a form of performing work away from the employer's premises on a regular basis using information technology in which the results of such work are communicated via electronic devices..**

The prohibition of discrimination

Telework arrangements are always voluntary and the parties must mutually agree on the conditions. In order to ensure that **those opting for telework are not at a disadvantage compared with employees who are "physically present", and are not segregated from the company**, the law provides that they are entitled to the same rights as those working at the employer's premises. So, for example, teleworkers have the same right to enter the employer's premises, communicate with their co-workers or claim a discount at the company's canteen as their colleagues working from the office.

Regularity

Regularity, one of the elements of the definition of telework, raises questions regarding its interpretation. Hungarian regulations do not provide a comprehensive definition for regularity and, therefore, it should be determined by the parties. For instance, if a company provides an opportunity to employees in a given position to work away from their workplace once a week, then it is very likely that the regulations on telework could and should be applied.

Termination

The termination of a telework arrangement is a somewhat ambiguous term as it merely refers to the fact that such an arrangement can be cancelled. This case may typically occur when the option of teleworking is not initially included in the employment contract, but is agreed on by the parties later on. There are detailed regulations on the option of terminating telework in a number of European countries. However, the Labour Code contains no provisions in this regard; therefore, the parties should determine the circumstances under which an employee may revert to the original employment conditions and what happens when the teleworker does not wish to maintain a contract that initially included telework.

Use of information technology devices

The Labour Code specifies that employees shall communicate the results of their work to their employer by electronic means. However, the law does not contain provisions on how regular such electronic communication must be for the parties to be able to enter a telework arrangement. This factor must be examined on a case-by-case basis. If the device used for work is a computer and the data flow between the parties is sufficient, the rules regulating telework are applicable.

Control

A fundamental need of employers is to be able to control work. Naturally, companies are allowed to supervise the work of their employees, but may not abuse this right: the parties must specify, in advance, to what extent and how regularly a superior may examine the data stored on an employee's computer. Furthermore, companies may restrict how an employee uses an information technology device, thereby further controlling work. **In addition, the parties may agree on the scope of the employer's right to instruct and control in order to satisfy the company's need for supervising employees.**

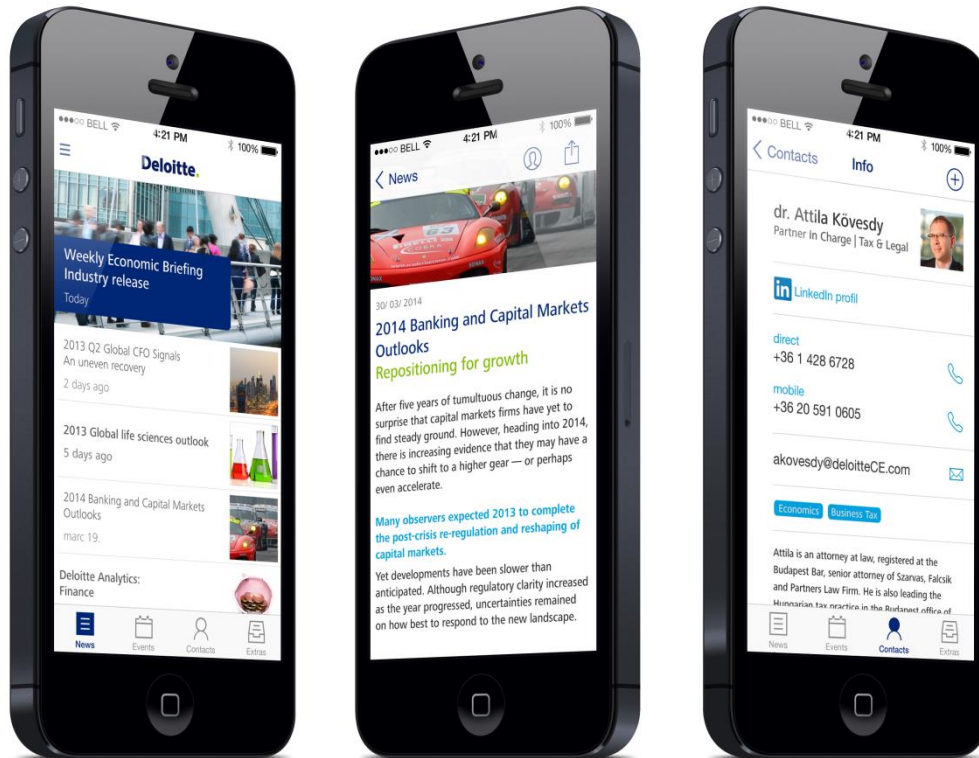
Reimbursement of expenses

Under the Framework Agreement, all issues regarding work (including, for instance, responsibilities and expense reimbursement) must be clarified before commencing telework. According to the general rule, the employer is responsible for the provision, installation and maintenance of the equipment required for telework, except if the employee uses its own devices. Furthermore, the employer is required to cover and reimburse the employee for all direct costs of work, with special regard to expenses relating to communication.

The Hungarian labour law does not provide detailed guidance on the reimbursement of expenses relating to telework; one reason why this is less than ideal is that determining the costs relating to work is problematic in cases where the employee works from home. Therefore, **one of the questions that may arise is how the employer reimburses the employee for the costs incurred in relation to heating and other utilities and how the employer is able to account for such items among employment-related expenses.** Internal policies are the most satisfactory and cost-effective means of addressing such issues.

Thus it may be concluded that many Hungarian companies are in favour introducing telework arrangements, but since there are no common and comprehensive statutory regulations on telework, it is the companies' duty to develop detailed rules in the relevant employment contracts and internal policies.





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