

WORKING FROM HOME DURING THE PANDEMIC - FAQ

Working from home during the COVID-19 pandemic in the regime known as „home office“, has become a new trend. More and more employees are gradually showing interest in home office, but the implementation of this work regime brings up a number of questions for employers. The most common of these are answered by labour law specialists from the law firm SOUKENÍK – ŠTRPKA, s. r. o. – senior associate, **Andrej Guba** and junior associate, **Simona Horáková**.



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What possibilities of work from home does the Labour Code provide?

If the type of work of the employee agreed in his/her employment contract allows it, the employee may perform work from home in the following regimes:

- a) *regularly* in a **domestic work** regime, if agreed with the employer in the employment contract. A special type of domestic work represents telework, i.e. work performed regularly at home using information and telecommunication technologies (PC, laptop, internet, etc.);
- b) *occasionally*, irregularly or in exceptional circumstances, i.e. in the **home office** regime. Although the Labour Code does not directly use the term “home office”, it can be characterized as occasional performance of work at home.

While in the case of domestic work, the employee's regular (usual) place of work is a place other than the workplace (headquarters or business premises) of the employer (most often the employee's address of residence), in the home office regime, it is the workplace of the employer that is stipulated as the regular place of work in the employment contract and the employee performs work elsewhere only in exceptional cases.

During the application of both of these regimes, the employee is obliged to perform work to the extent specified in his or her employment contract and is entitled to the agreed salary for the work performed. The performance of domestic work and home office is quantifiable primarily through the employee's work outputs, which the employee demonstrates to the employer by a time snapshot of the work shift (i.e. a specification of individual tasks as a part of the performance of work with an approximate duration).

Under what conditions can an employee perform work at home during the pandemic?

The employer may unilaterally order that employees work in the home office regime if the following conditions are met:

- a) there persists:
 - an extraordinary situation declared by a resolution of the government of the Slovak Republic under the Act on Civil Protection of the Population, or
 - an emergency state declared by a resolution of the government of the Slovak Republic

or an exceptional state declared by the president of the Slovak Republic under the Constitutional Act on State Security at a Time of War, State of War, Exceptional State and Emergency State, or two months after their rescission

(hereinafter collectively referred to as a „crisis situation“), and consecutively

- b) in regard to the employer, there is an effective measure of the competent authority (Public Health Authority of the Slovak Republic, locally competent regional public health office, government of the Slovak Republic, etc.) to prevent the emergence and spread of communicable diseases or a decree on public health protection, which may, for example, restrict or prohibit the activities of the employer as a whole, or its specific business premises. It may also restrict or prohibit the operation of facilities throughout the territory (in the city, municipality, etc.).

Working from home in the domestic work and home office regimes based on an agreement or with the consent of the employer does not depend on whether the crisis situation persists or not.

During a crisis situation, the employee is even entitled to demand work from his or her household. The employer is obliged to comply with the employee's request, provided that there are no serious operational reasons on the part of the employer that prevent the possibility of the home office.

Can the employer unilaterally terminate or at least suspend the home office?

If a crisis situation persists while the employee works from home and

a decree issued by the competent authority is effective against the employer, home office cannot be unilaterally terminated or suspended by the employer, regardless of whether it has been unilaterally ordered by the employer or agreed with the employee. The termination of the home office must be the result of an agreement with the employee, because during a crisis situation, the employee has the right to home office and the employer is obliged to allow it, unless serious operational reasons are preventing from doing so.

In order for the employer not to become a hostage of the employee in case, when during the home office agreement, the employer accrues an urgent need of work at the employee's usual place of work, we recommend that the period for which the home office agreement is concluded, is definite to the shortest possible time. After this period, the employer can decide whether to extend the employee's home office or not.

Is an employee working from home entitled to alimention?

In order for an employee working from home to be entitled to alimention, the employee must work for at least four hours during the day. The Labour Code imposes an obligation on the employer to provide such an employee with meals in one of the following ways:

- a) in the employer's own catering establishment, or
- b) in the catering establishment of another employer, or
- c) by arranging catering services through a person authorized to provide catering services, i.e. by providing a meal ticket.

Although the employee working from home schedules the beginning and end of working time himself or herself, the employer should provide a catering facility at a reasonable distance from the employee's place of work. The provision of meals in the catering facility according to letter b) or c) above, which is disproportionately far from the employee's place of work, could be regarded as bullying by the employer. If the employer is unable to provide meals in any of the above ways, or if such meals would be provided in conflict with the nature of the work

performed at home, the employer is obliged to provide the employee with a financial contribution for alimention.

Who is obliged to provide workplace equipment when performing work from home at the employee's home?

As we have mentioned above, an employee can perform work from home on the basis of a unilateral order of the employer or on the basis of an agreement with the employer. In the case of a unilateral order to work from home, the employer is responsible for equipping and adapting the workplace for work in accordance with the rules on occupational safety and health (known as OSH), only if it has not agreed with the employee that the employee will use his or her



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own equipment (desk, office chair, etc.). The employee is entitled to monetary compensation for the use of own equipment, facilities and objects for workplace only if such compensation has been agreed upon between the employer and employee following a unilateral order of work from home.

If the performance of work from home is the result of an agreement between the parties, a legitimate question arises as to whether the employee's consent to work from home can be interpreted as a declaration of the employee that he/she has created working conditions for working from home and that he/she also has suitable workplace equipment. In our legal opinion, if working from home is the result of an agreement, the employee assumes the obligation to equip the workplace in accordance with OSH rules with appropriate equipment, unless the employer undertakes to fulfil this obligation in the agreement. In this case, however, it also applies that the employee is entitled to monetary compensation for the use of his or her own work resources only if he or she has agreed upon it with the employer. Under observance of all hygienic measures, the employer is entitled to inspect the employee's workplace with regard to compliance with the principle of prevention and protection of the employee's life and health and OSH rules. Any non-compliance with the employee's obligation to secure a workplace in accordance with OSH rules is a breach of work discipline, for which, depending on the degree of intensity of the breach, the employer could even terminate the employment (termination by notice or immediate termination).