

LEGAL INFORMATION

Community newsletter



Spring 2021

Teleworkers

You are a teleworker if you are on a salary, you use computer technology to do your work, and you work outside of your regular workplace.

The employer must, at all times, take the necessary measures to protect the health and ensure the safety and physical well-being of their employee, as stipulated under section 51 of the **Act respecting occupational health and safety (AOHS)**. As a preventive measure to reduce the risk of contagion, the employer can ask employees to work remotely.

Changes to work hours

In the context of the pandemic, employers may have to change work hours in order to, for example, take into account client traffic and business volume, and to thus avoid layoffs.

Changes to work hours (reduced or increased hours) are at the employer's discretion but they must be **reasonable and equitable**. The employee has the right to refuse to work these hours in certain cases, as detailed in section 59.0.1 of the **Act respecting labour standards (ARLS)**.

An employee's regular work hours can also not be reduced substantially without a business reason (without valid economic rationale).²

Ordinarily, the employer cannot force an employee to telework against their will. However, in exceptional circumstances (such as a pandemic), the employer has the right to unilaterally modify working conditions and require that employees telework if the nature of the job makes this possible, and even prohibit employees from showing up at their regular workplace in accordance with the **Public Health Act**.¹

Considerations related to health and safety

A person working from home is nonetheless covered by laws governing workplace health and safety, as stipulated by the **AOHS** or the **ARLS**. In the case of telework, the home is considered the workplace. This means that if the employee is injured while carrying out their job, they could access resources in conjunction with the **CNESST**. Protection can be carried over to the home in the case of teleworking. This protection generally applies to persons receiving a salary. In order to minimize workplace accidents, the employer must ensure that the workplace is safe, has proper lighting, suitable equipment, good ergonomics, etc.

Teleworkers are protected by the **Act respecting industrial accidents and occupational diseases**. In fact, **CNESST** applies the same conditions and regulations when they analyze the eligibility of a workplace injury, whether the person in question was injured while teleworking or elsewhere. A salaried employee who is teleworking could therefore be compensated if an accident occurred in the context of their work. For example, a salaried employee could be compensated if they develop a work-related illness, such as carpal tunnel syndrome after a prolonged period of computer work.

In the context of a pandemic, the employer must take all possible measures to allow for teleworking with the objective of reducing the risks of contagion related to COVID-19. If teleworking is not possible due to the nature of the job, an employee can refuse to work out for fear of contracting the virus. It is therefore important that the employer adapt the workplace to accommodate social distancing and frequent sanitation practices.³

The issue of privacy

The **Quebec Charter of Human Rights and Freedoms** requires that the employer respect the employee's privacy, whereas the employer-employee relationship grants the employer management rights, particularly with respect to supervising and monitoring work. The employer therefore has the right to check and supervise work done by the employee for the purposes of accountability, but they must not overstep the employee's privacy rights. The employer may not, for example, force the employee to always have their computer camera on. Constant audio-visual monitoring would be considered unreasonable and a violation of the employee's rights to privacy.

Teleworking costs and the employer's responsibilities

Although the **ARLS** does not have any provisions pertaining specifically to teleworking, it stipulates that when the employer makes the use of equipment or other supplies required for the execution of a job, they must provide them free of charge to employees being paid a minimum wage.

Furthermore, the **ARLS** stipulates that the employer cannot demand money from the employee to cover the purchase, use or maintenance of equipment, raw materials or supplies that would result in the salaried person receiving less than minimum wage. Nor can an employer demand that the employee reimburse them for costs related to their current business operations, regardless of the employee's salary. Any expenses incurred by the salaried employee that are not reimbursed by the employer are tax deductible.

With respect to teleworking, a written agreement that covers, among others, matters related to costs, such as equipment and supplies, provides leverage that helps avoid misunderstandings between employers and their employees.

THIS MONTH'S TOPIC

The right to telework



As a teleworker, the employee is protected under the same laws that protect them in any other workplace. If the employee is a victim of discrimination, psychological or sexual harassment, they can file a complaint with the **CNESST**.

La commission des normes, de l'équité, de la santé et de la sécurité du travail (**CNESST**) is the organization that ensures that Quebec workers' and employers' labour rights and obligations are respected.

www.cnesst.gouv.qc.ca/en

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Resources: Au bas de l'échelle www.aubasdelechelle.ca Action travail des femmes www.atfquebec.ca

References: 1 www.educaloi.qc.ca/en/ | 2 <https://www.cnesst.gouv.qc.ca/en/> | 3 www.inspq.qc.ca/en

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