



Remote Working under French Law

Judith ADAM-CAUMEIL – Avocat à la Cour – Rechtsanwältin

Intervention on May, 4th 2021 - 3.30 PM
Employment and Immigration Practice Group

Introduction

- Home Working in France
= « **télétravail** » /
« **teleworking** ».

- French law had
dispositions regarding
teleworking that **COVID**
then expanded.



DIFFERENT TYPES OF TELEWORKING :

- ✚ Telework at home
- ✚ Offshore telework (telework **abroad**)
- ✚ Alternate or partial telework (alternating between home and employer's premises)
- ✚ Regular or occasional telework
- ✚ Telework in a **co-working space**
- ✚ **Nomadic telework** (on assignment to clients)



I. The pre-existing Dispositions regarding Home Working in France

II. The Impact of COVID-19

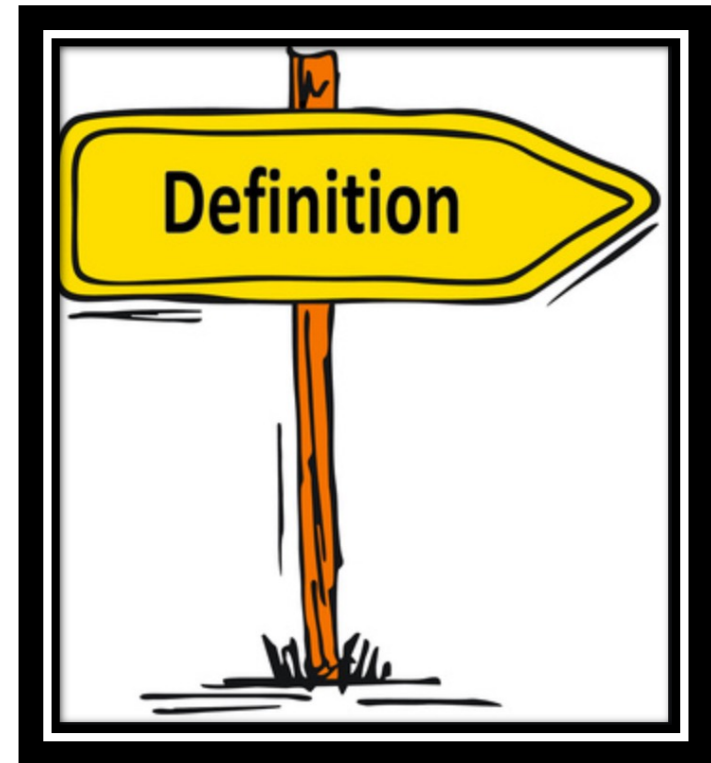
III. Rights and Duties

IV. The current Tendence regarding Home Working in France

I. Dispositions

- Article L. 1222-9 of our Labour Code (Code du Travail), teleworking is

« any form of work organization in which work which could also have been performed on the employer's premises is carried out by an employee outside of these premises on a voluntary basis using information and communication technologies ».



HOWEVER

“in exceptional circumstances, in particular the threat of an epidemic or in the event of force majeure = the implementation of telework can be considered (...)

1. to allow the continuity of the activity
2. guarantee the protection of employees."

(Article L.1222-11 of the Labour Code, Code du Travail)



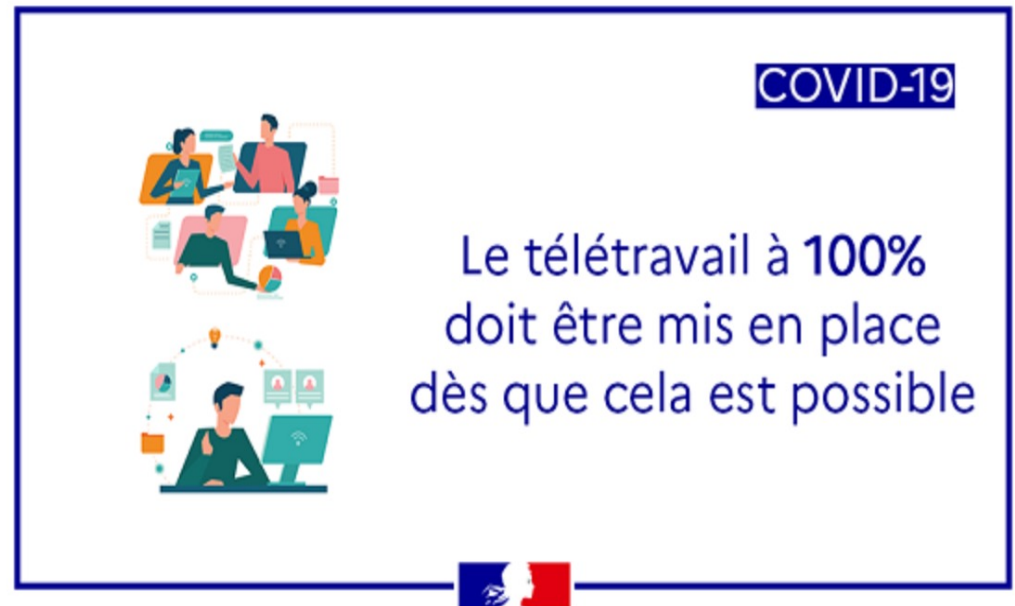
II. The impact of COVID

Since the decrees of both March 16 and 23, 2020 :

Home working has become **the RULE**

« It is imperative for all employees who can work from home to do so until further notice ».

Muriel PENICAUD, Minister of Labour.



The infographic is enclosed in a blue border. In the top right corner, there is a blue box with the text 'COVID-19' in white. On the left side, there are two illustrations: the top one shows three people in a meeting, and the bottom one shows a person working at a computer with various icons around them. On the right side, the text 'Le télétravail à 100% doit être mis en place dès que cela est possible' is written in blue. At the bottom center, there is a small French flag icon.

COVID-19

Le télétravail à 100% doit être mis en place dès que cela est possible

Evolution of the use of teleworking

Times considered	Percentage of employees Home working
Before COVID-19	3%
April 2020 (under lockdown 1)	25%
February 2021 (no lockdown)	26%
April 2021 (under lockdown 3)	38%

National Sanitary Protocol

Telework can be considered as :

→ One of the most effective measures to prevent the risk COVID for the protection of workers' health.

→ ITS GOAL = Reduce social interaction

→ It must be ADAPTED to the EMPLOYEE and decided within framework of SOCIAL DIALOGUE.



CORONAVIRUS & TÉLÉTRAVAIL
#RESTEZCHEZVOUS

III. Rights and Duties

1. No such thing as a right to Home working. BUT **duty of the employer to protect the health of his employee.**
2. The employer has the obligation of giving an equal treatment to all his employees.
3. **Obligation of information** = Employer must inform Employee of any Health recommendation (L.1222-10 of the Labour Code).



Regarding the equal treatment obligation

March, 30th 2021

Decision regarding the Meal Vouchers, recognition of a **Breach** of the obligation of Equal Treatment.
Labour Tribunal of PARIS.

We find it in **Article L.1222-9** of our Labour Code :

« The teleworker has the same rights as the employee who performs his work on the company's premises. »

Time spent at work when Home working

Principle = the Employee must organise the time he spends working in order to **respect the rules on the matter.**

The question that remains = **Is it possible for an employer to oversee and control his employee activity and time actually spent working when teleworking ?**



Monitoring a Home Working employee's activity

The issue = possible infringement of fundamental individual rights.

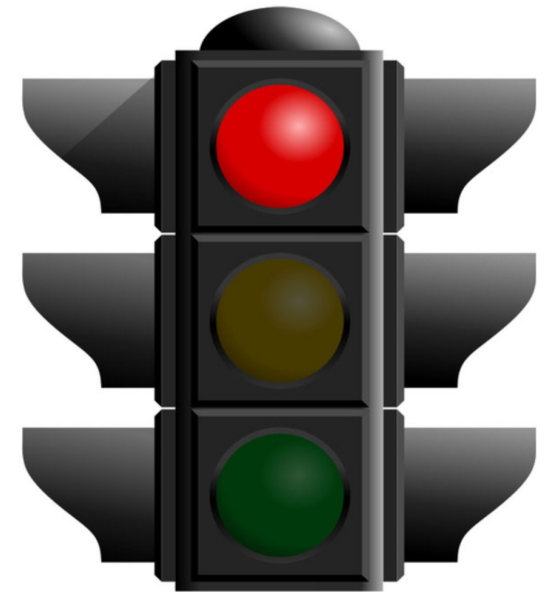
Constant and permanent monitoring of the activity of an employee is PROHIBITED

MONITORING : allowed but various principles to abide by.



FORBIDDEN:

- **constant surveillance** by means of video (such as a webcam) or audio devices;
- the obligation for the employee to **regularly perform actions** to demonstrate his presence behind his screen;
- permanent screen sharing and/or the **use of "keyloggers"** (spyware program = software that records all keystrokes made by a person on a computer);
- **No monitoring** to track all employee activity (similar to continuous monitoring)

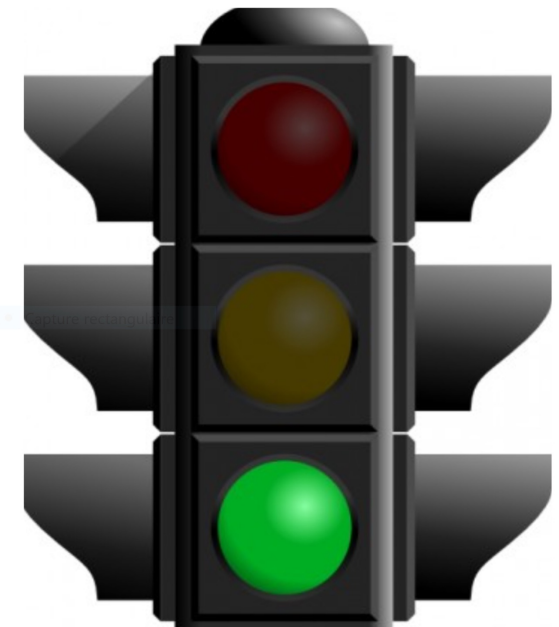


- **ALLOWED :**

- Monitoring by checking connection logs to enable the employer to see at **what time an employee logged on** (similar to analogue tagging).
- **Spot checks of the browsing history** to check that the employee is not making personal use of his computer equipment (if prohibited)

- **RECOMMENDATIONS of the CNIL (French Data Protection Authority):**

- be preferable to set up a **monitoring of achievement by objectives** for a given period or **regular reporting** by the employee.
- teleworkers who participate in **video conferences via the microphone** would be sufficient in most cases.



RGPD (General Reglement on the protection of personal Data) - Article 5

Personal DATA only collected for :

SPECIFIED,

EXPLICIT,

LEGITIMATE PURPOSES

Article L.1222-4 of the Labour Code

« No information concerning an employee personally may be collected by a device that has not been brought to his or her prior knowledge beforehand ».



Employees representative body
CSE – Social and economic
committee – must be consulted
prior to the implementation of
such methods as well.

**Consultation of the CSE (Article
L 2312 38 of the Labour Code)**



CSE = RECIPIENT of any claim brought by an employee who's employer does not respect the measures here presented and thus endanger the health and safety of the said employee.

Right to ALERT the CSE (Article L4131-2 of the Labor Code)



Additional Costs

Principle : Employer must pay whatever additional cost induced by teleworking.

He will bear the costs of **any new material bought to work**. The employer might even pay part of the costs of **electricity, internet, telephone** as well.

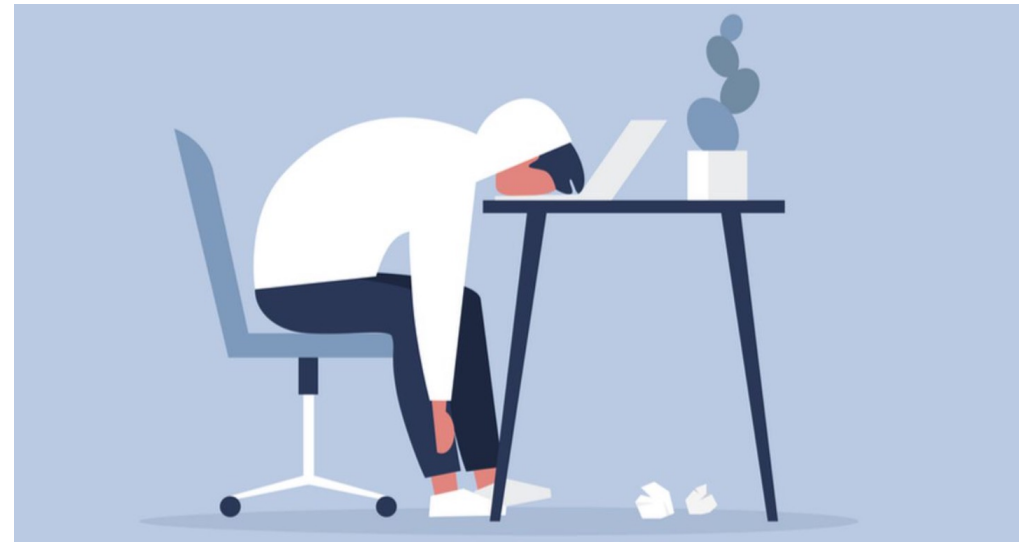


IV. The current tendance in France

-November 13, 2020 : Return to the office for isolated employes.

-January 6, 2021 : employees working 100% remotely can ask for one day per week at the office.

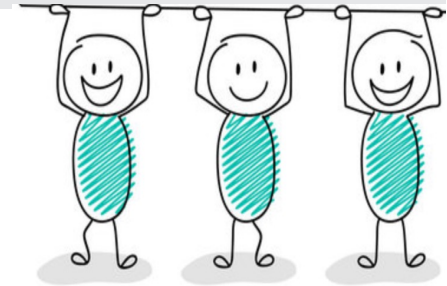
« *Working from anywhere approach* »
nuanced by « *Working from nowhere
but at work approach* » here in
France.



Dear Colleagues,
Thank you very much for your
attention.
Do not hesitate if you have any
questions.

Judith Adam-Caumeil
Avocat à la Cour – Rechtsanwältin

THANK YOU
ANY QUESTIONS?





Judith ADAM-CAUMEIL

Avocat à la Cour de Paris,
Rechtsanwältin

2 avenue Trudaine, 75009
PARIS

Tel. Nr : 00.33.1.42.81.41.51

www.adam-caumeil.com