



European Platform
tackling undeclared work

Telework Legislation

Spain

	<p>Summary</p> <p>In response to the COVID-19 outbreak and subsequent lockdown, the Spanish Government introduced the Telework Legislation (Royal Decree Law 28/2020) in October 2020 to support teleworking in Spain. Specific regulations and software have been made available to check documents virtually and to contribute to tackling undeclared and under-declared work in the new context. Prior to this measure, the legislation related to teleworking was lacking, as teleworking in Spain has previously been a rare occurrence.</p>
<p>Title of the practice in original language</p>	<p><i>La Ley de trabajo a distancia</i></p>
<p>Name(s) of authorities/bodies/organisations involved</p>	<ul style="list-style-type: none"> • The Ministry of Labour and Social Economy (<i>Ministerio de Trabajo y Economía Social</i>); • The Labour and Social Security Inspectorate (<i>Organismo Estatal Inspección de Trabajo y Seguridad Social - ITSS</i>).
<p>Sectors</p>	<p>All</p>
<p>Target groups</p>	<ul style="list-style-type: none"> • Business owners (directly targeted); • Employers (directly targeted); • Employees (directly targeted).
<p>Purpose of measure</p>	<p>Deterrence: improve detection</p>

	<p>Aims and objectives</p> <p>The Telework Legislation aims to reflect the prominence of teleworking since the beginning of COVID-19 pandemic. In particular, the new legislation updates the protocol regarding undeclared and under-declared work.</p>
<p>Background context</p>	<ul style="list-style-type: none"> • Prior to the Telework Legislation, the regulations surrounding teleworking were outdated and insufficient. Teleworking was a rare occurrence in Spanish society and less than 10 % of the Spanish workforce were teleworkers in 2019;



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	<ul style="list-style-type: none"> • However, the COVID-19 pandemic and the lockdown changed the landscape for teleworking, making it more prominent across most sectors. Teleworking became the working format of approximately 40 % - 50 % of the workforce in Spainⁱ.
Key objectives of the measure	General Objective: <ul style="list-style-type: none"> • To protect the rights of employers and employees alike in the context of teleworking; • To acknowledge the new reality with regards to teleworking through legislative protection and clarity.
Main activities	<p>The Telework Legislation (Royal Decree Law 28/2020) differentiates between remote working, i.e. work that occurs away from company premises on a regular basis, and teleworking, a sub-category of remote working that occurs exclusively or predominantly online. The regular basis of work is defined as at least 30 % of the working week, the equivalent to approximately two days a week for a period of three months.</p> <p>Teleworking is part of a voluntary agreement between employer and employee. It is possible to opt out of it at any point. An agreement must be signed between employer and employees outlining details on the new arrangement, such as: an inventory of equipment, list of expenses, required working hours, distribution between remote and on-site working, duration of the agreement and the location of remote and on-site work.</p> <p>Companies may monitor remote workers as long as they respect the dignity of employees. Remote workers have the right to disconnect outside of work hours and to enjoy flexibility within reason. Remote workers are also entitled to equal treatment and opportunities as on-site workers.</p> <p>The Labour and Social Security Inspectorate (ITSS), according to its regulation, has the capacity to investigate and control the labour, health and safety and social security conditions of these workers without prejudice and with respect for their right to privacy. This includes investigations of complaints e.g. of undeclared and under-declared work, following up on information from the Antifraud Tool Unit, conducting visits, requesting and analysing documents and records for infringements.</p>
Funding/organisational resources	<ul style="list-style-type: none"> • The Telework Legislation has been passed by the Ministry of Work and Social Economics, a department of the Spanish Government; • It has been decreed that it is up to each company or organisation to cover the cost of provision,



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	maintenance and running of resources, tools and equipment that enable staff to work remotely.
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	Outcomes The recent nature of the legislation means the outcomes of its implementation are yet to be determined, however, it is expected that the legislation will clarify the rights and obligations between employee and employer and will enhance the detection of undeclared work in telework situations.
Achievement of objectives	<ul style="list-style-type: none">• The Telework Legislation has been newly introduced, therefore collection of concrete data and results following its implementation is still in process;• It is expected that the level of acceptance and adaptation by companies and workers alike will demonstrate the extent to which telework in Spain will evolve in line with the legislation.
Lessons learnt and success factors	It is important that governments recognise the need to adapt to the changing environment with new legislation and procedures to support effective processes to hold themselves and their citizens accountable.
Transferability	This legislation could be used as an example to shape new laws and regulation in other Member States. The increase in teleworking is nearly universal so this is of relevance to other countries that have seen a substantial change in the format of working procedures.

Further information	
Contact	The National Office for the Fight Against Fraud Labour and Social Security Inspectorate Ministry of Labour and Social Economy <i>Oficina Nacional de Lucha contra el Fraude del Organismo estatal Inspección de Trabajo y Seguridad Social, Ministerio de Trabajo y Economía Social</i> Email: itsssgit@mites.gob.es Phone: +34 913631161; +34 913631273



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Useful sources and resources

Boletín oficial del estado (2020) '*Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia*', Sec. I. Pág. 79929

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-11043

Sostero M., Milasi S., Hurley J., Fernández-Macías E., Bisello M. (2020) '*Teleworkability and the COVID-19 crisis: a new digital divide?*', Seville: European Commission, JRC121193. Available at, <https://ec.europa.eu/jrc/sites/jrcsh/files/jrc121193.pdf>

Eurofound (2020), '*Living, working and COVID-19*', COVID-19 series, Publications Office of the European Union, Luxembourg. Available at, https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20059en.pdf

ⁱ Eurofound (2020)