Current Teleworking Issues

The rediscovery of remote working and teleworking has led to the creation of a new business culture based on collective or individual agreements on the working conditions for this type of employment. This paper analyses the most significant trends in case law over the last year.

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1. Although working from home is a form of service regulated by the Workers' Statute Act since its original drafting (Article 13, work-from-home employment contract), it was not until the pandemic and, in particular, until the passage of the Remote Work Act 10/2021 of 9 July (hereinafter LTD), that companies realized the possibilities that this form of work, modernized through teleworking, offered for their productive organization, providing significant labour flexibility. Several years have now passed, and although the presence of this form of work has generally declined, it continues to be used, at least as a hybrid mechanism, combined with on-site work, and in many cases as the only way of providing labour.

As is well known, remote work is understood to be work performed at the worker's home or at a place freely chosen by the worker, for all or part of his or her working hours, on a regular basis and, therefore, for at least 30% of his or her working hours. There are a number of provisions that foreshadow this type of work, two of which are particularly noteworthy.

On the one hand, the provisions of Article 4 LTD, which guarantee these workers the same rights they would have had if they had provided service at the company's workplace, except for those rights that are intrinsic to the performance of work at the workplace in person. On the other hand, Article 7 LTD sets out the minimum content of this arrangement, which must reflect the work equipment, expense reimbursement, working hours, distribution between remote and on-site work, where applicable, worker's assigned workplace, normal place of work, employee monitoring means, and term of the remote arrangement.

However, case law consistently emphasizes the importance of applying this legislation to party-agreed regulation — or lack thereof — for these purposes. As stated in the Supreme Court judgment of 10 September 2025, Jur. 282888, *"Spanish lawmakers have therefore chosen to regulate remote working through a law that provides the general principles, leaving it to the parties to agree on the specific details of the provision of service by signing a so-called remote working agreement. In addition, collective agreements may include all the aspects that need to be considered in order to address the specific characteristics of the business sector. Thus, it can be said that the law contains the general principles; collective agreements, the specifics of the sector; and the remote working agreement, the specific details of the work.* Hence, it is considered "*highly desirable that collective bargaining should cover the specific terms of teleworking, as the generality of the law makes its direct application difficult*" (4th point of law).

The same rights as those enjoyed by on-site workers are guaranteed, except for those that are intrinsic to the performance of the work

2. This paper examines some rulings handed down this year by the Supreme Court's Employment Division, rulings that reveal the trend in the application of collective agreement or contractual clauses being adopted by companies.

A first group of cases focuses on the legality of certain clauses included in bilateral remote working agreements, sometimes drafted as "standard-form contracts", into which the teleworker indiscriminately enters, without any personal participation beyond the mere expression of acceptance.

Take, for instance, clauses on reversibility." Article 5(3) LTD admits that the decision to work remotely will be reversible for the company and the worker, although "*the exercise of this reversibility may be exercised under the terms established in the collective agreement or, failing that, under those set out in the remote working agreement referred to in Article 7*" (LTD). However, when the collective agreement does not specify anything in this regard, the Supreme Court characterises as unconscionable both the clause that limits the possibility of reversing the decision to

work remotely and the clause that establishes that the revocation of the authorization to provide remote services will not give rise to any compensation for the worker. This is particularly the case when, as stated above, the agreement is made as a stand-form contract, which may constitute an abuse of power by the employer based on the contractual inequality between the employer's and the employee's positions (Supreme Court judgment of 2 April 2025, Jur.77744).

Or clauses referring to the equipment necessary to carry out the work, the Supreme Court taking the view that *"each individual remote working agreement (must contain) an inventory of the equipment that is specifically provided to each worker and that this inventory satisfies the right to the provision and maintenance of resources, equipment, and tools under Article 11 LTD"* (Supreme Court judgment of 2 April 2025, Jur. 77744, 7th point of law). In this regard, workers "*must comply with the requirements and instructions for use and maintenance established by the company in relation to computer hardware or software, in accordance with the terms that, where applicable, are established in collective bargaining*," ex Article 21 LTD. It seems clear, therefore, that the legal provision imposes on workers the legal obligation to comply with the requirements and instructions for use and maintenance established by the company, so that nothing can be objected to a clause that provides for the worker's responsibility for the maintenance of the equipment provided.

On occasions, the cost of repair may be passed on to the worker if the damage is a result of misuse. It is true that this provision does not apply to those who carry out their work in person, "*but in the case of remote working... the company no longer has permanent control or supervision of these resources, unlike what happens with in-person work at the workplace*." Nor can there be any objection to the possibility of deducting from the final settlement the failure to return, where applicable, the equipment provided by the company, since, in the case of resources owned by the employer, if they are not returned at the end of the contractual relationship, *"it is logical that, as they have been incorporated into the worker's assets, their value may be offset against owed salary included in the final settlement"* (Supreme Court judgment of 2 April 2025, Jur.77744, 7th point of law).

The legality of clauses in which it is accepted that, even if the teleworker incurs some type of expense, this would be offset by the savings that this form of work arrangement entails [*"the worker will not incur any expense as a result of providing telework services and, if they do, these will be fully offset by the savings that this form of work facilitates"*]. The Supreme Court takes the view that wording such as that described above implies an apodictic acceptance that teleworking does not cause any expenses for the teleworker and that, in any case, these expenses are offset by the corresponding savings. However, Article 12 LTD recognizes the right of teleworkers to claim expenses arising from their provision of service, a right that cannot be nullified by an individual agreement, regardless of the interpretation made of the expense and savings in this case (Supreme Court judgment of 4 March 2025, Jur. 42099).

3. Another group of controversial situations revolves around the manner in which the service is provided.

   Thus, in some cases, it is assumed that, during the week, part of it will be spent in the workplace and another part teleworking (two/three days; three/two days, etc.). The options must be clearly established, determining who is to decide when each modality is to be used or, where appropriate, the worker's obligation to report to work if the company requires the service to be provided in person and not remotely. However, this means that in those weeks when the company requires the teleworker to come to the workplace on days when teleworking was planned, the general rule set out in the individual teleworking agreement is not complied with.

   It is well known that Article 8(1) LTD prohibits unilateral changes to the percentage of on-site work. This means that, after agreeing on the individual teleworking agreement, the company cannot unilaterally change this percentage. However, this change will occur if the company informs the employee that, from thereon, they must work on-site and telework for a number of days different from that initially planned. Unless it is considered, as in the Supreme Court judgment of 4 March 2025, Jur. 42099, that the percentage of on-site work (two days per week) is only the general rule, with the employer having the power to alter it according to the needs of the company. And, in view of the facts of the case, the Supreme Court only accepts this practice when it is proven that the employer does not render the agreed percentage of on-site work hollow, turning the requirement to work in person into a mere "*specific exception*" (2nd point of law).

   If, in addition, the agreement includes a list of cases in which the company may require on-site work (attendance at meetings, training, replacement of colleagues on sick leave or holiday, unforeseen events such as breakdowns or technical difficulties with equipment, materials, or computer programmes provided by the company, etc.), the worker's guarantee is strengthened. However, some of these cases, for example, the replacement of workers on sick leave or holiday, show that the provision of on-site service on days when teleworking was planned is no longer a specific, brief, exceptional, and concrete situation, but rather a medium- or long-term projection. Consequently, if Article 8(1) LTD prohibits unilateral modifications of the percentage of on-site work, *"an individual teleworking agreement that allows the company, in a variety of cases, to require the worker to provide service on site is not admissible"* (Supreme Court judgment of 4 March 2025, Jur. 42099, 2nd point of law).

   The Supreme Court acknowledges that teleworking is a very useful tool to strike a work-life balance, which will be undermined if the company can force the teleworker to go to their workplace on days when they are scheduled to telework. To minimize this damage, a period of prior notice to the worker may be included. If this is not included, either by collective agreement or by contract, it would be possible to resort to the analogous application of the law when a legal loophole is detected, ex Article 4(1) of the Civil Code. However, the Supreme Court does not see

any loophole when the collective agreement establishes that notice must be given "as far in advance as possible." This type of case is different from that of irregular distribution of working hours, geographical mobility, supplementary hours, and the recovery of flexible time, which justifies requiring a minimum period of prior notice in those cases, while in this case, depending on the circumstances and in view of the case in dispute, the company is required to give as much advance notice as possible, as the requirements for the analogous application of the law are not met (Supreme Court judgment of 4 March 2025, Jur. 42099, 4th point of law).

Lawmakers have opted for a law with general principles, leaving the details of the provision of work to the discretion of the parties

Furthermore, the place where the service is provided may determine, as is well known, the territorial jurisdiction to hear disputes arising from teleworking. Indeed. Article 10(1) of the Employment Jurisdiction Act (LJS) establishes an elective territorial jurisdiction ("*In general, the place where service is provided or the domicile of the defendant, at the claimant's choice, shall be deemed competent*"). This provision takes into account the reality of the place where service is provided, not the formal provision in the employment contract. In the case of teleworkers, the place where service is provided is where they telework, normally their home, which facilitates the bringing of legal actions against their employer. When the employer agrees with the claimant to provide service by teleworking from their private home, this means that the place where service is provided will be the worker's home and that, by literal application of the foregoing procedural rule, the elective territorial jurisdiction will include the Employment Court of the worker's domicile.

However, it may happen (and often does) that the contract formally states that the teleworker's assigned workplace is the company's workplace, even though the telework is carried out from the worker's home. However, the procedural rule determines territorial jurisdiction according to the reality of the place where the work is performed and not according to the formal provision in the employment contract. The opposite *"would mean that, due to the inequality in bargaining power between the employer and the employee, when the employee does not perform services in person, the employer could predetermine the future territorial jurisdiction by stating in the employment contract that the employee is assigned to any of its workplaces, where the employee would not be providing service, which could make it difficult for the employee to take legal action and would violate the right to effective judicial oversight under Article 24 of the Spanish Constitution*" (Supreme Court judgment of 24 April 2025, Jur. 116734, 2nd point of law). This solution will not be different if the teleworker provides service partly at home and partly in person (teleworking at home some days each week and providing

service in person at the company's workplace on the remaining days) because, in any case, the provisions of Article 10(1) LRJS will apply.

4. Aspects related to privacy, intimacy, data protection, and even digital disconnection with teleworking are worth highlighting.

   And so, the requirement that, during teleworking hours, the worker must *"ensure that they are accessible by telephone and email through their company account"* is not contrary to the law, since the right to digital disconnection is linked to time outside working hours, not under company supervision during the working hours (Supreme Court judgment of 2 April 2025, Jur. 77744). It is a different matter for the company to require the employee to *"provide the company with their personal email address and telephone number in the event that they need to be contacted for pressing work matters"*. Considering that Article 17(2) LTD stipulates that the company may not require "the use of [the employee's] devices in the performance of remote work," the Supreme Court concludes, based also on the provisions of Article 11 LTD on the provision and adequate maintenance by the company of the necessary equipment, that a clause such as the one set out does not, however, violate the provisions of the applicable legislation. Although data protection aspects must be respected, the fact is that *"the provision of the employee's personal email address and telephone number to the company may also be necessary for the 'performance' of the employment contract, as provided for in Article 6(1)(b) of the General Data Protection Regulation as another possible basis for the lawfulness of personal data processing. The current social reality means that the provision of such data, as socially prototypical means of communication of our time, may indeed be necessary for the performance of the employment contract... (when, in addition)... in the present case, clause 3.4 of the standard remote working agreement limits the provision of the employee's personal email address and telephone number to the company to the business need ("in the event that they need to be") to contact them "for pressing work matters". Consequently, the clause, in itself and regardless of the possible use that the company may make of it and whose abuse may be challenged, if applicable, does not breach the requirements regarding the purpose, adequacy, relevance, and limitation to what is necessary for the transfer of personal data ("data minimization") (Articles 5(1)(b) and 5(1)(c), respectively, of the General Data Protection Regulation)"* (Supreme Court judgment of 2 April 2025, Jur. 77744, 4th point of law).

   The lawfulness of the clause is also questioned where it is established that *"the employee shall have the right not to attend to digital devices after the end of his or her working hours, except in the pressing situation indicated in this clause. A pressing situation shall be deemed to exist in those cases where harm to the company or the business may be caused, the temporary pressing nature of which requires an immediate response or attention from the worker"*. In these cases, the Supreme Court takes the view that, as current legislation *"not only allows but also requires the company to draw up an 'internal policy' on the right to digital disconnection. The thing is, this internal policy must be implemented 'after hearing' worker representatives,*

and there's no record of this having been done in the present case" (Supreme Court judgment of 2 April 2025, Jur.77744, 5th point of law). Avoiding the involvement of worker representatives has consequences, as any actions taken by the company in this regard are considered void (Supreme Court judgment of 6 February 2024, Jur. 49591).

5. Finally, working conditions closely linked to occupational health take on special significance in relation to teleworking, although here the focus has been on whether or not the company is obliged to provide an ergonomic chair to the teleworker. This is the case resolved by the Supreme Court judgment of 10 September 2025, Jur. 282888, which analyses this obligation exclusively in the case of teleworkers, i.e. those who work remotely through the exclusive or prevalent use of computer, telematic and telecommunication resources and systems. It is understood that, if this is the case, the use of an ergonomic chair must be considered a working condition relating to occupational hazard prevention.

   Beyond the possible equalization of rights with on-site workers, in this case the claim extends to the right to sufficient provision and maintenance of resources, equipment, and tools, and the right to payment and repayment of expenses (Articles 11 and 12 LTD, respectively) and the right to occupational hazard prevention (Articles 15 and 16 LTD, also respectively). Also worth recalling is the aforementioned Article 7 LTD on equipment and the European Framework Agreement on Telework of 16 July 2002, which provides for the obligation to clearly define, before starting telework, all issues relating to work equipment, responsibility for it, and its costs.

   Focusing its attention on the capacity of the parties, in collective agreements or contracts, to establish the content and carrying out of the service, the Supreme Court considers in the above judgment that *"if it had been the will of the parties to include the ergonomic chair as necessary to carry out telework, this would have been reflected in the inventory of the remote working agreement. However, the remote working agreement signed by teleworkers in the defendant company does not contain any reference to the ergonomic chair, nor is it included in the applicable collective agreement"* (4th point of law).

   It is precisely the prominence of collective bargaining that allows us to affirm that, if the terms of the collective agreement are clear, they do not require any interpretation. And, here, the parties established the necessary elements for the provision of remote work with a series of resources (specifically, a desktop computer with a screen, or a laptop, mouse, and keyboard). They also stipulated that *"the aforementioned items (with the exception of laptops or desktop computers) may be provided through sufficient repayment by the company to allow for the purchase of said items. Therefore, companies that opt for the repayment system will not be obliged to provide workers with any of the items mentioned above".* Consequently, the company is only obliged to provide the desktop or laptop computer. As the keyboard and mouse are also considered necessary, the collective agreement provides for two possibilities: either the company provides them or the employee

purchases them and the company provides appropriate reimbursement. The company has no other obligation than that expressed above, much less that of providing an ergonomic chair or any other item not included in the collective agreement or in the contractual agreement.

However, it is worth considering whether, given that Article 12 LTD states that *"the carrying out of remote work must be paid for or compensated by the company, and may not involve the worker assuming expenses related to the equipment, tools, and resources linked to the performance of their work. Multi- or single-employer collective agreements may establish the mechanism for determining and paying or repaying these expenses"*, the chair in question involves an additional expense for the worker in order to perform his or her work properly. However, the Supreme Court interprets that this legislative text does not provide that the payment or repayment must cover the full amount of the worker's expenses.

It is true, however, that the aforementioned European Framework Agreement on Telework specifies how the employer must cover the costs directly incurred by teleworking and, in particular, those related to communications. It also establishes that the employer shall provide the teleworker with adequate technical support and, in accordance with national legislation and collective agreements, the employer shall be responsible for paying the costs associated with the loss or damage of equipment and data used by the teleworker. However, the Supreme Court interprets this obligation restrictively, considering that the rule does not refer to all expenses generated by remote work, but only to the expenses mentioned. And, according to Article 12 LTD, multi- or single-employer collective agreements may establish the mechanism for determining the expenses to be borne by the company and, where appropriate, for payment or repayment.

On this point, it should be noted that the Supreme Court judgment of 2 April 2025, Jur. 77744, recognizes the right to repayment of expenses in accordance with the aforementioned Article 12 LTD, even if the applicable collective agreement makes no reference to this matter. However, in the case analysed in the Supreme Court judgment of 10 September 2025, Jur. 282888, the company had included a generic expense allowance with a gross monthly amount — which doubles that established in the applicable collective agreement — repaying all expense items related to remote working (supplies, water, use of space, etc.), only to persons providing service under this remote working arrangement. Therefore, the Supreme Court considers that such business conduct *"represents a clear improvement on the provisions of the collective agreement, both in terms of amount and scope of application, as it is paid regardless of the period during which the teleworker has provided service in this modality during the month. Therefore, the company has also guaranteed this pecuniary right"* (Supreme Court judgment of 10 September 2025, Jur. 282888, 4th point of law).

Furthermore, as is generally the case, all preventive activity by the company must be planned, taking into account too workers who provide remote service. In this

regard, Article 16(1) LTD itself provides that "*the risk assessment and planning of preventive measures for remote work must take into account the risks characteristic of this type of work, paying special attention to psychosocial, ergonomic, and organizational factors and the accessibility of the actual work environment. In particular, the distribution of the working hours, availability times, and the guarantee of breaks and disconnections during the working hours must be taken into account.*" Well, "*ergonomic factors must be taken into account for risk assessment and preventive activity planning regulated in Article 16(2) of the Occupational Hazard Prevention Act, which makes it clear that ergonomic risk cannot be determined without prior assessment, and only if its existence is established as a result of such assessment should the necessary preventive measures be taken to eliminate or reduce it in accordance with the preventive activity plan*" (Supreme Court judgment of 10 September 2025, Jur. 282888, 4th point of law). In this case, it has been proven that if a teleworker requested ergonomic equipment other than that provided by the company, such as an ergonomic chair, the company provided such equipment provided that there was a medical prescription and approval of the aforementioned need by the occupational hazard prevention medical service.

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Undoubtedly, this accumulation of judgments is representative of the trend in the application and interpretation of a matter where party-agreed regulation prevails and where the possibilities for business implementation are so diverse that it is difficult to establish standardised, albeit comparable, criteria.