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EY LAW Flash

NOM-037- STPS-2023 Telework-Work safety and health conditions



On June 8, 2023, the Ministry of Labor and Social Welfare (STPS) published in the Official Gazette of the Federation the Official Mexican Standard (NOM) 37 pertaining to telework, in compliance with the reform of January 2021.

The purpose of NOM 037 is **to establish the safety and health conditions applicable to employees who are effectively teleworking**, in order to prevent accidents and illnesses, as well as to promote a safe and healthy environment in the work environment.

The obligations established in the NOM that are directed to the employer under the telework modality are as follows:

- ▶ To have an **updated list of the employees who are under this modality**.
- ▶ Establish in writing a **telework policy** that complies with the provisions of the collective bargaining agreement or the internal work regulations, as applicable, in compliance with the provisions of the Federal Labor Law.
- ▶ **Inform** the employees and the joint commission of safety and hygiene **on the risks related to Telework** and the possibility of agents and risk factors.
- ▶ To have the **checklist of the conditions of safety and health in the Telework**, as well as the measures of safety and hygiene in the workplace that have been established by the Joint Commission of Safety and Hygiene.
- ▶ To grant the facilities for **the Joint Commission of Safety and Hygiene to carry out the validation of the checklist** of safety and health conditions in teleworking.

- ▶ To establish and **document the process of implementation of the telework**, for the work center that changes of modality.
- ▶ **To deliver the necessary inputs for the employees under this modality.**
- ▶ Establish and document programs in the way to provide **maintenance to the equipment for the management of Information and Communication Technologies (ICT)** provided to the employees to perform their activities.
- ▶ Provide **training at least once a year to employees** on the health and safety conditions they must have and maintain in their workplace.
- ▶ To establish **mechanisms for the reversibility of the modality of Telework to presencial**, when the employee informs to the employer of some condition, or alteration of the conditions of safety and health in the work, that justifies the return to the presencial work, or because this way it is convenient to his interests.
- ▶ **To practice the medical examinations that corresponds to the employees in accordance with the NOM-030-STPS-2009**, and to give pursuit to the notices of accident of work that the employees or their relatives report him, when those are related with an accident in the place of work, with reason or in exercise of his activities of Telework, always observing the protocols established by the institutions of social safety.
- ▶ To have mechanisms of attention for cases of **family violence** that consider, among other things, the return to the face-to-face modality temporarily or permanently.
- ▶ Provide the necessary support and facilities for employees to participate in the Health and Safety Commission or in the Joint Commission for Training, Education and Productivity.

In turn, the following obligations are established for the employees who are under the telework modality:

- ▶ To provide to the Joint Commission of Safety and Hygiene, the facilities in writing for a **physical check of the conditions of safety and health at work in the place that designated outside the workplace**, or alternatively **apply the checklist on the conditions of safety and health in the workplace or workplaces to perform their activities of Telework.**
- ▶ To comply with the Telework Policy.
- ▶ **Inform** the employer and the Joint Commission of Safety and Hygiene **any alteration of the conditions of safety and health at work**, or case of force majeure, which prevent the development of Telework.
- ▶ **To safeguard and keep in good condition the equipment**, materials, tools and ergonomic furniture, if any, provided by the employer to perform Telework.
- ▶ To observe the provisions on safety and health at work, and undergo medical examinations, in accordance with the provisions of NOM-030-STPS-2009.
- ▶ To comply with the policies and mechanisms for the protection of data and information established by the employer in the performance of their activities as an employee, as well as the restrictions on their use and storage.
- ▶ **Inform in writing and in advance to the employer of any permanent or temporary change of address**, to the place of work previously agreed so that steps are taken to verify that the proposed new workplace **meets the requirements for the Telework to be developed there.**
- ▶ Participate in the processes of risk information related to their Telework activities and training provided by the employer, as well as in face-to-face or virtual meetings organized to avoid social isolation.
- ▶ To notify the employer and the Joint Commission of Safety and Hygiene **of the occupational hazards suffered.**

Likewise, the NOM establishes occupational safety and health conditions, which imply:

- ▶ Avoiding occupational risks caused by physical agents, the employee must have a clean, orderly, well-lit work area, with a pleasant temperature and ventilation, and a noise level that allows concentration.
- ▶ To avoid work risks related to ergonomic risk factors, the employee must have a comfortable workplace that avoids back, shoulder or neck strains. This place should have an adequate desk, an ergonomic chair and, if necessary, ergonomic or postural accessories for the use of computer equipment.

- ▶ Avoid occupational risks caused by psychosocial risk factors by providing a space that allows privacy. There should be communication with the employer about cases of family violence. In addition, adequate breaks and rest times must be provided, and **the right to disconnect after the workday, during breaks, on non-working days, vacations, leaves and leaves of absence must be respected.**

It is important to note that the training process can be carried out remotely, in person or mixed, and is part of the workday.

This NOM will become effective **6 months after its publication**, in addition to the 44 NOMs on safety and health published by the STPS.

On the other hand, the NOM establishes conditions for Training that imply:

- ▶ Training for employees provided by the employer shall include:
 - ▶ The recognition of hazards in the workplace, identifying risks due to hazardous conditions, ergonomic risk factors, and psychosocial risk factors, especially those present in teleworking.
 - ▶ The understanding and application of the Telework Policy.
 - ▶ Necessary knowledge for the management of Information and Communication Technologies for teleworking.

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