

C E N T R O  
DE ESTUDOS  
JUDICIÁRIOS

## CONFERÊNCIA COM A OIT – LISBOA

### *Reflexões sobre trabalho digno na era digital*

27 e 28 • Janeiro • 2022

Lisboa • Webconferência  
Ação de Formação Contínua Tipo B

**Objetivos:** Análise e reflexão sobre temas atuais referentes ao Direito do Trabalho que se encontram na agenda da OIT

**Destinatários:** Juízes/as e Magistrados/as do Ministério Público, Advogados e outros profissionais da área forense.

2.º dia – 28 de janeiro

Manhã

**10h00** Experiências internacionais de teletrabalho

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# **Telework and The Right to Disconnect: International Experiences**

## **Teletrabalho e o direito a desligar: experiências internacionais**

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## ► Telework: A Note on Use Pre-Pandemic & Onwards

Telework has existed since the 1970s, when telecommuting developed in the information industry in industrialized countries, such as the United States and even then, some assumed it was the future of work.

As ICT and communication infrastructure (e.g., internet broadband availability) became more cost effective in most parts of the world, it was thought that telework would grow quickly.

However, for organizational and human resources reasons, this did not grow as expected (where telework policies existed, they were generally used by organizations in individual agreements between workers and manager/employer).

On 11 March 2020, the World Health Organization (WHO) designated the Novel Coronavirus-19 (or Covid-19) to be a global pandemic and urged governments and organizations to adopt measures to limit the spread of the virus (thus, the exponential growth in the use of telework around the world)

Until 2019, very limited data on telework use in most countries (with most data coming from research by universities or policy institutes).

- Prior to Covid Pandemic in 2020 just 15% of workers in the European Union teleworked, but in 2020 40% of active workers were teleworking.

## ► Telework: Definition and Forms

Telework can be defined as the use of Information and Communication Technology (ICT) - such as smartphones, tablets, laptops and desktop computers – for the purposes of work outside the employer's premises (either from the worker's home or from another location).

The use of telework during the Covid-19 period raised several issues, making it important to distinguish between mandatory telework v. worker-employer agreed telework

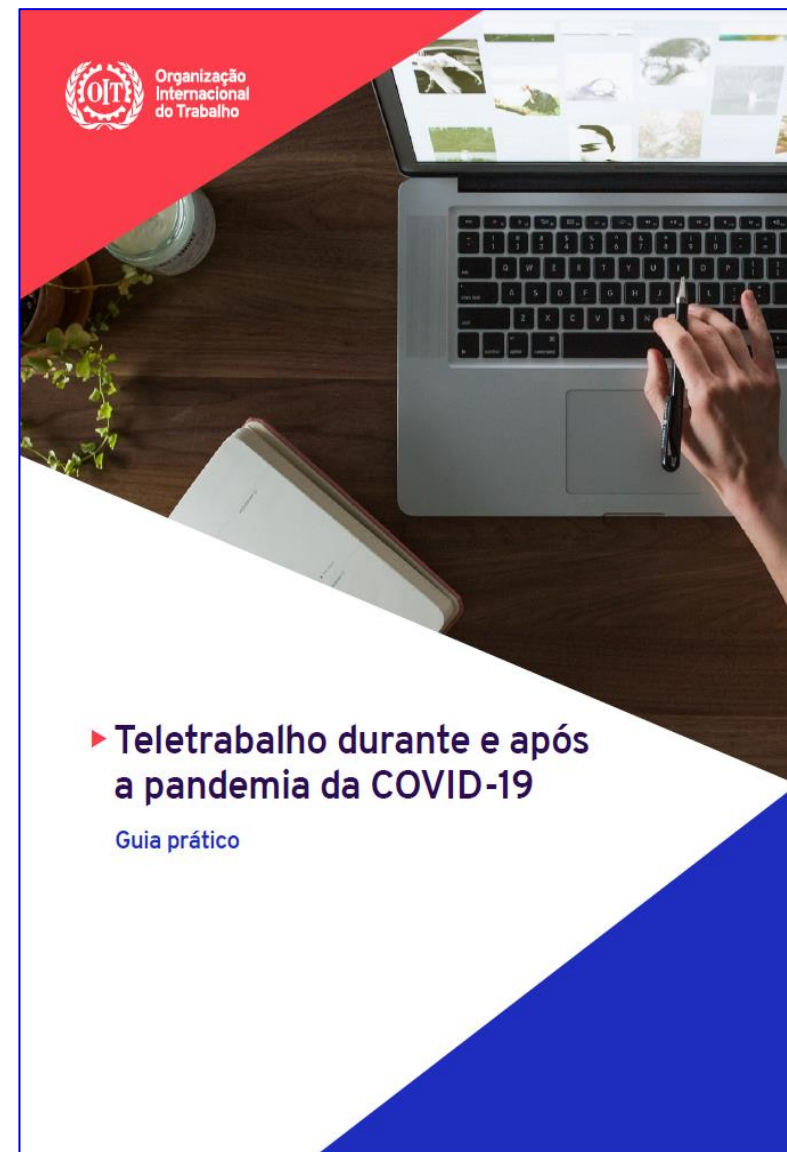
- **Mandatory Telework: Telework that is required by authorities based national health or safety concerns**
  - The Covid experience, was imposed with many of the issues above being addressed in an ad hoc manner by employers, workers, and social actors (based on Covid, this may continue to linger or be applied periodically in some parts of the world)
- **Worker-Employer Agreed Telework: is normally based on established regulatory guidelines (e.g., office rules), with negotiated conditions of telework use, how it will be managed, and how it will work to meet worker and employer expectations.**
- Telework is not going away after the pandemic, but a growing debate about the “Hybrid Model” of work
- **Hybrid Model of Telework involves a worker working part of their time in the employer's workplace (e.g., ► ilo.org office) and part of the time remotely (e.g., from home)**



# ILO Practical Guide to Telework

## The Purpose of this Guide is to:

- Provide practical and actionable recommendations for effective teleworking that are applicable to a wide range of actors
- To support policymakers in developing or updating existing teleworking policies and arrangements
- To provide a flexible framework through which both private enterprises and public sector organizations can develop/update policies & practices
- **In legal terms, the themes identified in the Guide can provide a framework for determining if reasonable procedures were used in the development of telework measures, including those impacting on the application of right to disconnect principles and legislation**
- (Portuguese Version: [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/publication/wcms\\_771262.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/publication/wcms_771262.pdf))



# ILO Guide: Key Components of Decent Telework (Pt. I)

## Work Organization Component

- Telework requires a different way of organizing work and managing workers = Work Focus on Results

## Performance Management Component

- Effective Telework requires dialogue and cooperation between workers and managers (organizations)

## Digitalization Component

- Digitalization refers to the use of tools for converting analog information into digital (computerized) information; may be unevenly spread around the world (e.g. some better, some worse internet)

## Communication Component

- Teams that telework may have more communications challenges than teams working in one location (social isolation can be a problem)

## Teleworker & Manager Training Component

- Workers and managers need to acknowledge that telework arrangements require a reassessment of old working habits and learning new skills for telework.

## Work-Life Balance Component

- The most significant challenge to work-life balance for teleworkers is the lack of clear boundaries between paid working hours and personal life (right to disconnect is essential); also measures needed to address teleworkers with care responsibilities (e.g., children, elderly, disabled, etc.).

# ILO Guide: Key Components of Decent Telework (Pt. II)

## Organizational Safety and Health Component

- Employers have the same health and safety responsibilities for home-based teleworkers as they would for teleworkers in the employer's workplace (include identifying and managing risks).
  - Psychosocial risks for teleworkers: Long hours/no rest related to workload & job security
  - Ergonomic risks for telework: Sitting too long, working in one position over long periods can lead to health problems (muscle-skeletal issues, visual fatigue, obesity, heart disease, etc.)

## Working Conditions Component

- Working hour limits and rest periods (e.g. brief pauses away from the screen, meal breaks, daily rest, weekly rest, annual leave) are critical for teleworkers
- Right to Disconnect -Ability of workers to disconnect from work and not to engage in work-related electronic communications such as e-mails or messages during non-work hours.

## Regulatory Component

- Regulations are needed to provide a framework for the rights and responsibilities for teleworker, managers, and the organization

## Trust-Building Component

- Trust is the “glue” that holds together all aspects of telework (managers, teleworkers, and their colleagues need to trust each within organizations)

## Gender Component

- Organizations may need to factor in the gender dimension in work arrangements, including telework.

# The Right to Disconnect: What is it

**The Right to Disconnect** refers to a worker's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails, texting or other communications, during non-work hours.

- **Once again, the principle of the right to disconnect is not new**
  - As ICT devices (mobile phones in particular) have become common, the distinction between “office working hours” and work-related communication outside of the workplace has continued to blur
  - Like the broader topic of telework, the Covid pandemic beginning in 2020 elevated the visibility of the principle of the right to disconnect. (mainly based on the experience of workers teleworking from home).
- **The regulation of the right to disconnect relies on three main pillars (often found in law)**
  1. **Working Hour Limits** (in labour code or acts limiting daily/weekly working hours, limits on overtime hours)
  2. **Right to Rest Periods** (in labour codes or acts addressing provisions on daily rest, meal breaks, weekly rest, annual leave)
  3. **Right to Privacy** (may have broader legal context in some countries; constitutional right, labour right, both)
- **Work-Life Balance is important, but may not always be addressed in law in some countries**



# Regulatory Levels to Address Telework & Right to Disconnect

## Legal levels to address telework in institutions and organisations

### • **International Labour Standards (ILS)**

- ILO Conventions & Recommendations on maximum working hours, part-time work, night work, weekly rest, annual leave; wages and wage protection, equal pay, and OSH are among the standards that may apply to telework
- Currently no ILS specifically on telework or right to disconnect (however **Article 24 of UN Convention on Human Rights** **Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay).**

### • **Regional Agreements (through regional regulatory systems)**

- European Union Framework Agreement on Telework (2002) (negotiated between European Trade Unions and Employers Associations)

### • **National legislation (in private sector and administrative laws in public sector)**

- Similar issues as identified above in ILS, but also including right to privacy and right to disconnect measures

### • **Collective Bargaining Agreements (in private and public sector, where applicable)**

- National, sectoral, or workplace agreements between workers and employers can include provisions that regulate the telework relationship (these are often structured on higher levels of regulation identified above)

### • **Workplace Regulations**

- Regulations agreed by workers and employers in workplace (these are often structured on higher levels of regulation identified above)

# International Labour Standards (ILS) That May Apply to Telework & Right to Disconnect

At this time there is no specific ILS on telework or right to disconnect, but some ILS may still be useful to define some working conditions for teleworkers:

- ILO Occupational Safety and Health Convention, 1981 (No. 155) and ILO Occupational Safety and Health Recommendation, 1981 (No. 164)  
– Note Article 13 of C155 may be important in crisis situations (like Covid) to request telework
- ILO Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) - 8 hours per day/48 hours per week, (could be crucial in right to disconnect legal analysis)
- Night Work Convention, 1990 (No. 171) (could be useful in right to disconnect legal analysis)
- Part-Time Work Convention, 1994 (No. 175)
- ILO Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) – At least 24 continuous hrs. per 7 day workweek (could be crucial in right to disconnect legal analysis)
- ILO Holidays with Pay Convention (Revised), 1970 (No. 132) – annual leave
- ILO Homework Convention, 1996 (No. 177) – regular and consistent home based telework
- ILO Protection of Wages Convention, 1949 (No. 95) and ILO Protection of Wages Recommendation, 1949 (No. 85) Ensure proper wage payments to all workers (including teleworkers).
- ILO Code of Practice on Protection of Workers' Personal Data – Code is meant to provide guidance on the protection of workers' personal data collected by employer.

# National Regulations on the Right to Disconnect, Pt I.

**Countries have taken different approaches to address the right to disconnect.**

In the countries below the right to disconnect is established as a specific labour right:

- **France** - France pioneered the right to be disconnected (*le droit à la déconnexion*) in a revision of the French labour code that was implemented in 2017, (Article L2242-17 Code de Travail, 2020) includes an obligation for employers and employees in every company with 50 employees or more to negotiate “the use of ICTs”, with a view to ensuring respect for the rest and holiday periods of workers and their personal and family lives.
- **Belgium** – Articles 15 to 17 of the 26 March 2018 "Act regarding the strengthening of economic growth and social cohesion". These articles of law (in force since 9 April 2018) establish that issues concerning disconnection and the use of digital communications should be discussed within the Prevention and Protection Committee (PPC), a representative body for employees that must be elected in companies with more than 50 staff members.
- **Italy** - Act 81/2017, which provides the right to disconnect covers so-called “smart workers” via individual agreement. These are defined as those workers who combine working in their offices with working remotely, either to balance work and family commitments or for work-related reasons. The right to disconnect is established via individual agreements.

## National Regulations on Right to Disconnect, Pt. II

- Right to disconnect has been included as part of broader regulatory measures to address all dimensions of telework.
- Argentina - Article 5 of Teleworking law (No. 27,555) and Regulatory Decree No. 27/202, entered into effect on 1 April 2021, teleworkers will have the right not to be contacted and to disconnect from digital devices and/or information and communication technologies, outside of their working day and during leave periods.
  - Chile - Law 21220 Amending the Code of Work on Remote Work (2020), the employer must respect their right to disconnect, guaranteeing the time in which they will not be obliged to respond to their communications, orders or other requirements. The disconnection time must be at least twelve continuous hours in a twenty-four-hour period. Likewise, in no case may the employer establish communications or formulate orders or other requirements on days of rest, permits or annual holidays of the workers.

## National Regulations on Right to Disconnect, Pt. III

- **Luxembourg** - A new legal framework for teleworking implementing the latest version of the social partners' collective agreement entered into force on 2 February 2021 (valid for 3 years), employees have a right to disconnect after working hours
- **Mexico** - Reform of Article 311 of the Federal Labor Law (12 January 2021) on Teleworking requires respect for the worker's the right to disconnect at the end of the working day.
- **Philippines** - Department Order No. 202 (series of 2019) and the Implementing Rules and Regulations of the Telecommuting Act (Section 5) provides that teleworkers have a right to rest days, regular holidays, and special non-working days
- **Russian Federation** - Federal Law No. 407-FZ (January 1, 2021) amending the Russian Labor Code to address remote work indicates that any interaction between employees and employers during employees' time off is considered working hours.
- **Slovakia** - Act no. 311/2001 Coll. The Labour Code (1 March 2021) Employees' right to disconnect outside working hours must be agreed upon between the parties.



## Regulations on Right to Disconnect, Pt. IV

**A teleworker's right to disconnect, established in protection of personal data regulations.**

- **Spain** - Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights.

**Article 88(1) Right to digital disconnection in the workplace. Provides that public workers and employees shall have the right to digital disconnection in order to guarantee, outside of the legally or conventionally established working time, respect for their rest time, permits and vacations, as well as their personal and family privacy.**

- **Article 18 of the Organic Law 10/2021 of July 9, 2021, on remote work uses definition above to frame the right to disconnect for remote workers.**

**Provinces or states have also developed regulations on the right to disconnect**

- **Province of Ontario (Canada)** - Working for Workers Act, 2021 requires Ontario businesses with 25 people or more to have a written policy about employees' rights when it comes to disconnecting from their job at the end of the day (from 2 June 2022)

## Right to Disconnect (Pt. V) and a New Factor to Consider

Some countries have chosen to use a code of practice, rather than an explicit legal act, to address the right to disconnect.

- **Ireland – Workplace Relations Commission (WRC) Code of Practice for Employers and Employees on the Right to Disconnect (1 April 2021)**
  - The purpose of the Code is to provide practical guidance and best practice to employers, employees and their representatives in relation to the Right to Disconnect.
  - While failure to follow a Code prepared under section 20(1)(a) of the Workplace Relations Act, 2015 is not an offence, section 20(9) provides that in any proceedings before a Court, the Labour Court or the WRC, a Code of Practice shall be admissible in evidence and any provision of the Code which appears to the court, body or officer concerned to be relevant to any question arising in the proceedings shall be considered in determining that question.

**“Hybrid Model” – a full time worker works part of their time at the organization workplace and part of their time from another location (e.g., home)**

- Hybrid worker can be based on an individual agreement between a worker and manager (usually based on organizational regulations) and used during “normal” times.
- Hybrid work may pose challenges to the right to disconnect and may require special attention (perhaps a mainly an issue for weekly working hour limits).

**Obrigado pela sua atenção**

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