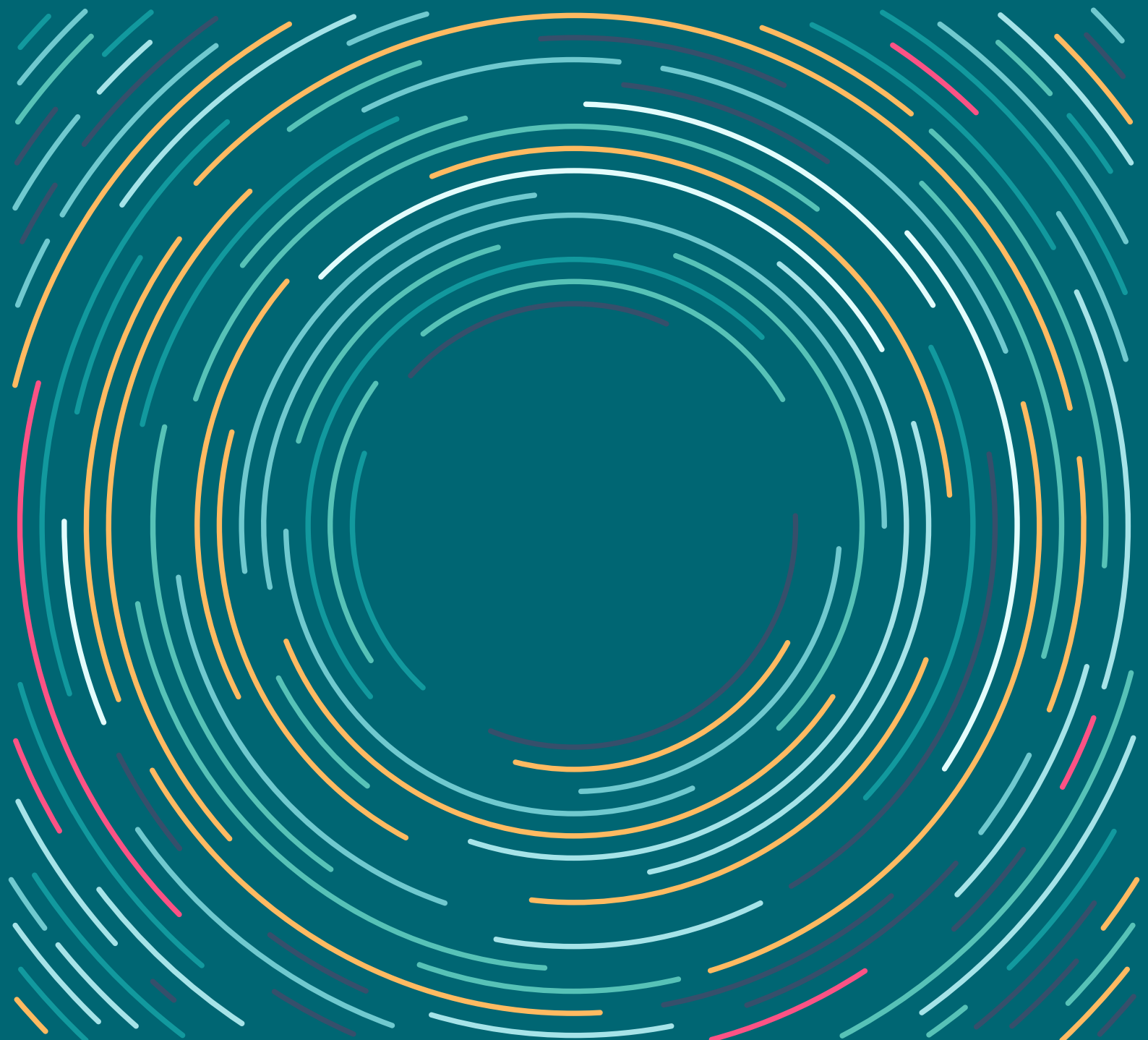


# EUROPEAN EMPLOYMENT LAW UPDATE

FLEXIBILITY AND TELEWORKING



2021 EDITION

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# INTRODUCTION

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**T**his edition of the European Employment Law Update is perhaps one of the most innovative editions that have been published in recent years. In fact, some of the regulations analyzed in this guide seemed impossible to apply just a few years ago.

The adoption of measures to curb COVID-19 in the vast majority of countries in the world has completely changed the lifestyle to which we were accustomed. The labor and employment sector has been, together with the healthcare sector, the one that has had to adapt itself more quickly to the new circumstances. In particular, the pandemic has forced to accelerate the process of teleworking that had begun in European countries.

Teleworking was intended by Governments to respond to the needs of family conciliation, which is so necessary in an aging Europe with serious demographic problems. Today, however, it has become a basic health recommendation. It has been shown that greater adaptation of national legislations to teleworking translates into better protection against the pandemic. This need has led certain European countries to pass laws regulating teleworking in the shortest possible time and also an EU Directive is in the process of being drafted.

It is clear that teleworking is here to stay and that, after the COVID-19 pandemic, it will be an everyday reality that will be present in many companies both in the public and private sector.

Although each country has regulated teleworking according to its economic capacity and industrial network, there are important similarities and common points throughout all European legislations. We will address such points in this guide trying to highlight the relevant regulations and rights linked to remote work and flexibility schemes, which seemed unfeasible only a few months before the outbreak of the pandemic.

This guide has been elaborated by all the law firms included on the European Employment Group of the World Services Group. We hope it will be useful and, as always, the contacts of the different firms are included so that you can contact the authors for further information.

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In line with the European trend, teleworking has recently been on the rise in Austria. While *homeworking* was often considered the exception before the COVID-19-crisis, it is now clear that many companies will continue to rely on this additional option and that employees will increasingly work from home in the future. By using mobile information and communication technologies, it is frequently possible to perform work not only from home (or at the employer's premises), but anywhere in the world, be it at home, on the road in a train, or a foreign country. All these forms of mobile working, including *homeworking*, fall under the umbrella term "teleworking".

Until now, there was no separate legal regulation for teleworking in Austria. On the occasion of the Covid-19 pandemic, new statutory provisions were introduced

in spring 2021, which regulate basic requirements and framework conditions for working from home (but not teleworking in general).

#### ***Homeworking is and remains a matter of agreement***

Legally, working from home cannot be implemented unilaterally but requires consent of the individual employee as well as the employer (unless the existing contract already provides for such arrangement). Under the new law, such agreement must be concluded in writing for purposes of proof and can be terminated by both the employee and the employer for good cause with a notice period of one month to the end of each calendar month. Such "good cause" includes, for example, a significant change in operational requirements or significant changes in the employee's domestic situation, which no longer enable the



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**D O R D A**



employee to work from home in the future. In addition, it is also possible to agree on a fixed term or further options of giving notice.

*Framework conditions* for working from home (e.g. general provisions on work equipment, reimbursement of costs) can also be agreed with the works council, if any, by way of a shop agreement.

### **Work equipment, costs and tax advantages**

As a general principle, the employer must provide employees with all relevant work equipment and bears the costs for such equipment. When the employee provides own equipment, employees generally can claim for expenses. Under the new law, employers are specifically required to provide digital work equipment for employees who regularly work from home. This may be deviated from by agreement if the employer bears the reasonable and necessary costs for the digital work equipment provided by the employee. Such costs may also be compensated as a lump sum.

Payments made by employers to compensate their employees for additional homeworking costs enjoy a tax relief (e.g. costs for business or the extra cost of gas and electricity). In this context, payments by the employer up to a maximum of EUR 300 per year (i.e. EUR 3 per day for a maximum of 100 days – “homeworking allowance”) are tax-free. Should the employer not exhaust this tax relief, the employee himself will be able to claim the difference (up to the maximum of EUR 300) as income-related expenses in the context of their employee tax return.

In addition, employees may claim a further tax relief for the purchase of ergonomically suitable furniture (e.g. their own office chair) in the context of their employee tax return. Employees can deduct up to EUR 300 per year as income-related expense (and even another EUR 300 if the employer does not use the above-mentioned EUR 300). The precondition for this is that at least 26

days per calendar year are worked exclusively from home.

### **Health and safety rules**

There are no specific health & safety rules for teleworking. Rather, workplace-related employee protection regulations do not apply to work in employees’ private homes or any other places where work can be carried out (e.g. in public transport, parks and accommodation establishments).

However, other employee protection regulations not related to the workplace do apply, such as workplace evaluation, information and instruction, or protection of use. More specifically, employers are obliged to design monitor workplaces ergonomically, including the provision of appropriate display screen equipment, monitors, keyboards and other necessary additional equipment, but there is no obligation to provide suitable worktables, work surfaces and seating.

Neither the employer nor the labour inspectorate have a right to inspect the employee’s workplace at home.

According to the new law, accidents that occur at home are also considered occupational accidents, if there is a temporal and causal connection with the insured activity. This means that going to prepare a meal or the garden during a break are also covered by accident insurance.

### **Other instruments for more flexibility**

In addition to teleworking, Austrian labor law also offers a wide range of instruments to meet the desire of many employees for more flexibility. In this context, there is e.g. the possibility to agree on a flexible working time model; under certain circumstances, employees can also make use of parental part-time work, a special caregiver leave, partial retirement and educational leave.