Limits of home-office in perspective of the amendment to the Czech Labour Code

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Abstract: This paper reacts to the current issue of home-office in the Czech legislation. Currently, an amendment to the Labour Code is to be approved bringing substantial changes to this legal institute. The aim of this paper is to draw attention to those changes because this topic has been legally regulated only marginally. The necessity to adopt legal rules to make home-office function practically was confirmed during the "Covid" era, when this tool started to be used by employers for objective reasons. employers began to massively use this tool for objective reasons. Another significant reason for new regulation is an obligation to harmonize the Czech and EU legal regulation which is based on the Directive 2019/1158/EU on work-life balance for parents and carers and on the Directive 2019/1152/EU on transport and predictable working conditions in the EU. This obligation was already required to be fulfilled up to August 2022. It is necessary to consider whether this regulation would sufficiently respond to the practice needs and whether it makes the usage of this legal tool easier for labour-law relations. Of course, only practice will prove a correctness of such legal changes.

Keywords: home-office, teleworking, agreement on home-office, termination of home-office, entitlement to home-office
JEL Classification: K31, J81

1 Introduction

The aim of the legal regulation of teleworking, for the purposes of this paper as more commonly used term home-office, has to be to eliminate the disadvantage of employees working in such a regime; at the same time, it is necessary to adjust the conditions in order to make the implementation of home-office to the practice easier for both employers and employees. It is general request as it comes to support of all forms of flexible work as the Directive 2019/1158/EU on work-life balance for parents and carers and the Directive 2019/1152/EU on transport and predictable working conditions in the EU do. Those Directives have to be harmonized with national laws thus the Czech Republic reacted by the Labour Code Amendment effective since 1st October 2023.

Home-office is one of the types of flexible working relationships, the application of which should be supported for the full use of the workforce and the flexibility of the labour market. Appropriately set legal conditions will make it easier for both employees and employers (Jouza, 2018). Home-office work performance is closely related to work-life balance. Collins (2019, p. 43) says „… helping people to achieve satisfactory work-life balance becomes even more fraught when work is demarcated by neither time nor place. In future we are likely to see demands from workers, for a legal right to be left alone and a right to turn off email and messaging systems outside working hours.“ Sladká and Kreid (2018) deal more with possible conflict between home-office and work-life balance. Such fact cannot be also overlooked thus the flexible work is more likely assumed to be used by employees-carers. Šimáčková and Havelková and Špondrová (2020, p. 644) stress that: „…making the access to the labour market easier to the carers, flexible forms of work including home-office are good tool. Although in the Czech Republic those persons are quite widely protected, combining of caring and wage-earning roles has not been supported yet. Home-office being considered the tool for work-life balance is rather exception than standard”.

As for the labour law field, home-office was understood more as an employee benefit until recently. But this is no longer the case, because as a result of the coronavirus crisis, it has become a widely used form of work performance. It has to be considered as a fairly established working regime, during the use of which many questions have arisen in practice. Employers often proceeded by trial and error, as the legislation provided only minimal support for such type of work. This situation should be corrected by an amendment to the Labour Code, which adjusts the rules for home-office. This paper tries to discuss whether those adjustments can be useful for the practice.

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The Czech Statistical Office declares that within the pandemic Covid-19 in 2021 60 % of employers enabled partial work at home to their employees. This trend has remained used by many employers even after this crisis. Of course, home-office regime cannot be used by every field; in some areas, home-office cannot be used at all, contrary to that, in some areas home-office is easy to be used such as administrative, IT, media (Český statistický úřad, 2022). At the same time, it is necessary to react to the fact that development in technologies brings new options of flexible working arrangements. Modern trends include home-office, teleworking with smart working or cloud computing, when physical presence of the employee is not necessary. Legal regulation has to react to a dynamic development of dependent work and decline in its traditional conception, mainly in some professions (Bělina, 2017).

Home-office in the sense of the law means that the employees do not work at the employer's workplace, but according to the agreed conditions, they perform the agreed work for him at another agreed place. For home-office, the decisive feature is the place of work, which determines and at the same time distinguishes the employment relationship of employees who do not work at the employer's workplace from the employment relationship in which employees work at the employer's workplace. Such setting requires a higher amount of employer´s trust towards employee and a higher amount of employee´s independence and responsibility (Vrajík and Marada, 2021).

New legal regulation makes the rules for home-office more precise. The request for written agreement conclusion is determined and home-office working regime is to be ordered only in exceptional cases determined by the law. Nevertheless, there is no content of this agreement adjusted so contractual parties are left to their will to stipulate conditions for home-office work. The law regulates working hours schedule in case the employee sets it by himself as well as costs compensation arising in relation with home-office work to the employee. The absence of costs compensation in the law has been considered by the practice very contradictorily. Morávek (2022) mentions that some employers adopted wrong opinion that compensation does not have to be provided with at all or can be added to the salary as a bonus. At last, it is needed to say that home-office is adjusted specifically for carers but only as an option not as an entitlement.

The aim of this paper is to draw attention to changes in home-office legal regulation and to answer the question whether this regulation sufficiently responds to the practice needs and whether it makes the usage of this legal tool easier for participants in labour relations.

2 Methods

This paper is elaborated on literature review and interpretation of legal regulation using relevant judicature. To achieve the results, methods of analysis and deduction are used in this paper, too.

3 Research results

In order to achieve the aim of this paper, there is an analysis of new home-office legislation carried out. Attention is also paid to some problematic issues related to this form of work performance and the practice of employers and employees, which are not being sufficiently addressed by legislation.

3.1 Agreement on home-office by the Labour Code Amendment

The written agreement on home-office work between an employer and an employee is a formal condition, which has to be fulfilled to make such agreement valid. This agreement can become a part of employment contract or can also be concluded separately. Condition of a written agreement does not apply only in situations of crisis or public health protection, when the employer can order remote work (Act No. 240/2000 Coll., Crisis Act, as amended and Act No. 240/2000 Coll., on the protection of public health, as amended). The law does not regulate a content of the agreement on home-office though, nevertheless, in the explanatory report to the Labour Code Amendment, there is recommended what is suitable and, in the author´s opinion, necessary to be adjusted for the practical use. For sure, it is the place of remote work performance, or more places. Judicature can be used to specify that the workplace is a municipality, region, territory of the Czech Republic, an organizational unit or another designated place where the employee has committed to work for the employer in the employment contract. (Supreme Court: 21 Cdo 4596/2014). They way, in which the employer would conduct the employee´s work, assign the tasks and control their fulfillment is another important provision of agreement on home-office. By such way, email, phone contact or personal tasks overtaking are meant. Agreement that the employee would work some days at employer’s workplace, some days at home is not excluded. The questions of working hours, occupational health and safety (OHS) or duration of agreement should be taken into consideration, too.

The law implements unequivocal process of agreement on home-office termination. The agreement can be terminated in two ways – by written mutual agreement or by written notice. As for the agreement, there is the date of home-office ending important, reasons do not have to be specified. The employer and the employee can terminate the home-office agreement without giving the reasons or for any reason. There is 15-day termination period but there is an option to agree

on different termination period (but the same for both employer and employee), or the option of termination can be excluded. In such case, contractual parties can terminate the agreement on home-office only by mutual agreement.

The question of home-office working hours is adjusted for cases when there exists mutual agreement that the employee is entitled to plan his working time. Such regime is said to be full-fledge home-office. The Labour Code determines that in such cases, a working hours schedule, an idle time and working eruptions due to adverse climatic conditions will not be applied. The employer though has to determine a fictive distribution of working hours into a shift for the purpose of compensatory wage at temporary capacity for work and for leave. But, general requirement applies that the length of the shift must not exceed 12 hours. In the full-fledge home-office regime, the employee is not entitled to compensatory wage at other important personal obstacles to work (e.g. visit at the doctor, accompanying the child when visiting the doctor, child birth). The second variant of the home-office, prevailing in practice, non-full-fledge home-office is. In this regime, the employee is not entitled to plan his working hours. This type of home-office is not influenced by the special regulation of distribution of working hours. It is important to stress that the home-office work does not free the employer from the duty to keep the records of working hours. Based on the decision of Supreme Court: 21 Cdo 1916/2004, the Labour Code does not determine how the working hours should be administrated. It is the only employer´s responsibility what way of working hours´ record he would choose in order to make provable whether the employee fulfilled or did not fulfill the determined or agreed working hours, when he did it, in what range or any other facts being important when assessing entitlements.

Another very important question when considering home-office, the reimbursement of expenses incurred in connection with the home-office performance of work is. Such regulation has been significantly lacked by the practice. There are two options. Either the employee applies the reimbursement of costs arising during home-office work and he proves it, or the employer would provide him with lump amount to compensate him the costs. Lump amount could be agreed in the agreement on home-office or it could be regulated by internal company regulations. The amount is determined in the regulation by the Ministry of Labour and Social Affairs of the Czech Republic. As for the tax law, such compensation is not considered the income. In case, the employer would give the employee compensation higher that determined one, the difference between determined and factually given compensation is considered the income, though. The aim of lump amount regulation is to make the agenda of costs related to home-office easier. The Labour Code Amendment also adjusts the option of mutual agreement between the employer and the employee thus the costs compensation would not be provided at all. Here, it is necessary to draw attention to a possible polemic whether such agreement would be in accordance with the rules of dependent work and in accordance with the constitutional order of the Czech Republic (Liškutin, 2023).

The Labour Code has newly amended the possibility to apply for home-office for pregnant employees and employees taking care of a child under the age of 9 or taking care of a dependent person for long time (i.e. a person who is dependent on assistance of another person in providing basic life needs). Those persons can apply for home-office work; in case the employer would not oblige, he would have to give reasons for such decision in written. In this context, the author stresses the fact that original amendment included an entitlement not only option for said person to work at home (above that, taking care of a child up to 15 years of age). A denial of such request should have not only been justified by the employer but also proved by serious operational reasons. If at least the proposed rejection of the application for serious operational reasons were to be maintained, the implementation of home-office for these persons would be more respected by employers, referring to the analogous use of case law regarding the definition of serious operational reasons. For example, the decision of the Supreme Court No. 21 Cdo 1821/2013 determines the criteria for assessment of serious operational reasons. Those are: number of employees, their mutual replaceability, determination of those employees´ work and intensity of possible disruption of employer´s operation in case application for home-office would be agreed. By the operation, tasks and other activities fulfillment is meant. Denial of application for home-office could be taken into consideration in case such work would make the operation impossible, disrupt it or somehow seriously put it into danger (Supreme Court: 21 Cdo1561/2003). In the case of an obligation to justify the rejection of an application on the basis of the above criteria, it would necessarily be more difficult for the employer to defend such a procedure and, in principle, it would only be possible for employees, in view of their specialization, whose presence at the employer's workplace would be objectively necessary. It can be assumed that due to this, the current home-office arrangement will not greatly improve the possibilities of the mentioned persons in relation to the requirements for increasing the flexibility of employment relations and work-life balance. However, this does not fully comply with the requirements of Directive 2019/1158/EU on work-life balance for parents and carers.

Finally, it should be mentioned that compliance with the set rules for home-office is also supported by the new regulation of sanctions that can be imposed on employers for non-compliance. According to the amendment contained in the Labour Inspection Act (Act No. 251/2005 Coll., as amended), the control body - the labour inspectorate - can impose a fine of up to CZK 300,000. This is a violation of the obligation to conclude a home-office agreement in written, a violation

of the obligation to schedule working hours into shifts for the purposes of taking vacation and wage compensation, and a violation of the obligation to provide compensation for costs to which the employee is entitled. In addition to these cases, the employer may be fined up to CZK 200,000 if he does not justify the rejection of a home-office request of pregnant women and carers (as described above) in written.

3.2 Safety, health protection and control at home-office

The Labour Code does not have any special regulation for the occupational safety and health at home-office thus it is necessary to solve this topic individually accordingly by general law. Individual cases are solved by concrete environment conditions, in which the home-office is provided. It is clear, that general rules of OHS are not easy to be applied at home-office but the employer should provide with at least the minimum, mainly OHS training, safety equipment, e. g. first aid kit and fire extinguisher. In the home-office agreement, it is more than appropriate to regulate the possibility and method of checking the workplace. It can be a remote control, e.g. in the form of photo documentation or a webcam, but a physical control can be also provided. Rejchrtová (2021) also admits an option to replace the control by the employee´s statutory declaration on suitability of place for home-office. It must be emphasized that home-office employees are obliged to respect the principles of occupational safety and health like all other employees, and if they do not cooperate with the employer in this regard, they risk that in the event of health damage the employer will be released from responsibility for an occupational accident. According to the findings of the state control authorities, accidents at work occur at a minimum when working outside the employer's workplace. However, this does not mean that employers should not pay attention to this issue. For this reason, an agreement between the employer and the employee in the event of an occupational accident is important, which will allow the employer to enter the workplace to investigate the causes and circumstances of the occupational accident. Any occupational accident will be investigated in the same way as, for example, an occupational accident that would happen at the employer's workplace in the late afternoon or evening, when the employee himself was present. Among employee's obligations as it comes to the occupational safety and health field the obligation not to work under the influence of alcohol or other addictive substances is. A control by the employer cannot be ruled out even in the case of a home-office, however, certain conditions have to be followed; the control would be e.g. provided at an open door to the employee's apartment, where an orientation test for alcohol with a detection tube by an employee authorized by the employer would be provided (Brůha, 2021). Rejection of such control could be considered the violation of employee´s duties. It is evident that as for occupational safety and health, an application of legal regulation of home-office is unsuitable and hard to be executed. Therefore, it would be very appropriate to adjust special conditions for duties of both employers and employees in this area.

Employers should also pay attention to IT infrastructure and cyber safety. Home-office usually demands the usage of modern technologies. Employees often work with the Internet, use the virtual private net (VPN), email etc. By the Czech Statistical Office, 97 % of big companies with more than 250 employees offer VPN access to their employees and 57 % of small companies with up to 50 employees (Český statistický úřad, 2022). Therefore, it is necessary to keep in mind a possible data and information leak. The possible use of BYOD – bring your own device – is not without risk, as the home-office regime does not absolve employers of their obligations to protect personal data, and it is difficult to prove any violation and enforce any sanctions on employees (Vrajík and Marada, 2021).

Another area employers have to deal with individually without much support of the law is the control of the employee's work performance and the fulfillment of his work tasks. The employer's right to control the employee's work results from the nature of dependent work and also applies to work performed in the home-office mode, where physical and remote control (phone, online forms) can be considered. Certain difficulties can relate to physical control, as it is necessary to respect the protection of personality, the right to privacy and the inviolability of the home. The employer should not carry out the control in a bullying manner, e.g. too often, early in the morning, late in the evening or at the weekends (Brůha, 2021). It is also necessary to remember that the employee is not obliged to let the representative of the employer (carrying out the control) into the apartment or house. However, at least the employee´s minimum cooperation is requested, i.e. communication at the door or through the open window. To specify what is no longer the employee's obligation during such a control, the Supreme Court Decision: 21 Cdo 5126/2014 can be cited containing that the employee's obligation to allow the employer the control and to provide the necessary cooperation does not include his obligation to mark the place of residence with the necessary data, such as name on the door bell or on the mailbox. The said court decision concerned the control of the regime of an employee who is temporarily unable to work, but it can be assumed that the court would process of the control of the employee in the home-office regime in the same way. When dealing with the question of control, it is necessary to remember that the home-office employee cannot of course be at the employer's disposal 24 hours a day. The employer should determine a time for the rest - a time without contact, especially for employees who work in a full-fledged home-office. The control of working hours in the home-office regime depends on its type. If the employee plans his working hours by himself, the control is irrelevant. Just to make it clear (Brůha, 2021), the home-office with flexible working hours can be controlled by the employer but only its compulsory basic part. Similarly, when

hybrid type of home-office is concerned (partial work at home, partial work at employer´s facility). Logically, the control is allowed only within days determined for home-office.

In the end, the proposed amendment to prevent the social isolation of employees in the home-office regime did not make it into the Labour Code. Sometimes referred to as the "the right to the friend" (Morávek, 2022). During the home office regime, social isolation is obvious and can have negative not only social, but also psychological and health consequences. It would be suitable not to abandon this topic and pay attention to it in further legal regulations; despite the fact that many employers who use home-office to a greater extent do not underestimate these issues and try to take measures to support contacts between employees, e.g. in the form of coworking.

4 Conclusions

In the latest amendment to the Labour Code effective since 1st October 2023, the legislator introduces the home-office adjustment, which aims to answer the most frequent questions of employers arising from the practice. The legislator adjusted the home-office on the principle of contractual freedom. The condition for home-office is a written agreement between the employee and the employer, but the law does not stipulate its content. It is thus left to the will of the contracting parties how they agree on this work performance regime. On the one hand, it has to be appreciated that this agreement is left fully under the direction of the specific employee and the specific employer, knowing that it will be possible to solve the specifics of different practice flexibly. On the other hand, however, it has to be admitted that the legal regulation of certain requirements would be a certain guarantee of the relevant content of the agreement. After all, even the explanatory report to the Labour Code Amendment states that employers should pay attention to the content of this agreement and adjust the conditions essential for the home-office regime. The Labour Code determines specific rules for terminating a home-office agreement. It also regulates how to proceed employee´s working hours being scheduled by himself as well as the reimbursement of costs in the case of a home office.

However, only the practice will show whether the implementation of new legal regulation would fulfill employers´ expectations. Unfortunately, some questionable points can be already mentioned now as addressed in the Research results. Those are mainly OHS aspects, solution of which is left to the employers while respecting the general legislation. As for the practical execution of the control, it is problematic issue as well. Questions regarding measures preventing the social isolation of employees in the home-office regime, which will inevitably be dealt with in the future, are left aside. The adjustment for carers also failed to meet expectations, as the original intention to enshrine the entitlement of these persons to a home-office was changed only to the possibility of applying for it with no guarantee that the employer would grant it.

When evaluating new Czech home-office legislation, a comparison with the legislation of this institute in the EU states suggests itself. Home-office, more precisely telework, is governed by the European Framework Agreement on telework of 2002. It defines telework and sets up a general framework for working conditions of teleworkers at European level. Another document being relevant to this issue is the European Social Partners Framework Agreement on Digitalization of 2020 related to “connections and disconnections” which are to be provided in accordance with practice in particular member states. In 2021, the European Parliament adopted a resolution with recommendations to the Commission on the right to disconnect. It should also establish minimum requirements for remote working and clarifies working conditions, hours and period for the rest. In the EU, there is no universal approach to the home-office regulation yet. Different sectors and businesses in member states require different arrangements and procedures and this fact needs to be taken into account when preparing EU legislation in this area (Eurofound, 2022).

Slovakia and Poland can be mentioned briefly as examples for comparison. Just as the Czech Republic, both states implemented new home-office regulation to their Labour Codes based on similar principals as the Czech one. However, compared to the Czech regulation, Polish and Slovakian are more detailed; they consider the questions of occupational safety, to which the Czech legislation has not reacted yet and could be inspired by. Among other things, the Slovakian Labour Code explicitly requires the employer to ensure the protection of data used during teleworking and to prevent the isolation of employees working at home by enabling them to meet with other employees. The Polish Labour Code, for example, determined the employer's obligation to draw up an occupational risk assessment and the principles of safe work to be respected by the employee before allowing a home-office. The paper author anticipates a more detailed elaboration of the home-office issue in EU countries. It is a topic for an individual study based on the comparison of legal regulations and home-office functioning in the Czech Republic and EU member states.

This paper clearly shows that home-office is a topic that deserves attention. There is a room for further consideration of issues that have not yet been sufficiently addressed by legislation, but, at the same time, those that are regulated by the Labour Code Amendment. As the effective period of new legal regulation has been short so far, it is necessary to wait for feedback from the practice and based on it relevantly assess its consequences as it comes to the rights and duties of both

employees and employers. Only practical experience will show whether the new regulation adequately addresses this legal instrument and creates suitable conditions for its realization.

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