

TELEWORKING AND LABOR CONDITIONS CONCLUSIONS

Manuel Luque Parra

Professor of Labor Law and Social Security Universitat Pompeu Fabra

Andrés Camargo Rodríguez

PhD candidate, Universitat Pompeu Fabra

Abstract

The Comparative Labor Law Dossier (CLLD) in this issue 2/2017 of IUSLabor is dedicated to teleworking and labor conditions. We have had the collaboration of internationally renowned academics and professionals from: Belgium, France, Italy, Lithuania, Poland, Portugal, Russia, Spain, The U.K, Argentina, Brazil, Colombia, Chile and Canada

Notwithstanding recommending the reading of the complete articles of the comparative dossier, we have drawn the top 10 conclusions and elaborated a summary table with the most relevant issues regarding teleworking and labor conditions in the different legal systems analyzed in this issue of IUSLabor.

El *Comparative Labor Law Dossier* (CLLD) de este número 2/2017 de IUSLabor está dedicado al teletrabajo y las condiciones laborales. Hemos obtenido la participación de académicos y profesionales de prestigio de Bélgica, España, Francia, Italia, Lituania, Polonia, Portugal, Rusia, Reino Unido, Argentina, Brasil, Colombia, Chile y Canadá. Sin perjuicio de recomendar a nuestros lectores la lectura del capítulo correspondiente a cada uno de los países citados, en las páginas que se suceden hemos incluido las 10 conclusiones principales que hemos alcanzado, así como un cuadro-resumen con aquellas cuestiones mas relevantes .

Título: Teletrabajo y condiciones laborales. Conclusiones

Keywords: Teleworking, teleworker, ICT, consent, return, labor conditions, training, professional promotion, work health and safety, data protection, collective representation.

Palabras clave: teletrabajo, teletrabajador, ICT, consentimiento, reversibilidad, condiciones de trabajo, capacitación, promoción profesional, seguridad y salud en el trabajo, protección de datos, representación colectiva

Summary

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1. «Top ten» conclusions

The Comparative Labor Law Dossier (CLLD) in this issue 2/2017 of IUSLabor, elaborated by internationally renowned academics and professionals, is dedicated to teleworking and labor conditions.

In the last decades technological revolution has triggered diverse changes and challenges for states and citizens. The existence of work which require exclusive performance of activities by telematics means, the flow of data through networks, and the fragmentation of productive processes through the world, are characteristic of the current century. In this context emerges telework to link work and such virtual context. Hence, the current study analyzes the matter from a comparative perspective in order to identify some similarities and dissimilarities and relevant regulatory challenges within those countries taking part of it. The dossier has gathered information concerning the most relevant issues in the legal systems of Belgium, France, Germany, Italy, Lithuania, Poland, Portugal, Russia, Spain, the United Kingdom, Argentina, Brazil, Colombia, Chile, and Canada

The international advisors that have participated in this comparative dossier have answered to the following questions:

1. Is there any regulation on teleworking in your legal system?
2. What is the legal or judicial concept of teleworking often used in your country?
3. Are there differences in the national legal system between teleworkers and flexible workers?
4. Does the implementation of telework require consent of workers? Can the employer (or the parties via collective agreement/collective bargaining), impose (temporary or definitely) telework on workers upon certain entrepreneurial causes? In such case, please specify them.
5. Can a teleworker or an entrepreneur unilaterally decide to return to a position within the enterprise's premises?
6. What provisions on labor conditions (privacy, working time, *inter alia*) are established regarding teleworkers and not for regular workers?
7. Is there any concrete regulation on training and professional promotion in regard to teleworkers?
8. What provisions on work health and safety are established regarding teleworkers?
9. Is there any concrete regulation on “data protection” as regard to work performed by teleworkers?
10. Is there any particular regulation concerning collective representation of teleworkers in your legal system? Are they taken into account as electors in the process of electing teleworker representatives? Can they be elected as representatives of workers?

Following, and in the same order of the above questions, are the 10 most important conclusions regarding teleworking and labor conditions, drawn from the articles written by our international consultants

1. There is a regulation on teleworking **in the majority of the countries analyzed**. However, the comparative analysis has been useful to identify different trends in relation to the regulatory methods used by each state.

In **Europe**, teleworking is predominantly form is **ordinary legislation**. That is the case of **Lithuania, Poland, Russia** and **Spain** where related provisions are found in each Labor Code. In **Italy**, the phenomenon is regulated by legal rules although they vary according to the status of each worker. Hence, the rules applicable to public employees differ from those for the private regime. Other systems set regulatory mechanisms from a collective bargaining perspective, such as **Germany** where bodies representing workers (*work councils*) exert an essential function on the matter. Finally, there is a greater level of interaction between the legal system and the rules collectively agreed on in the **Belgian, Italian, French** (*Accord National Interprofessionnel –ANI*), and **Portuguese** systems.

According to the reports, **South American** systems are still in the inception period. In **Brasil** and **Colombia** exist legal rules related to the matter, whereas in **Chile** and **Argentina** do not. In the latter several legislative initiatives have been unsuccessfully promoted.

In the **Canadian** case, an array of instruments governs the subject at the federal (*telework policy framework – minimum standards legislation*) and entrepreneurial level (collective agreement).

The only case where the matter is regulated by a soft law mechanism is in **the UK** (*telework guidance voluntary*), which is strongly influenced by the European Framework Agreement on Teleworking – EFAT.

In relation to International Labor Standards, it has been detected a very low level of ratification of ILO Convention 177. Out of the fifteen countries under scrutiny, barely two have incorporated such instrument in their national legal systems: **Argentina** and **Belgium**. Furthermore, several reports have referred to a reduced margin of influence of the International Labor System in the national set of rules, with the only exception **Canada**, where some steps are taken to bring employment into conformity with the Convention. Nevertheless, the **Framework Agreement on Teleworking - EFAT** has hitherto exerted an effective influence on **Italy, Poland** and **The UK**

2. Despite the differences in the use of language, **telework is mostly considered a form of work organization in Europe**. Within **South American systems**, there is a noteworthy reference in the recently passed **Brasilian** legislation where it is considered “*species*” within a wider “*genus*” (work at home).

Regarding the characteristic elements of the definition there is consensus upon the **technical** element (use of Information and communication technology – ITC) as a determining feature of this form of working. However, several variations have been found in relation to the **spot**, and the **time** where/when telework is to be performed.

In relation to the second element (spot), **all the analyzed legal systems** consider that tasks framed as telework ought to be performed principally out of the employer’ premises. Such assertion is to be further developed in certain points.

The first concerns about performance of duties out of the enterprise, but in places under control of it (satellites). For instance, in **Belgium** the telework regulation cannot be applied to such situations. Conversely, in the **German case** (specifically in *rotating telework*) it is admitted to carry out telework in company branches.

In the second place, in some of the analyzed systems it is admitted applying telework rules even to hypothesis in which tasks or duties are performed within the enterprise’ premises. That is the case of **France, Spain, and Portugal** (in this the matter is arguably to a certain extent). In South America, telework regulations also apply to such case in **Argentina, Brazil and Colombia** (this latter in case of “*supplementary telework*”). **Russian** regulation prohibits to perform simultaneously regular *work and telework*.

Now, regarding the time of performance, the great majority of legal systems considers telework to be a **regular activity**, in opposition to those incidental, occasional or transitory. Even though in **Belgium** occasional telework is regulated by law, it applies in exceptional circumstances (*force majeure*).

In South America, there is no mention to the regular character as a defining element of telework

Once again, **British regulation** contains noteworthy variations inasmuch as it establishes a wide categorization of teleworkers within which are mentioned: *homeworker teleworker* (from home at her/his principal job), one day *homeworker teleworker* (working from home once a week and performing tasks from other locations during that week), *home based teleworker* (variety of locations but based at home), *call center teleworker* (working from centers), and client-based teleworkers (based at their clients premises)

3. Apart from **Spain, Italy, and Brazil**, none of the systems under scrutiny makes a **distinction** between **teleworkers** and **regular workers**. Indeed, in **the UK** telework is considered as a form of flexible work.

The reasons which explain the trend are diverse, and related to the absence of a common criteria to make such distinction.

In **Italy**, for instance, the difference relates to the emergence of a new form of work, namely “*lavoro agile*”, which has characteristics in common with telework. However, the respective legal statute has been recently enacted and therefore, the matter has not been deeply analyzed by legal studies, jurisprudence or administrative decisions. In the **Spanish** case the distinction is based on the spot where labor is executed. There, a teleworker carries out his/her duties preponderantly in his/her place of residence, or in a spot chosen by him/herself. The expression “*preponderant*” is affected by certain degree of indeterminacy, which is problematic in terms of enforcement.

In the **Brazilian** case the distinction is set in terms of **time** (teleworkers perform duties on a discontinuous basis) and the **technic element** (use of ITC is exclusive of telework).

4. In the great majority of cases under study the modification of contractual conditions to subject workers to the telework regime requires their consent. Precisely, in **Belgium, Italy** (private regime) and **Russia** (pursuant to general provisions of the Labor Code), contract amendments aimed at imposing unilaterally telework are expressly banned.

This rule possesses certain exceptions. For instance, imposition of telework is exceptionally allowed in **France** in cases of *force majeure*, epidemic, or due to continuity of entrepreneurial activities, and in **Italy** (public service) since the norms governing the matter do not recognize the voluntary character of it.

Another sort of exception is related to the **right to occupy a telework position**. That is the case of **Lithuanian, Portuguese and British** legislations which contain such provisions in favor of workers under specific family-related circumstances (pregnancy, raising, domestic violence, *inter alia*).

In **Germany** the implementation of teleworking is contingent since it depends on collective agreement and the criteria provided by “work councils”, bodies enabled even to veto such kind of proposals.

As regard collective agreements, the comparative study has been useful to identify two opposite patterns in the **European legislation**. On the one hand, the **French** legislation does not contain any provision allowing the imposition of teleworking via collective

agreement, whereas in **Germany** it is possible, no matter whether the worker acquiesces to it. In **Spain**, the Supreme Tribunal has refused such possibility.

There certainly is a more even pattern in the case of **South American** systems. All the countries there taking part of the study require worker's consent, except in **Colombia** where it can be imposed by means of collective agreement.

Again, in the **Canadian case** parties of the employment contract are expected to agree on the matter.

5. There are three different patterns on the matter in the **European systems** scrutinized. In first place, some countries do not admit to parties unilaterally decide such matter if the employment contract does not contain a specific provision. That is a majoritarian trend and so regulated in **Belgium, Germany, France, Italy (private workers), Poland, Portugal and the U.K.**

Secondly, some countries regulate the return to a position within the enterprise' premises in the context of a probationary period following the transformation of a labor relation into one of telework. Hence, in **Italy** (public employees) and **Poland**, teleworkers are entitled to return to the employer' premises under specific circumstances. In **Spain**, the parties usually agree on this topic, even though if the employer impose the return of the worker it must pay for a compensation.

All South American countries establish such right with the exception of **Brazil**. In particular **Chilean** legislation provides such guarantee for those attached to telework regime via collective agreement.

In **Canada**, this is contingent matter depending on the agreement between the parties. However, federal public employees are entitled to the return by delivering notice in advanced.

6. On this matter, the topics most often addressed by different legal orders refer to: i) Supply of elements and instruments to work performance by means of ITC, ii) Working time, iii) Equal treatment (teleworkers and on site workers), iii) Supervision, iv) Teleworker's right to privacy. Further provisions are unfolded in each legislation

Regarding working time, **Italian and Colombian** regulations are worth mentioning since those expressly exclude teleworkers from Sunday work, night work, overtime and related subject. However, it is said in the **Brasilian** case (as a matter of interpretation departing from the rest of rules making up the system), that overtime ought to be remunerated since it is recorded (ITC).

Now, in relation to *supervision* and *right to privacy*, it has been identified a potential tension in case of telework perform in the worker place of residence. Because of that, the **polish system** establishes a safeguard in favor of workers, according to which supervision cannot be carried out without prior consent of them.

7. The great majority of countries analyzed barely establish an entrepreneurial duty of providing training on the handling of technologic means involved in telework. Therefore, the predominant rule is that teleworkers hold the same rights and prerogatives than on-site workers.

Two deviations deserve special mention. The first was found in **Spain**, where teleworkers are entitled to obtain information about on-site job positions when available. The second belongs to **The U.K.** system in which two relevant concepts are to be mentioned: i) The “*core training*” concerning the skills specifically required to carry out telework (generic, job-related, report writing, effective telephone communication and self-management); ii) The need to the perform a first job in the office as a prior stage to telework.

8. Provisions on work health and safety have been analyzed from a comparative perspective and in relation with those applicable to on-site workers.

Some countries, such as **France, Lithuania, Portugal and Poland** report the application of the same rules for both cases, although in the latter there are certain exclusions as regards teleworkers performing tasks in their place of residence. By contrast, the **Russian** system establishes a considerably narrower scope of protection for telework, limited to the adoption of measures to prevent work accidents, the enforcement of rules delivered by labor authorities, and the provision of social security measures in case of work accident and occupational health.

Certain topics are often included in the systems subject to comparison. That is the case of *isolation* as a telework-related risk, the subsequent regulation of measures tending to avoid it (**Belgium, Italy** –private workers, and **Portugal**), and labor inspection (**France, Italy and Spain**).

Finally, the highest degree of protection in this specific matter (although not mandatory) was found in **The U.K.**, in which guidelines are established for the employer regarding several aspects such as: the handling of hazardous materials, the degree of suitability of equipment provided and the safety of them, first aids in the telework place, specificities of electric equipment, *inter alia*.

South American regulation is less uniform. For instance: the **Argentinian** legislation regulates the supply of safety elements, adoption and disclosure of regulatory instruments within companies employing teleworkers, in **Brazil** exists rules on the provision of safety

elements in charge of the employer, and **Colombia** externalizes the work health and safety risk management by means of *ARL (Administradoras de Riesgos Laborales)*.

In **Canada** teleworkers are generally excluded from some occupational and safety benefits, in comparison to on-site workers. However the matter varies along the different provinces of the state.

9. Apart from Poland, Russia and Spain, the rest of countries in the study have specific legislation on this matter.

Those provisions regulate similar aspects such as: the entrepreneurial duty of providing information about the rules applicable to manage collected information (**Belgium, France and Spain**), the worker' acknowledgement to such rules (**Poland**), or the emphasis on the right to privacy (**Italy and Poland**)

Once again, the **British** system regulates a wider variety of related hypothesis, for instance: access to personal data by the worker' members of the household, responsibility of providing virus free information, or the right to privacy out of the workplace.

In **South America** the subject is also deployed in the **Colombian** legislation in relation to the entrepreneurial duty of providing information about related restrictions, and the consequences triggered in case of breach. In **Canada** there is no regulation either, and ordinary regulation is presumably applicable to telework.

10. In all the european countries analyzed teleworkers are entitled to participate in representing bodies, either as electors or as workers' representatives. The only restriction was found in **Germany**, where to be elected in a "*work council*" a worker must have been working at least during six months.

It is worth to mention some mechanisms to ease the access to information for those workers out of the company by electronic means (**Portugal and Italy**), the duty of attach a worker to a specific work center (**Spain**), or the supply of ITC to representing bodies to get communication with teleworkers (**Germany**).

Neither South American nor North American) countries reported related regulations on this matter. It is worth mentioning the last, where collective bargaining is considered "*workplace centric*" and so, many factual and legal problems arise.

2. «Top ten» conclusiones

El *Comparative Labor Law Dossier* (CLLD) presentado en el volumen 2/2017 de IUSLabor ha sido elaborado por un grupo de académicos y profesionales internacionalmente reconocidos y está dedicado al teletrabajo y las condiciones de trabajo dentro de dicho régimen.

En las últimas décadas, la revolución tecnológica ha generado diversos cambios y retos para los estados y los ciudadanos. La existencia de trabajos que solamente requieren la ejecución de tareas a través de medios telemáticos, el flujo de información a través de redes, y la fragmentación de los procesos productivos a través de diversos actores esparcidos alrededor del mundo son, entre otros, característicos del presente siglo y sus dinámicas de producción. En ese contexto surge el teletrabajo, como una intersección entre el trabajo y dicho contexto virtual. Así, el presente estudio analiza la materia desde una perspectiva comparativa con el fin de identificar semejanza y diferencias entre los diversos sistemas que regulan el fenómeno, tendencias y patrones, y desafíos dentro de las regiones que hacen parte del análisis (Europa, Sudamérica y Norteamérica). El dossier ha reunido información relacionada con los problemas más relevantes en los ordenamientos jurídicos de Alemania, Bélgica, España, Francia, Italia, Lituania, Polonia, Portugal, Reino Unido, Rusia, Argentina, Brasil, Colombia, Chile y Canadá.

Los expertos internacionales que participaron del estudio han resuelto los siguientes interrogantes:

1. ¿Existe una regulación del teletrabajo en su ordenamiento jurídico?
2. ¿Cuál es el concepto normativo, judicial o que habitualmente se utiliza de teletrabajo en su país?
3. ¿Existen diferencias, en el ordenamiento jurídico nacional entre teletrabajador y trabajo flexible?
4. ¿La implementación del teletrabajo requiere el expreso consentimiento del trabajador? ¿Puede el empresario o el Convenio Colectivo/negociación colectiva imponer el teletrabajo a uno o varios trabajadores de manera temporal o definitiva de concurrir una serie de causas empresariales (en este caso, especificar causas)?
5. ¿El teletrabajador o el empresario pueden decidir unilateralmente la reversibilidad de la situación de teletrabajo, esto es, que el teletrabajador vuelva a prestar servicios en el centro de trabajo de la empresa?
6. ¿Qué previsiones en materia de condiciones de trabajo (intimidad, tiempo de trabajo, entre otras) se prevén con relación con el teletrabajador y no respecto del trabajador?
7. ¿Existe alguna previsión concreta en materia de formación y promoción profesional respecto del teletrabajador?

8. ¿Qué previsiones se disponen en materia de seguridad y salud laboral respecto del teletrabajador?
9. ¿Hay alguna regulación en materia de “protección de datos” respecto del trabajo realizado por el teletrabajador?
10. ¿Hay alguna singularidad en materia de representación colectiva con relación a los teletrabajadores? ¿son tenidos en cuenta como electores en las elecciones para los órganos de representación de los trabajadores? ¿pueden ser elegibles como representantes de los trabajadores?

A continuación, y en el mismo orden de las preguntas se encuentran las conclusiones más importantes relacionadas con el teletrabajo y sus condiciones laborales, elaboradas a partir de los artículos escritos por los expertos internacionales

1. En la **gran mayoría de los países analizados** existe una regulación sobre teletrabajo. Sin embargo, el análisis comparativo ha sido útil para determinar diferentes tendencias en cuanto al método regulatorio adoptado en cada Estado.

Así, en **Europa**, el teletrabajo se encuentra regulado en forma predominante a través de la legislación laboral ordinaria. Es el caso de **España, Lituania, Polonia y Rusia** en donde se reporta la existencia de regulación sobre la materia en cada Código Laboral. En **Italia**, la regulación es legal pero varía en función de la naturaleza de la vinculación de los trabajadores. Así, el régimen jurídico aplicable al teletrabajo en el marco del empleo público difiere de aquel que regula las relaciones de carácter privado. Otros sistemas establecen mecanismos de regulación a partir de la negociación colectiva como en el caso de **Alemania**, en donde organismos representativos de trabajadores (*Work councils*) ejercen un papel esencial. Finalmente, los sistemas **Belga, Italiano, Francés** (*Accord National Interprofessionnel –ANI*) y **Portugués** se caracterizan por una mayor interacción entre el sistema legal, y aquellas reglas colectivamente acordadas.

A partir de los reportes efectuados por los expertos de los **países Sudamericanos** que tomaron parte del estudio se puede señalar que, en ese grupo, la regulación se encuentra en una fase de inceptión. Así, las normas legales que regulan el fenómeno se ubican en **Brasil y Colombia**, mientras que en **Argentina y Chile** no existe regulación, pese a que en el primero se han producido diversas iniciativas legislativas fallidas

Por su parte, el sistema **Canadiense** se caracteriza por la concurrencia de instrumentos, principalmente en el nivel federal (*telework policy framework – minimum standards legislation*) y empresarial (acuerdos colectivos).

En el único de los países que han tomado parte del presente estudio en donde se regula el fenómeno a través de un mecanismo de *soft law* es en el **Reino Unido** (*telework guidance*)

voluntary), el cual es fuertemente influenciado por las disposiciones contenidas en el Acuerdo Marco Europeo sobre Teletrabajo.

Respecto a la normatividad adoptada en el contexto de la Organización Internacional del Trabajo se ha detectado un bajo nivel de ratificación del Convenio 177. De los 15 países sometidos a comparación, tan solo dos reportan la incorporación de dicha norma en su orden jurídico: **Argentina** y **Bélgica**. En términos generales, y en adición a lo anterior, se acusa una reducida influencia del sistema jurídico internacional en las normas nacionales que regulan la materia con la única excepción de **Canadá**, en donde se reporta la existencia de avances con el fin de alcanzar el nivel de protección establecido en el Convenio. No obstante, en la **Unión Europea** el **Acuerdo Marco Europeo sobre Teletrabajo -AMET** ha ejercido influencia efectiva en los sistemas jurídicos de **Italia**, **Polonia** y **Reino Unido**

2. En Europa, y a pesar de las diferencias de cada sistema normativo en el uso del lenguaje, se puede afirmar que el teletrabajo es considerado mayoritariamente como una forma de organización del trabajo. En **Sudamérica**, Por su parte, y en forma explícita se destaca la legislación **brasileña**, recientemente expedida, que define el teletrabajo como la especie de un género más amplio: el trabajo a domicilio.

En cuanto a los elementos característicos de esta definición, existe consenso respecto al *elemento técnico*, esto es el uso de tecnologías de la información como un rasgo distintivo de esta forma de trabajo. Sin embargo, en lo que hace referencia a los elementos *locativo* y *temporal* se pueden ubicar diversas variables.

Con respecto al primero, **todos** los ordenamientos consideran que las labores enmarcadas en el régimen de teletrabajo deben ser ejecutadas primordialmente *fuera de las instalaciones de la empresa*. Sin embargo, tal afirmación es objeto de ciertas modulaciones destacables.

La primera de ella hace relación a la ejecución de la labor en sitios ajenos a la empresa, pero sometidos al control de aquella. En **Bélgica**, por ejemplo, el régimen legal que se estudia no puede ser aplicado cuando en el sitio donde se ejecuta la labor, aunque exterior a las instalaciones de la empresa, se encuentra bajo control del empresario (satélite). Por el contrario, en el caso **Alemania** (específicamente en la modalidad conocida como *teletrabajo rotativo*) es admisible la ejecución del teletrabajo en locaciones satélites.

En segundo lugar, algunos de los ordenamientos analizados admiten la aplicación de las normas sobre teletrabajo, aún cuando parte de las actividades sean ejecutadas en las instalaciones de la empresa. Es el caso del ordenamiento **español, francés, y portugués**, este último en el que la cuestión resulta cuando menos discutible. En Sudamérica, dicha concurrencia se plantea en **Argentina, Brasil y Colombia** (teletrabajo suplementario).

En el extremo opuesto a los mencionados sistemas se ubica el sistema **ruso** que no admite la concurrencia de teletrabajo y trabajo presencial.

Por su parte, en lo que respecta a la **temporalidad**, la mayoría de los ordenamientos establecen que el teletrabajo es una actividad de carácter **regular**, en oposición a aquellas incidentales, ocasionales o transitorias. Aun cuando en **Bélgica** se encuentra definido el teletrabajo **ocasional**, el mismo se encuentra reservado para situaciones excepcionales (*force majeure*). Por su parte, en Suramérica, en los países en los que existe regulación en la materia (**Brasil, Colombia y Chile**) no existe mención a la **regularidad** como un elemento característico.

Nuevamente, se destaca la regulación del fenómeno en el **Reino Unido**, que plantea una amplia categorización de teletrabajadores, útil para ilustrar una intersección entre diversas de las variables brevemente descritas, y dentro de la que se mencionan: i) *homeworker teleworker*, quienes ejecutan su trabajo principal desde el hogar; ii) *one-day homeworker teleworker*, trabajan desde el hogar una vez a la semana y ejecutan sus funciones desde otras locaciones durante el resto de la semana; iii) *call center teleworkers*, quienes trabajan desde centros especializados; y iv) *client-based teleworkers*, establecidos en las locaciones de los “clientes”

3. A excepción de **España e Italia (en Europa), y Brasil (en Suramérica)** ninguno de los sistemas analizados contempla diferencias entre teletrabajadores y trabajadores flexibles. Precisamente, en el sistema **británico** el teletrabajo es considerado como una de las diversas formas de trabajo flexible.

Las razones son diversas y se relacionan con la ausencia de criterios comunes para elaborar una distinción entre ambas categorías.

En **Italia**, la diferencia se plantea con relación a una nueva forma de trabajo denominada “*lavoro agile*”, la cual comparte características comunes con el teletrabajo. Sin embargo, la reciente expedición del Estatuto legal que lo regula impide la identificación explícita de dichas diferencias en decisiones judiciales, estudios legales o decisiones administrativas. En el caso de **España** la diferencia se plantea en función del **elemento locativo**. Así, en dicho ordenamiento, un teletrabajador se diferencia de un trabajador flexible como consecuencia de la ejecución preponderante de la actividad contratada en el domicilio o en el lugar por él/ella escogido. La expresión “preponderante” se encuentra afectada por cierto nivel de indeterminación que resulta problemático a efectos de la aplicación.

Por su parte, en el sistema brasileño, establece la diferencia entre los dos grupos comparados en términos de **temporalidad** (los trabajadores flexibles ejercen labores en forma discontinua) y del **elemento técnico** (exclusivo del teletrabajo)

4. En la gran mayoría de los casos analizados, la modificación de una relación laboral al régimen de teletrabajo exige el consentimiento del trabajador. Precisamente, en ordenamientos como los de **Bélgica, Italia** (en el caso de los trabajadores sometidos a régimen privado) o **Rusia** (de acuerdo a las provisiones generales del Código laboral) la modificación de condiciones contractuales con el fin de imponer unilateralmente el teletrabajo se encuentra expresamente prohibida.

La anterior premisa está sujeta a ciertas excepciones. Así, la imposición de teletrabajo está excepcionalmente permitida en **Francia** en casos de *forcé majeure*, epidemia o continuidad de la actividad económica de la empresa; y en **Italia**, en el caso de los servidores públicos, dado que la norma que regula la cuestión no asigna un carácter voluntario.

Otro tipo de excepción apunta al **derecho del trabajador** a acceder al teletrabajo. Es el caso de las regulaciones de **Lituania, Portugal y Reino Unido** en donde, el recurso a esta se justifica en determinadas circunstancias relacionadas con la vida familiar (embarazo, crianza, violencia doméstica, entre otros)

En **Alemania** se trata de una cuestión contingente que depende de las regulaciones establecidas en el respectivo acuerdo colectivo y el concepto que al efecto rinda el “*work council*”, el cual puede, inclusive vetar tal iniciativa.

Respecto al papel que desempeñan los acuerdos colectivos, el presente estudio ha sido útil para identificar los extremos dentro de la regulación Europea. Así, en **Francia** no existe disposición que permita imponer el teletrabajo por vía de acuerdo colectivo, mientras que en **Alemania** es viable dicha modificación, sin importar el trabajador asiente el cambio.

En el caso de los países sudamericanos analizados la tendencia es mucho más uniforme. Así, en todos éstos el teletrabajo requiere el consentimiento de los trabajadores, y solamente en **Colombia** se reporta la existencia de la posibilidad de imponer dicho régimen por vía de acuerdo colectivo.

De nuevo, en el caso de **Canadá**, las partes de la relación laboral son las encargadas de pactar las provisiones respectivas a la materia.

5. En los ordenamientos Europeos se ubican tres variables en términos de reversibilidad.

En primer lugar, aquellos países en los que la misma no es admisible por decisión unilateral de ninguna de las partes, debido a la naturaleza bilateral del contrato de trabajo, y por ende de las modificaciones que sobre los términos de éste se efectúan. Se trata de una tendencia mayoritaria presente en **Alemania, Bélgica, Francia, Italia –trabajadores**

privados, Polonia, Portugal, Reino Unido). En el caso de **España** la regla general es pactar la reversibilidad, y aun cuando el empresario está facultado para imponer la reversibilidad como titular del derecho de libertad de empresa, lo cierto es que está en dicho supuesto queda obligado a indemnizar.

En segundo lugar, se encuentran aquellos casos en los que la **reversibilidad** se relaciona con la existencia de un **periodo de prueba** en el tránsito de modificación de un nexo al régimen de teletrabajo. Así, en **Italia** (en el caso de los servidores públicos) y en **Polonia**, los trabajadores sometidos al régimen de teletrabajo cuentan con la posibilidad de retornar al sitio de trabajo bajo determinadas condiciones

Para finalizar se encuentra el modelo **español**, en el que el empleador está facultado para imponer la reversibilidad como titular del derecho de libertad de empresa. Lo anterior sin perjuicio del deber de indemnizar en caso de negativa del trabajador

En el caso de los países **Sudamericanos** en observación, y a excepción de **Brasil**, todos contemplan el **derecho a la reversibilidad a favor de los trabajadores**. En particular, el sistema legal chileno provee dicha garantía en el caso de aquellos sometidos al régimen de teletrabajo por efectos de un acuerdo colectivo

En **Canadá** se trata de una materia contingente, que depende del acuerdo entre las partes. Sin embargo, en el caso de los empleados públicos federales es posible dicha facultad mediante el envío de aviso previo al empleador

6. Las materias tratadas con mayor frecuencia en los diferentes sistemas jurídicos, relativas a prestaciones patronales y a condiciones de trabajo están referidas a: i) la provisión de elementos e instrumentos para la ejecución de trabajo a través de medios telemáticos, ii) el tiempo de trabajo, iii) Igualdad de trato entre trabajadores en las instalaciones de la empresa y teletrabajadores) iii) supervisión, y iv) el derecho a la privacidad del trabajador en dicha modalidad. Las especificidades en cuanto a cada materia son objeto de desarrollo en cada legislación.

En materia de tiempo de trabajo, se destacan, las regulaciones **italiana** y **colombiana** que excluyen expresamente a los teletrabajadores de las provisiones sobre trabajo en días de descanso, tiempo extra, o trabajo nocturno. Sin embargo en **Brasil** se plantea, por deducción de las demás reglas que integran el sistema, que el trabajo suplementario debe ser remunerado, en la medida que su ocurrencia queda registrada a través de los medios telemáticos

Respecto a los dos últimos aspectos mencionados (supervisión y privacidad), se ha podido identificar una eventual o potencial tensión en el supuesto del teletrabajo ejecutado en el domicilio del trabajador, para la cual, el sistema **polaco** establece una salvaguarda a favor

de este último, que condiciona la supervisión a la existencia de una manifestación de consentimiento.

7. En mayoría de los países analizados no existe tal regulación, diferente de aquellas reglas que imponen la obligación empresarial de proveer instrucción respecto al manejo de los elementos tecnológicos que esta forma de trabajo demanda. Así, la regla predominante es que dichos trabajadores gozan de las mismas prestaciones y prerrogativas establecidas a favor de aquellos que ejecutan su labor en las instalaciones de la empresa.

Dos variaciones destacables merecen particular atención dentro de los países estudiados. La primera de ellas en **España**, en virtud de la cual, se establece el derecho de los trabajadores de obtener información respecto a los puestos de trabajo disponibles en las instalaciones de la empresa. La segunda, en la legislación **británica** en la cual desarrolla dos conceptos de particular interés para la materia: i) “*core training*”, relacionado con las aptitudes que deben ser desarrolladas para efectos de laborar bajo esta modalidad (habilidades relacionadas con el trabajo, genéricas, elaboración de reportes escritos, comunicación telefónica y auto administración); y ii) el de primer empleo en las instalaciones de la empresa.

8. Las disposiciones que regulan la seguridad y salud en el régimen de teletrabajo se analizan en perspectiva comparada en relación con aquellas aplicables a las relaciones con los trabajadores que desempeñan funciones en las instalaciones de la empresa.

Algunos países como **Francia, Lituania, Portugal y Polonia** reportan la regulación del asunto mediante las mismas normas para uno y otro supuesto, aunque en el último país mencionado se aduce la exclusión de ciertas obligaciones en el caso de los teletrabajadores que desempeñan la labor en su lugar de residencia. En contraste, en el ordenamiento en el **ruso** existe un ámbito específico de protección considerablemente más reducido que se limita a la adopción de medidas de prevención en accidentes de trabajo, la implementación de órdenes impartidas por las autoridades de control en materia laboral, y a la provisión de seguridad social contra de accidentes de trabajo y enfermedades ocupacionales.

Ahora, ciertos temas son comunes en la regulación de la materia en los ordenamientos sometidos a comparación. Es el caso de la identificación del aislamiento como un riesgo propio del teletrabajo y la subsecuente regulación de medidas tendientes a evitar su ocurrencia (**Bélgica, Italia –trabajadores privados, y Portugal**), y la inspección de las condiciones bajo las cuales se ejecuta esta forma de trabajo (**Francia, Italia, y España**).

Finalmente se debe resaltar que el mayor nivel de protección se encuentra en la regulación del Reino Unido que establece directrices respecto al manejo de materiales peligrosos, el

uso apropiado y la seguridad de los equipos, las particularidades de los aparatos eléctricos, el deber del trabajador en cuanto al reporte de riesgos, la prestación de primeros auxilios en el sitio de teletrabajo, entre otros.

La regulación de los países sudamericanos analizados es mucho menos uniforme. En **Argentina**, por ejemplo, se regula la provisión de elementos de seguridad y la implementación y divulgación de instrumentos de regulación al interior de las empresas que utilizan teletrabajadores; en **Brasil** se regula el suministro de elementos de protección personal por parte del empleador; y en **Colombia** se plantea la externalización en el manejo de la seguridad y salud de los teletrabajadores a través de *Administradoras de Riesgos Laborales*.

En **Canadá**, los teletrabajadores se encuentran generalmente excluidos de ciertos beneficios en materia de seguridad y salud en el trabajo, en comparación con aquellos trabajadores que desempeñan labores en las instalaciones de la empresa. Sin embargo, la materia encuentra variaciones a lo largo de las diferentes provincias del Estado.

9. Con excepción de, **Polonia, Rusia y España**, todos los demás países europeos cuentan con regulación específicas en materia de protección de datos.

Las antedichas provisiones regulan aspectos similares de la materia como el deber de la empresa de informar al teletrabajador sobre las reglas de la compañía en el tratamiento de la información recolectada (**Bélgica, Francia, España**), la necesidad de aceptación escrita de aquél (**Polonia**), o el énfasis en cuanto a la protección del derecho a la intimidad del trabajador (**Italia y Lituania**).

De nuevo, el sistema **británico** contiene la mayor variedad de supuestos fácticos relacionados, dentro de los que se encuentra la protección de la información por parte de miembros de la familia del teletrabajador, el deber de suministrar material informático libre de virus, o el derecho a la privacidad fuera del trabajo.

En el segmento Sudamericano dicha materia solamente es tratada en el ordenamiento **Colombiano** respecto al deber del empleador de informar las restricciones relacionadas, y la sanción derivada del incumplimiento. En **Canadá** tampoco existe regulación, y se presume que la regulación ordinaria se extiende a la modalidad que se estudia.

10. En **todos los países europeos analizados**, los teletrabajadores cuentan con el derecho de participar en los cuerpos representativos, bien como electores o como representantes de los trabajadores. La única limitación en el ejercicio de estos derechos fue ubicada en **Alemania**, en donde para ser elegido dentro del órgano representativo de trabajadores (*work councils*) el trabajador debe haber prestado servicios cuando menos durante seis meses

Se puede resaltar la existencia de diversos mecanismos para facilitar el flujo de información hacia aquellos empleados que se encuentran fuera de la empresa con el fin de ejercer esos derechos, como el uso de medios electrónicos para facilitar la participación en los mecanismos de representación colectiva (**Portugal, Italia**), la necesidad de vinculación del trabajador a un centro de trabajo determinado (**España**), o la provisión de los medios tecnológicos a los órganos representativos de trabajadores, por cuenta del empleador, con el fin de comunicarse con los teletrabajadores (**Alemania**).

Por su parte, **ninguno de los países Sudamericanos** incluidos, ni en **Canadá** se reportan cuestiones regulatorias particulares, dentro de lo cual se debe resaltar que en este último la negociación colectiva se encuentra centrada en el sitio de trabajo, y de allí, la existencia de diferentes problemas asociados a la materia.

3. Summary table

3.1. Europe

	Belgium	France	Germany	Italy	Lithuania	Poland	Portugal	Russia	Spain	The UK
1. Is there any regulation on teleworking in your legal system?	Yes Collective agreement (based on EFAT), and ordinary Labor Law	Yes <i>Accord national Interprofessionnel (ANI)</i> and Labour Code	Yes Work agreements (employers and work councils) References made in several legal instruments	Yes. Public sector: Presidential Decree and Collective Agreements Private sector: Different legal statutes and collective agreements. EFAT is “transposed” by <i>Interconfederal Agreement</i>	Yes Labor Code Factual application of “ <i>home work</i> ” rules No references to ILO nor EU instrumens	Yes Labor Code (inspired by EFAT) and Specific act regulating telework	Yes Labor Code Complementary regulation by means of collective bargaining Regulation goes beyond EFAT	Yes Labor Code Academic interest in the EFAT	Yes <i>Estatuto de los trabajadores</i> A comprehensive regulation is required.	No Telework guidance: voluntary, non binding regulation based on EFAT

	Convention 177 ratified. Nor the convention neither the Recommendation exert influence on national law	Convention 177 unratified.			Convention 177 unratified.	Convention 177 unratified. ILO standards has not made an impact in national law Use of telework by grants aiming at encouraging telework.	Convention 177 unratified. Limited influence of Recommendation 184	Convention 177 unratified.		Convention 177 unratified.
2. What is the legal or judicial concept of teleworking often used in your country?	Form of organization and/or execution of work in the context of an employment contract - Mandatory use of ICT -Performance of duties	Form of organization and/or execution of work in the context of an employment contract - Use of ITC	Different categories: -Rotating telework - Mobile telework - Pure telework	Two concepts: - Public employment: i) Prevailing use of ITC, ii) Performance of activities outside the workplace	Form of work organization Work performed in a place different from employer's premises. Full or part time.	Form of work organization Work performed in a place different from employer's premises.	Form of work organization Conceptual difference between telework and homework Elements: i)Performance of duties	- Use of ITC - <i>Remote work</i> -Frequency: Combination of work in and out of employer's premises is not allowed	One akin to that provided by ILO Convention 177. Not mention to use of ITC Focused on telework when	None (telework guidance transcripts EFAT definition) i) ICT ii) Full or part time iii) Mobile workers

	outside the employer' premises on a regular or not incidental basis	- Performance of duties outside the employer' premises on a regular and voluntary basis		Private employment (EFAT): i) Form of organization and/or execution of work in the context of an employment contract; ii) Use of ITC, iii) Performance of duties outside the employer' premises on a regular basis	Use of ITC	Regular basis Use of ITC Report of results by electronic means	outside the employer' premises ii) Use of ITC Written agreement is required Debate upon partial telework.		shared with work on site Work preponderantly performed at worker's residence	Classification:- homeworker teleworker, - one day homeworker teleworker - Home based teleworker - Call centre teleworkers -Client-based teleworkers
3. Are there differences in the national legal system between teleworkers and flexible workers?	No Telework is applicable irrespective of flexible working agreements	No No criteria to distinguish between them. Regular work and teleworkin	N/A	Yes <i>Lavoro agile</i> Conceptual problem to distinguish between teleworking and lavoro agile	N/A	N/A	N/A Flexibile arrangements regulate relations in employer's premises	N/A No criteria to distinguish between them.	Yes Flexible work: performed at worker's residence but not in a preponderant way.	N/A No criteria to distinguish between them. Telework is regarded as other types of flexible works

		g can be combined.							Flexible work is excluded from telework regulations	
4. Does the implementation of telework require consent of workers? Can the employer (or the parties via collective bargaining), impose (temporary or definitely) telework on workers upon certain entrepreneurial causes? In such case,	Yes Imposition is prohibited	Yes Written agreement is mandatory. It cannot be modified by collective agreement Workers are entitled to refuse telework Telework can be imposed on exceptional circumstances	Yes/No Depending on the agreement	Yes Pursuant to Framework Agreement applicable in public sector Imposition is prohibited	Yes Worker's refusal is not a valid cause to finish contract Employer cannot refuse request of teleworking in specific cases, except from different circumstances	Yes Mutual consent is required Telework can be implemented during employment relation or at the end of it. Telework cannot be used as consequence of termination of employment conditions neither as an	Yes Mutual consent is required Telework can be implemented during employment relation or at the end of it Workers are entitled to unilaterally decide teleworking under specific circumstances. Denial of the right due to lack of	Yes Contracts cannot be modified by the employer except in specified circumstances <i>Change of organizational or technological conditions.</i> Modification cannot undermine condition in comparison with those	Yes Exception: telework can be imposed when justified by different reasons.	Yes Mutual consent is required (individual or collective) Exception: parents of disabled children (right to call for flexible work including teleworking). Telework cannot guaranteed under this provision. Change in the particular of

<p>please specify them</p>						<p>employer' assignment on a temporary basis</p> <p>Refusal to undertake telework does not enable contract extinction.</p>	<p>resources or compatibility</p> <p>Limit on telework duration (3 years). Workers have a right to "denounce" the agreement.</p>	<p>collectively bargained</p>		<p><i>employment</i> is required</p>
<p>5. Can a teleworker or an entrepreneur unilaterally decide to return to a position within the enterprise's premises?</p>	<p>No</p>	<p>No.</p> <p>The matter is regulated pursuant to employment contract</p> <p>Exception in case of probationary period of telework.</p>	<p>Yes</p> <p>Most of the agreements establish such right</p>	<p>Different treatment.</p> <p>Public sector: Yes. Employers and Employees after overcoming probationary period.</p> <p>Private sector: No. The return to a position within the</p>	<p>No.</p> <p>Decision about use of teleworking is bilateral</p>	<p>Yes</p> <p>Probationary period specifically addressed at telework (first 3 months)</p> <p><i>Notice to change existing terms of employment (after three months)</i></p>	<p>No</p> <p>The return to work in the employer premises depends on the renewal of telework agreement.</p>	<p>No</p> <p>It implies amendment or conclusion of employment contract.</p>	<p>Yes</p> <p>As a general rule, such matter is regulated by agreement.</p> <p>Worker' refusal triggers compensation.</p>	<p>No</p> <p>Mutual consent is required</p>

		Teleworkers have a right to be preferred to take or retake regular positions related to its qualifications or professional skills.		employer's premises cannot be unilaterally decided by any of the parties.						
6. What provisions on labor conditions (privacy, working time, <i>inter alia</i>) are established regarding teleworkers and not for regular workers?	Providing employees with appropriate means to perform telework.	Providing employees with appropriate means to perform telework. Annual Assessment on work conditions. Specific regulation on work time, and work	<i>Coodetermination.</i> Variable patterns. Factual controversy regarding agreement on working time, data protection and right to privacy	Implementation of telework Working time regulation	Compensation of additional expenses when afforded by employees. Employer cannot record the working time of teleworkers. Autonomous distribution	Additional obligations on the employer: Providing equipment, insurance, training, assistance -Employee can Labour conditions:	Additional obligations on the employer Providing equipment (legal presumption on ownership of tools) and training -Specific privacy protection	Specific provisions must be agreed on the employment contract	Same rights than workers on site. Exception: inherent rights to work on site Right to disconnect as a matter of interpretation.	Same rights than workers on site. Specific provisions must be individually or collectively agreed. - Workplace - Hours of work

		<p>organization.</p> <p>Same rights in relation to regular workers.</p>			<p>of working time (respecting maximum working time and minimum rest period).</p> <p>Differences are related to right to privacy. (employee and family members)</p> <p>Inspection of telework by employer. - Object legally defined -It depends on worker's consent</p> <p>-It cannot affect employer neither family member's privacy</p>	<p>afforded by law.</p>			<p>- Additional Responsibilities and duties</p> <p>- Expenses</p> <p>- Acces to the working area</p> <p>-Equipment</p> <p>-Insurance</p> <p>Holiday and sick leave</p> <p>-Teleworking cease and return to employer's premises</p>	
<p>7. Is there any concrete regulation on training and professional promotion</p>	<p>No</p> <p>The same than those for regular workers</p>	<p>Yes</p> <p>Specific training on equipments, and</p>	<p><i>Coodetermination</i></p> <p>Prominent rol of Work councils</p>	<p>No</p> <p>Training occupational health and safety</p>	<p>No.</p> <p>Same regulations applicable to regular workers</p>	<p>No.</p> <p>Same regulations applicable to regular workers.</p>	<p>No.</p> <p>Equal treatment</p>	<p>No</p>	<p>Yes</p> <p>Right to get information on</p>	<p>Yes. Both</p> <p>Professional promotion. EFAT rules</p>

<p>in regard to teleworkers ?</p>		<p>work management in teleworking. Same training than that set for regular workers.</p>		<p>The same than those for regular workers (EFAT)</p>		<p>Specific rule on prohibition of discrimination against teleworkers</p>			<p>vacancies on the employer's premises Essential role of collective representations.</p>	<p>Training: -Core training: job-related skills, generic skills, report-writing skills, effective telephone communication skills and management skills. - New recruits in the first job ought to be on site - Specific training on safety and efficiency at work</p>
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<p>8. What provisions on work health and safety are established regarding teleworkers ?</p>	<p>Inspection of labor conditions.</p> <p>Taking necessary measures to prevent worker's isolation</p>	<p>Same regulations applicable to regular workers.</p> <p>Acces for employer, worker's representatives and administrative authorities at the spot where telework is performed</p> <p>Inspection of labor conditions.</p>	<p>Right to <i>codetermination</i></p> <p>Work councils are entitled to:</p> <ul style="list-style-type: none"> - Monitor application of labor standards. - Require appropriate action when provision regarding ergonomics are not complied <p>More than 50% of the agreements set provisions regarding teleworkplaces and</p>	<p>Public sector: Acces to the spot where telework is performed is regulated by collective agreement.</p> <p>Private sector:</p> <ul style="list-style-type: none"> - Provide information about use of visual display units - Acces for employer, worker's representatives and administrative authorities at the spot where telework is performed 	<p>Same regulations applicable to regular workers.</p>	<p>Same regulations applicable to regular workers.</p> <p>Work performed from home excludes certain obligations.</p>	<p>Same regulations applicable to regular workers.</p> <p>Protection against isolation by encouraging contact with other workers</p>	<p>Narrower scope of application in comparison with regular workers (except when they are agreed on labor contract).</p>	<p>Protection</p> <p>Vagueness in regulation</p> <p>The employer has the duty of informing teleworkers on rules regarding health and safety prevention.</p> <p>Acces for employer, worker's representatives and administrative authorities at the spot where telework is performed</p>	<p>British legislation apply to teleworkers "<i>so far as is reasonably practicable</i>"</p> <p>Full implementation of EFAT</p> <ul style="list-style-type: none"> - Risk assessment (including family members, neighbours, visitors and invitees in case of home teleworkers) <p>Furthermore, protection covers:</p> <ul style="list-style-type: none"> i)hazardous material handling
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			inspection of them	<ul style="list-style-type: none"> - Inspection of labor conditions - Prevention of isolation and guarantee of socialization 					<p>Control is subject to prior notice and worker's consent (Inviolability of the home).</p> <p>Employer is relieved of responsibility when labor conditions cannot be controlled.</p>	<ul style="list-style-type: none"> ii) appropriateness of equipment iii) provision of safe equipment iii) specificities regarding electric equipment Additional aspects. -Employee's duty of reporting hazards -Providing First aid (employers) -Minimum requirements of work stations, plan breaks, change of
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										activity, eye test, health and safety training
9. Is there any concrete regulation on “data protection” as regard work performed by teleworkers ?	No Same for regular workers Data Protection is carried out by the employer Teleworker ought to be informed about rules in the company	Yes The employer has to provide workers with information about: - Legal and internal rules as regard data protection and confidentiality - Restriction in the use	Yes Labor law, legislation on data protection and the act on homework (self-employed)	Yes Focused on respect of worker’s privacy	Yes Focused on respect of worker’s privacy General rules also apply to teleworkers.	Yes Employers set out the rules on the matter. Employees accept such rules by signing up.	No Same rights applicable to regular workers	No	No Employer: Duty to provide information. Workers: General duty of due diligence.	Yes Employers and teleworkers should ensure that other member of the household should not have access to personal data Parties should ensure that materials are virus free

		<p>of equipments</p> <p>- Prohibition to gather and spread illegal material through internet</p> <p>- Sanctions in case of unfulfilment</p>								Right to privacy out-of hours	
<p>10. Is there any particular regulation concerning collective representation of teleworkers in your legal system? Are they taken into account as electors within the process to</p>	No	<p>Yes</p> <p>Employer has to inform teleworkers about these rights</p>	<p>Yes</p> <p>Work councils</p> <p>Teleworkers are entitled to elect work council's representatives.</p> <p>To be elected in a work</p>	<p>Yes.</p> <p>Public sector: EFAT.</p> <p>- Right to be informed</p> <p>- Bulletin board for union use and e-mails to contact workers representatives</p>	No	No	<p>Yes</p> <p>Right to elect and to be elected in such bodies. Electronic means can be used to participate in collective representation.</p>	No	<p>No</p> <p>Workers are to be enrolled on a specific work center.</p> <p>Factual problem, due to the lack of specific provisions</p>	No	<p>Same provisions applicable to regular workers</p>

<p>elect bodies representing workers? Can they be elected as representatives of workers?</p>			<p>council a teleworker has to have been working for six months.</p> <p>Employers have to provide work councils with technologic means to communicate with teleworker, and all the means to carry out its duties.</p>	<p>Private sector: Teleworkers hold the same collective rights then regular workers. Teleworkers can elect and be elected as worker's representatives</p>						
<p>11. Other relevant aspects of the regulation regarding Teleworking</p>	<p>Written agreement is required. Cost-compensation in absence of it.</p>			<p>Low rate of use. Last country in diffusion of telework</p> <p>Different regulations</p>		<p>Collective bargaining in order to set conditions of telework.</p>	<p>Marginal number of teleworkers</p> <p>Current measures aimed at</p>			<p>Growing form of flexible employment</p> <p>“Regulation” (telework guidance) of</p>

				<p>according to the level (sector, company)</p> <p>Public initiatives addressed at promoting telework</p> <p><i>Lavoro agile</i> as a way of promoting telework</p>		<p>Legal procedures discourages resorting to telework.</p> <p>No case law</p>	<p>promoting telework</p>			<p>additional aspects:</p> <ul style="list-style-type: none"> - Worker's right to privacy - Telework equipment - Organization of work - Taxation <p>Nor judicial decisions neither collective agreements on the matter</p>
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3.2. South America

	Argentina	Brasil	Colombia	Chile
<p>1. Is there any regulation on teleworking in your legal system?</p>	<p>No legal regulation</p> <p>Administrative rules (companies' duties when implementing telework)</p> <p>Convention 177 ratified.</p>	<p>Yes</p> <p>Convention 177 unratified. No data regarding influence of Recommendation 198. However the concept of telework is strongly linked to that set by ILO</p>	<p>Yes</p> <p>Convention 177 unratified. Recommendation 184 exerted influence on the national legal order</p>	<p>No</p> <p>Legislative body did not pass legislation on the matter</p> <p>Convention 177 unratified.</p>
<p>2. What is the legal or judicial concept of teleworking often used in your country?</p>	<p>None</p> <p>Law project: Performance of duties (totally or partially) in the worker' home or any other spot different from the employer' premises. Use of ITC.</p> <p>At least one day by teleworking, and two on site.</p> <p>Frequency matters in order to set the sort of telework.</p>	<p>Provision of services preponderantly out of the employer' premises by using ITC, which is not external work</p> <p>Homework (<i>gender</i>) made up by several <i>species</i>:</p> <ul style="list-style-type: none"> - telework - "home office work" - "anywhere office work". <p>The spot where work is performed is not a relevant aspect to define telework.</p>	<p>Provision of services out of the employer' premises by using ITC</p> <p>Classification:</p> <ul style="list-style-type: none"> - <i>Autonomous</i> - <i>Mobile</i> - <i>Supplementary</i> 	<p>None</p> <p>Legal studies have define it as a provision of services out of the employer' premises by using ITC</p>

		Temporal aspect is not defining of telework.		
3. Are there differences in the national legal system between teleworkers and flexible workers?	N/A	Yes Use of ITC	No No flexible work as a separate category in the legal order.	No
4. Does the implementation of telework require consent of workers? Can the employer (or the parties via collective agreement/collective bargaining), impose (temporary or definitely) telework on workers upon certain entrepreneurial causes? In such case, please specify them	Yes Teleworker' status cannot be modified. Workplace is considered an essential element of employment contract.	Yes Written agreement, otherwise it is invalid	Yes Telework can be established by means of a collective agreement	Yes Work performed out of employer premises can be established by means of a collective agreement
5. Can a teleworker or an entrepreneur unilaterally decide to return to a position within the enterprise's premises?	Yes Just in cases of those contracts modified to implement telework	No. Under specific conditions: - Worker's consent - Delivery of notice in advanced - Register - Not detrimental to the worker' interests.	Yes It is a faculty for the employer and a right for the employee. Two different hypothesis: i) <i>On site workers turned into teleworkers</i> : hold a right to go back to perform activities in the employer' premises. Employer can set the conditions in order to carry out the return.	Yes When the work is performed out of employer premises because of collective agreement, workers can go back working to the employer' premises at any time by delivering

			ii) Teleworkers hired as such cannot ask for a position in the employer' premises	notice at least 30 days before
6. What provisions on labor conditions (privacy, working time, <i>inter alia</i>) are established regarding teleworkers and not for regular workers?	Worker' consent to carry out control in his/her home.	<p>Conflict of rules regarding limits on worktime in case of telework (Constitution-Law)</p> <p>Right to get overtime remunerated (as a matter of interpretation).</p> <p>Acquisition, supply and support of technologic equipments to perform telework is to be regulated by written agreement.</p> <p>Provided elements are not part of the remuneration</p> <p>Companies have to supply elements to telework or refund the expenses made by the worker</p>	<p>- No application of rules regarding worktime, work in Sundays and holidays, and night work either (right to get overtime paid afforded by law).</p> <p>Technologic equipments , technic support, connection, internet, connectivity, electricity are to be supplied by the employer.</p> <p>Right to get paid, when duties cannot be performed as a consequence of the omission in the supply of technical means</p> <p>- The employer has to implement a service in order to provide attention to teleworkers in case of accident or sickness.</p>	N/A
7. Is there any concrete regulation on training and professional promotion in regard to teleworkers?	No The same than those for regular workers	No	No Principle of equal treatment Employers must provide for	N/A

			training in the proper use of technical means	
8. What provisions on work health and safety are established regarding teleworkers?	<p>-Provision of specific security elements.</p> <p>- Experts to check out labor conditions</p> <p>-Delivery of guide of a manual of best practices in the matter.</p>	<p>Instruction in the matter on the employer. Workers must appoint themselves to follow such guidelines.</p> <p>Telework does not exclude compliance with rules on ergonomics, health and safety, and surveillance to keep a healthy work environment</p> <p>Personal protection equipments are to be gratuitously supplied by the employer</p>	<p>Institutions legally responsible for managing work health and safety (<i>ARL</i>) must promote adjustment of norms to telework.</p>	<p>No</p> <p>The same than those for regular workers</p>
9. Is there any concrete regulation on “data protection” as regard work performed by teleworkers?	<p>No</p> <p>It is stated the applicability of different legal regimes (internal, and general)</p>	No	<p>Yes</p> <p>The telework contract ought to include computer security measures to be complied by the worker</p> <p>The employer must provide information about restrictions in the use of data protection and sanctions to be imposed in case of not fulfilment</p>	No
10. Is there any particular regulation	<p>No</p> <p>Teleworkers are considered</p>	No	No	No
		General rules	General rules	General rules

<p>concerning collective representation of teleworkers in your legal system? Are they taken into account as electors within the process to elect bodies representing workers? Can they be elected as representatives of workers?</p>	<p>to be under the umbrella of dependent workers</p>		<p>Unions have to be taken into account in the design of policy aimed at fostering teleworking</p>	
<p>11. Other relevant aspects of the regulation regarding Teleworking</p>	<p>A Telework Commission was created in 2003 as an organ to discuss, and dialogue related matters.</p> <p>PROPET. Programme adressed at encouraging and easing telework application.</p> <p>Legislation concerning telework has not passed despite being filed five times.</p> <p>Absence of official statistics on the matter</p>	<p>Phenomenon regulated very recently</p> <p>Absence of official statistics on the matter</p> <p>Productivity demanded to teleworkers in the public sector is higher than that for workers on site</p>	<p>Public policy which fosters telework</p>	<p>Not frequently used as a matter of fact</p> <p>Not data regarding the rate of workers on it</p>

3.3. North America

	Canada
1. Is there any regulation on teleworking in your legal system?	<p>Yes</p> <p>Telework policy framework (federal government)</p> <p>Federal minimum standards legislation (Labour Code)</p> <p>No legislation or judicial law in provinces.</p> <p>Collective agreement</p> <p>Convention 177 unratified.</p> <p>Taking steps to bring employment into conformity with the convention</p>
2. What is the legal or judicial concept of teleworking often used in your country?	<p>None</p> <p>Different concepts developed by social actors</p> <p>-Flexible arrangement</p> <p>-Method of work</p> <p>-Performance away from central offices, a telework place, home, satellite offices</p>
3. Are there differences in the national legal system between teleworkers and flexible workers?	<p>No</p>
4. Does the implementation of telework require consent of workers? Can the employer (or the parties via collective agreement/collective bargaining), impose (temporary or definitely) telework on workers upon certain entrepreneurial	<p>-No restriction at signing a contract.</p> <p>-During the course of employment: terms of the contract</p> <p>- <i>Constructive dismissal</i>: Employee may be entitled to notice damages</p>

causes? In such case, please specify them	
5. Can a teleworker or an entrepreneur unilaterally decide to return to a position within the enterprise's premises?	<p>Contingent matter (it depends on agreement)</p> <p>Yes, in te case of federal public service, by delivering notice)</p>
6. What provisions on labor conditions (privacy, working time, <i>inter alia</i>) are established regarding teleworkers and not for regular workers?	<p>None</p> <p>Same regulation</p>
7. Is there any concrete regulation on training and professional promotion in regard to teleworkers?	<p>None</p> <p>Public Service Alliance of Canada makes some suggestions to be included in collective agreements (breach of security, supervision of teleworkers)</p>
8. What provisions on work health and safety are established regarding teleworkers?	<p>Teleworkers are excluded from many occupational and safety benefits</p> <p><i>Ontario.</i></p> <p>-Coverage depends on the industry within which the labor is carried out.</p> <p>- Workers do not have the benefits associated with occupational health and safety legislation</p> <p><i>British Columbia:</i></p> <p>Workers Compensation act allows for enacting protecting legislation including teleworkers under the condition of working in an industry</p>
9. Is there any concrete regulation on "data protection"	<p>None</p> <p>Presumably regulations on the matter extend to telework.</p>

<p>as regard work performed by teleworkers?</p>	
<p>10. Is there any particular regulation concerning collective representation of teleworkers in your legal system? Are they taken into account as electors within the process to elect bodies representing workers? Can they be elected as representatives of workers?</p>	<p>None</p> <p>Collective bargaining model is <i>workplace centric</i></p> <p>-Telework creates <i>factual</i> (dispersion and communication) an legal (status) problems for worker organization and union certification</p> <p>The matter is left to unions</p>