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REMOTE WORKING/TELECOMMUTING AND THE OFFICE REAL ESTATE MARKET

The coronavirus pandemic has demonstrated the effectiveness of remote working. It showed that this way of performing work can be accepted in many industries. There are even opinions that due to the fact that the pandemic has revealed the efficiency of remote working, there will be no return to work which we knew before the epidemic, and thus many companies will limit their rental needs by switching - permanently - to a greater extent to remote working or telecommuting. Although it is difficult for lawyers to argue with such claims, it should be noted that the currently observed phenomenon of mass transition to the remote work system takes place under special legal conditions arising from the Act of March 2, 2020 on special solutions related to prevention, counteraction and eradication of COVID-19, other contagious diseases and crisis situations caused by them. These provisions are temporary, and after their expiry, remote work will be a subject to legal regulations, making permanent work organization as a remote work will not be as simple as it is today. As a consequence, it may turn out that the real impact of the currently observed phenomenon (trend?) on the office real estate market will not be that significant.

In accordance with art. 3 of the aforementioned Act, the employer may order the employee to perform, for a fixed period, work specified in the employment contract, outside the place of its permanent performance (remote working). This solution was introduced only for the time of pandemic. Under normal circumstances, the organization of work in a remote work system is not a rule. In principle, the employee performs work in the workplace and only from time to time the employer allows him to work remotely, for example as home office. This way of performing work is actually not regulated by the provisions of the Labor Code. The only related legal institution is performing work in the form of telecommuting which, however, does not coincide with the common understanding of remote working. In the event of an employee providing work in a remote form, the general provisions on employment relationship shall apply, and the parties shall each time determine the terms and conditions under which they will work remotely.

Alongside to the commonly mentioned benefits of introducing work organization as a remote work, i.e. the ability to flexibly perform duties by an employee or

saving time usually spent by an employee on commuting to the office, in practice there are also many problems and doubts. For example, remote working is associated with problems of working time control, because in the case of remote working, the employer does not have a statutory legal basis to carry out the inspections at the place of work by the employee. In practice, an important problem is also securing documentation and confidential information, necessary to perform work.

Another, more formal option for organizing work in a remote form, is telecommuting. It is a form of work performance which is formally and in detail laid down in the Labor Code. In accordance with art. 67⁵ of the Labor Code, work can be performed regularly outside the workplace, using electronic means of communication within the meaning of the provisions on the provision of electronic services (telecommuting), and a telecommuter provides the employer with work results, in particular via electronic means of communication. However, it should be remembered that on the employer who decides to entrust an employee work in the form of telecommuting, the legislator imposes a number of obligations. When introducing telecommuting in a company, the employer must include this information in internal regulations, such as workplace rules and regulations or a collective labor agreement. The employer must adapt internal legislation to the newly introduced employment rules. As indicated in art. 67¹¹ of the Labor Code, the employer is also obliged to provide a telecommuter with equipment necessary for telecommuting, equipment insurance, coverage of costs related to its installation, service, operation, maintenance, providing technical assistance and necessary training in the use of this equipment, etc. It is also practiced to conclude a separate contract with a telecommuter, which regulates the scope of insurance of the employer's equipment necessary for the performance of work, the manner and form of control of work performance, compliance with health and safety rules, principles of information security provided to the employee and similar issues. The employer has the right to control the work performed by the telecommuter. It should be noted, however, that if the telecommuter provides work in the place of residence, the employer should obtain prior written consent from the employee to carry out the control.

Considering the above, the employer entrusting the employee with work in the telecommuting system will have to take into account not only a large number of formalities, but also the need to incur specific, often high costs of specialistic equipment, software or other work tools. Also in this case, there will be problems with ensuring confidentiality, as well as security of documentation and information entrusted to the employee in connection with her/his work.

Although, it seems that in such extraordinary situation of a pandemic and in the light of the so-called special purpose act, remote work turned out to be a good solution that in most cases maintained a relatively normal functioning of

companies, in the long run the indicated requirements, and above all the costs associated with their fulfillment may mean that switching to remote work mode, including telecommuting, will not be a phenomenon as widespread as it is currently believed and that this factor will not have a significant impact on reducing the demand for office space.

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