

WORDS BEYOND THE PANDEMIC: A HUNDRED-SIDED CRISIS

Coord.: José Reis
A collective work by CES

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Centro de Estudos Sociais
Universidade de Coimbra



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REMOTE WORKING

Dora Fonseca

The performance of remote working activities, defined as the provision of work carried out within a relationship of legal subordination, usually outside the company and through the use of Information and Communication Technologies (ICT), is regulated by Articles 165 to 171 of the Portuguese Labour Code (LC). The employee is granted the same rights and duties as other workers, namely with regard to training and promotion or career advancement, limits to the normal working hours and other working conditions. Among other aspects, the employer is responsible for providing adequate training on the use of ICT inherent to the activity.

There are several problems associated with remote working, especially when considering the lockdown resulting from the COVID-19 pandemic. First, the issue of ownership of work tools and responsibility for their installation, maintenance and payment of related expenses. The LC assumes the employer's ownership and responsibility for them in case of omission. This burden now seems to have fallen mainly on the employees, in particular with regard to payment of the related expenses. Second, having adequate ICT training can be an obstacle in many situations. Added to this is the increased danger of invasion of the private sphere when overseeing work performance.

In the current context, remote working has gone from being residual and limited to very specific activities, to being compulsory, except in situations of insurmountable incompatibil-

ity. If, on the one hand, the viability and possibilities opened up by remote working have been demonstrated, on the other hand, the challenges to its regulation have also become clear.

Most Collective labour regulation instruments do not mention remote working, thus leaving it to the LC, which can open the door to employer discretion. Hence the need to stimulate collective bargaining in the context of remote working. It is up to the social partners involved in such bargaining to establish more favourable conditions than those defined by the LC. In particular, it is important to reinforce and detail the employer's responsibility in relation to the means and expenses for carrying out the activity.

On the other hand, collective regulation must safeguard situations where it is necessary to reconcile remote working with family support, for example, by reducing working hours without significant loss of pay. Although the LC provides for the right of workers with children of up to three years of age to work remotely, the difficulties in reconciling work and care are countless, so solutions such as the one presented above are necessary.

There is also the issue of coverage of the conditions obtained through collective bargaining. Given the low density of trade unions but also of employers' organisations, extension mechanisms are of particular importance as a means of ensuring that the negotiated conditions apply to more workers.