

## OFFICIAL MEXICAN STANDARD NOM-037-STPS-2023 REGULATING TELEWORKING ISSUED.

On June 8, the Official Mexican Standard NOM- 037-STPS-2023, Teleworking-Conditions for Safety and Health at Work (“NOM-037”), issued by the Mexican Ministry of Labor and Social Welfare, was published in the Official Gazette. This official standard will become effective 180 calendar days after its publication, that is, as of December 5, 2023.

NOM-037 will be mandatory for those who hire people under the Telework modality. The definition of Telework is in line with the Federal Labor Law, being understood as a form of labor organization consisting in the performance of activities in places other than the work center –so that the physical presence of the employee is not required– using information and communication technologies for supervision and contact with the employer. It should be noted that NOM-037 provides that a specific address must be established for this modality to be effective. This implies that people will not be able to render services from places such as cafeterias or restaurants and, in case they decide to relocate, the company must validate the conditions of each new address.

Another relevant point is that it defines the right to disconnection. In this regard, NOM-037 establishes that it refers to the right of employees to disconnect from work (including disconnection from any technology) and refrain from participating in any type of communication with the workplace at the end of the workday, as well as during non-working hours, vacations, holidays, leaves of absence and during breaks agreed between the parties.

NOM-037 addresses the safety and health conditions in the places where teleworkers perform their activities, to prevent accidents and diseases, as well as to promote a safe and healthy work environment. In this regard, companies that decide to implement the Telework modality should assume the following obligations:

1. Implement, publish, and maintain a Telework Policy. This policy should contain, among others, the terms to perform Telework in a safe and healthy way, in addition to indicating the mechanisms and rules of contact between the company and the employees. It should also define the mechanisms in case it is necessary to return to a commuting modality, even if it will be temporary.
2. Have a checklist of safety and health conditions in Telework. This is a tool to assess whether the place for Teleworking has safe and healthy conditions. This checklist seeks to evaluate the suitability of candidates to perform under this modality, as well as the physical space proposed to perform the work, considering ergonomic risk factors, lighting, ventilation, and noise, among others. Companies must have evidence that they validated the conditions indicated in the list, either through a visit to the proposed site, or by allowing the candidate to fill out the list to be subsequently reviewed by the Company. In both cases, photographic or video evidence should be generated. Companies should also implement periodic checks and document

them in new follow-up lists.

3. Have an updated list of people who perform Telework. This list must contain, among other elements, the activities to be performed, their job profile, the percentage of time they will be teleworking, as well as the computer equipment and furniture that is granted by the company, if applicable. Regarding the last point, NOM-037 endorses the obligations of the Federal Labor Law in connection with the provision of a computer, printer, toner, chair, as well as any other tool that guarantees good posture and ergonomics to the teleworker.
4. Provide training for teleworkers. Employers should provide at least one training per year focusing, among others, on the recognition of the different types of risks due to hazardous and unsafe conditions, ergonomic risk factors, psychosocial risk factors, understanding and implementation of the Telework Policy and the management of information technology.

People working under this modality will also have to comply with certain special obligations, as follows:

1. Facilitate a physical verification of the safety and health conditions of the proposed place of work before performing under the modality of Telework and, once in it, to facilitate periodic verifications.
2. Comply with the Telework Policy.
3. Inform of any alteration of the conditions of safety and health at work, or case of force majeure, that prevent the performance of Telework.
4. Safeguard and keep in good condition the equipment (including computers), materials, tools and furniture provided by the employer to perform Telework.
5. Comply with the provisions on occupational health and safety, and to undergo the medical examinations required by the applicable standards.
6. Comply with the data and information protection policies and mechanisms established by the employer in the performance of its activities, as well as the restrictions on their use and storage.
7. Inform the employer in writing and in advance of any permanent or temporary change of address.
8. Participate in the processes of risk information and training related to their Telework activities provided by the employer, as well as in face-to-face or virtual meetings organized to avoid social isolation.
9. Report any work-related accidents they may suffer.

The Health and Safety Commission of each company will have an important role in the implementation of the NOM-037, since it will be in charge of defining, drafting, evaluating, and authorizing the “Checklists of safety and health conditions in Telework “ applicable to each address where teleworkers perform their activities. It will also supervise the collection of the records of the tools and computer equipment provided to teleworkers.

Employees may only perform under a Teleworking modality after a verification of the health and safety conditions applicable to the place where they intend to perform their activities. If the proposed place does not comply with the safety and health conditions, Teleworking should not be authorized.

NOM-037 includes examples and guides to facilitate its application. However, companies must have all the documents required at each point of compliance, which cannot be prepared entirely from these annexes, as they are linked to obligations derived from other legal regulations.