



## **ATYPICAL LABOR RELATIONS – LEGAL REGULATION OF TELEWORKING.**

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<b>Article history:</b>	<b>Abstract:</b>
<b>Received:</b> September 20 <sup>th</sup> 2023	This article describes the popularization of teleworking, which today is one of the atypical forms of work, as well as the regulation of this form of employment by the legislation of Uzbekistan, the new Labor Code. The concept of teleworking, working hours and rest time of teleworkers, vacation, the procedure for remuneration for their work, forms of mutual cooperation between employer and employee are covered. The article also describes the features of organizing the work of remote employees, the procedure for concluding and terminating an employment contract with them.
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Teleworking is a form of labor organization in which work is carried out by an employee using information and communication technologies outside the workplace or the territory of the owner, authorized body.

The number of teleworkers is increasing year by year. Teleworking is becoming more common now. The pandemic has ushered in a new mode of work- remote work, teleworking, or telecommuting. Before the pandemic, there was a hesitancy in allowing employees to telework, and remote jobs were far and few to find. Many companies didn't want to or didn't have the time to experiment with the teleworking model, as the initial office setup was working just fine. Companies were also apprehensive that productivity might take a dip<sup>1</sup>. What started as a temporary work model, is being looked at as a permanent one, as many companies, see the many advantages of teleworking related to cost and infrastructure savings. Employees too are choosing to work from home, as a healthy work-life balance is possible and costs are significantly reduced.

After the Covid 2019 pandemic, this figure increased even more. In order to prove this point, I would like to refer to some statistics.

As of March 2020, remote work has skyrocketed. The number of teleworkers increased by 42% in the US,

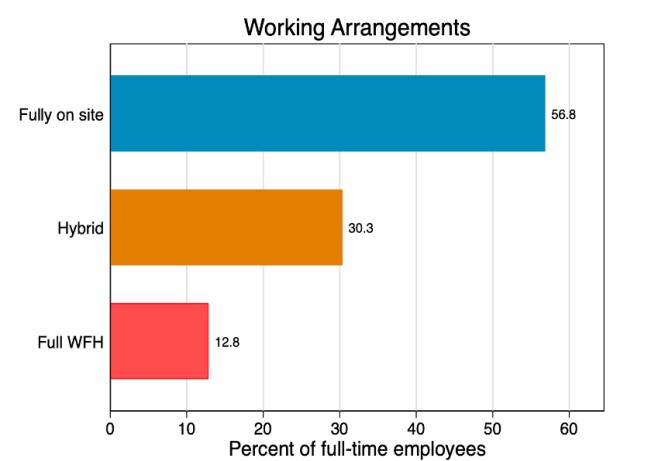
40% in Europe, 32% in Australia, 24.9% in South Korea and 10% in Japan<sup>2</sup>.

<sup>1</sup> Teleworking And Its Benefits And Challenges For Employers And Employees <https://www.usemultiplier.com/teleworking/benefits-and-challenges>

<sup>2</sup> 21+ Surprising Remote Work Statistics for 2022 — a Global Perspective. <https://www.paymoapp.com/blog/remote-work-statistics/>



While in 2019, an average of 7% of paid workdays were worked remotely, this climbed to 28% by September 2023. By August 2023, 13% of full-time employees were fully remote, 57% were full-time on-site, and 30% were in a hybrid arrangement<sup>3</sup>.



77% of teleworkers say they're more productive when they work remotely<sup>4</sup>.

These statistics show that telework is becoming more popular year by year and teleworking is beneficial for both employers and employees according to the results.

If we talk about teleworking in Uzbekistan, Despite the fact that the organization of remote work is very popular all over the world, it is clear that attention to this method of organizing work in Uzbekistan has increased after the coronavirus pandemic. During the pandemic in the labor legislation of the Republic of Uzbekistan was created the first norms aimed at the remote organization of labor and the regulation of the work of teleworkers. For example, in the Decree of the President of the Republic of Uzbekistan dated March 19, 2020 No. PF-59695, it is noted that during

the period of quarantine measures, employers can transfer employees to a remote work method. In order to ensure the implementation of this Decree, the Ministry of Employment and Labor Relations of the Republic of Uzbekistan of March 28, 2020 adopted orders No. 32276, 32287. And these orders for the first time legislatively defined the norms related to the implementing of a remote work method during the pandemic.

In order to regulate these relations, the new Labor Code of the Republic of Uzbekistan<sup>8</sup>, chapter 26, includes a paragraph entitled "Peculiarities of regulating the labor of teleworkers". This paragraph defines the concepts of remote work and employees working remotely, and also describes the features of concluding an employment contract with such an employee.

In this paragraph, also the following issues are clarified and explained:

Permanent and temporary remote work;

The procedure for switching to temporary remote work at the initiative of the employer;

A mixed mode of remote work;

The procedure for concluding an employment contract on remote work and its specific features;

The procedure for formalizing the acceptance and transfer of an employee to remote work;

Categories of employees who have the priority right to switch to temporary remote work or transfer to remote work;

Peculiarities of organizing the work of employees working remotely;

The procedure for mutual cooperation between the remote worker and the employer;

Working hours of a remote employee;

Annual work leave, annual paid vacation of a remote employee;

Paying for the work of a remote employee;

<sup>3</sup> Essential Remote Work Statistics for 2023 – Productivity, Demographics & More <https://www.techopedia.com/remote-work-statistics#>

<sup>4</sup> Teleworking And Its Benefits And Challenges For Employers And Employees <https://www.usemultiplier.com/teleworking/benefits-and-challenges>

<sup>5</sup> "On priority measures to mitigate the negative impact of the coronavirus pandemic and global crisis industries on economic industries" Decree of the President of the Republic of Uzbekistan. <https://lex.uz/docs/-4770761>

<sup>6</sup> "Temporary regulations on the procedure for providing annual work leave to parents of junior class students of general educational institutions and pupils of preschool educational organizations when suspension of the activities of preschool educational organizations general organizations and educational institutions for the period of quarantine measures". <https://lex.uz/uz/docs/-4776261>

<sup>7</sup> "Provisions on the temporary procedure for transferring employees to work remotely, flexibly, or at home during the period of quarantine measures". <https://lex.uz/uz/docs/-4776265>

<sup>8</sup> Labor code of the Republic of Uzbekistan. <https://lex.uz/ru/docs/-6257288>



Termination of the employment contract with a remote employee.

According to the new edition of the Labor Code of the Republic of Uzbekistan, teleworkers are considered to be persons who have entered into an employment contract for remote work.

The concept of "remote work" is defined in the Labor Code. According to the Code: Remote work consists of performing labor duties stipulated by an employment contract outside the employer's location, outside a separate organizational structure (including one located elsewhere), a stationary workplace, territory or facility under the direct or indirect control of the employer. In this case, it is necessary to use information and telecommunication networks, including the global information network Internet, to implement interaction between the employer and employee on issues related to the performance of this work task.

Based on the definition, the following characteristics of remote work can be distinguished:

- firstly, the employee must perform the labor function specified in the employment contract outside the location under the direct or indirect control of the employer, outside its branch, representative office, other separate structural unit (including a workplace located in another locality), territory or object;
- secondly, the use of publicly available information and telecommunication networks, including the Internet, is an indispensable condition for the implementation of the relationship between the employer and the employee when performing a labor function.

Permanent and temporary remote work. The work of employees who want to work remotely can be organized on a permanent or temporary basis.

Permanent remote employees are defined as:

the employment status of persons who have entered into an indefinite or fixed-term employment contract with the employer for remote work during the entire period of performance of the work specified in the employment contract;

- the labor activity of persons who have concluded an additional agreement to the employment contract, which includes the condition of working on a permanent basis outside the stationary workplace under the control of the employer, is remote work on a permanent basis.

Temporary remote work is a work mode that provides for the temporary performance by an employee of labor duties outside a stationary workplace under the control of the employer with his consent.

The duration of this period must be clearly indicated in the employment contract of the employee temporarily working remotely, by day, month, or by excluding an event (cancellation of previously introduced quarantine measures in connection with the epidemic, liquidation of the consequences of natural or man-made disasters, industrial accidents, etc.) leading to the termination of this regime.

According to the new edition of the Labor Code of the Republic of Uzbekistan, the maximum period of temporary remote work should not exceed one year.

At the end of the period of temporary remote work established in the employment contract, the employer must transfer the employee to the previous mode of work.

The procedure for switching to temporary remote work at the initiative of the employer. In case of natural or man-made accidents, industrial accidents, as well as fires, rockfalls, earthquakes, epidemics or epizootics, and in other exceptional cases threatening the life or normal living conditions of the entire population or part of it, the employee is transferred to remote work on the initiative of the employer until the specified circumstances are eliminated. At the same time, the employee's consent to switch to remote work is not required. If the specifics of the work performed by an employee at a stationary workplace do not allow, in the above-mentioned exceptional cases, to carry out his temporary transition to remote work on the initiative of the employer, or the employer cannot provide the employee with the equipment necessary for remote work, software and hardware, information security and other means, employer:

provide the employee with annual leave according to the vacation schedule;

provide the employee with annual leave for the corresponding working year with his consent, regardless of the procedure for granting leave provided for in the leave schedule;

- with the consent of the employee, provide him with leave with partial retention of wages;

- provide the employee with leave without pay with his consent;

- has the right to set the employee to work part-time.

In the presence of the above circumstances, the employer has the right to introduce part-time work to the employee with a written notification at least two weeks in advance.

Categories of employees who have the priority right to switch to temporary remote work or transfer to remote work. In the event of a natural or man-made disaster,



industrial accident, as well as fire, flood, earthquake, epidemic or epizootic and in other exceptional cases threatening the life or normal living conditions of the entire population or part of it, if there is employer with appropriate technical and organizational capabilities, the following categories of employees have a priority right for a temporary transition or transfer to remote work:

pregnant women;  
parents (guardians) of children under the age of fourteen;  
persons with disabilities;  
old age pensioners;  
workers caring for persons with disabilities or sick family members who need outside care.

Of course, other categories of employees provided for by collective agreements, a local act, or an employment contract may also have a preferential right for a temporary transition or transfer to remote work.

A mixed mode of remote work. Employees working on a permanent or temporary basis can switch to a mixed mode of remote work in agreement with the employer. Mixed remote work mode includes work at a stationary workplace and remote work. In this case, the employee spends some days of the month or week at the workplace, and the remaining days perform his work duties remotely.

The terms of stationary and remote work, as well as their alternation, should be clearly spelled out in the employment contract by agreement of the parties.

The procedure for concluding an employment contract on remote work and its specific features. Labor relations between a remote worker and an employer arise on the basis of an employment contract concluded between them. However, this agreement, unlike the "classic" employment contract, has a number of important features:

First of all, an employment contract concluded with a remote worker must necessarily include a condition for performing work remotely. This condition determines the specifics of the legal status of the employee and determines the legality of applying to him the special provisions enshrined in Chapter 26.3 of the Labor Code in the new edition.

Secondly, if an employment contract is concluded in the form of an exchange of electronic documents, then the location of the employer must be indicated as the place of conclusion of the contract.

Thirdly, the contract must indicate the period for sending the document confirming receipt from one party to the other in electronic form.

In addition to the above, an important feature of an employment contract concluded with a remote worker is that it provides the parties with greater opportunities to determine its terms compared to a traditional employment contract<sup>9</sup>.

The employment contract must contain provisions on the employee's obligation to use equipment, software and technical means, information security tools and other means provided or recommended by the employer in the performance of his duties. The parties independently determine the procedure and conditions for their provision to the employee.

The contract also prescribes the following procedures and conditions:

submission of a report on the work performed by the employee to the employer;  
the procedure for paying compensation to an employee for the use of equipment, software and technical means, information security tools and other means owned or leased, as well as the amount of this compensation;

- Compensation to the employee for other expenses related to remote work.

An employment contract for remote work and agreements to change the terms of the employment contract for remote work determined by the parties can be concluded in a general manner or by exchanging electronic documents. At the same time, the location of the employer is indicated as the place of concluding an employment contract on remote work, agreements on changing the terms of this contract determined by the parties.

At the request of a remote worker who has entered into an employment contract with the employer by exchanging electronic documents, the employer, no later than three working days from the date of receipt of this request, is obliged to send the remote worker by registered mail with notification a duly executed copy of this employment contract on paper.

The features associated with the exchange of electronic documents also apply to other elements of the procedure for concluding an employment contract. In accordance with part three of Article 483 of the new Labor Code, an applicant for remote work must submit

<sup>9</sup> Ismoilov Shukhratjon Abdusaminovich. (2022). EMPLOYMENT CONTRACT FORM. *World Bulletin of Management and Law*, 15, 125-128. Retrieved from <https://scholarexpress.net/index.php/wbml/article/view/1603>



to the employer the documents provided for in Article 124 of this Code in electronic form. (For example, by scanning and providing a passport, a diploma of completion of a higher or secondary special education, vocational school or a certificate giving the right to perform this work, or other relevant document, etc.) At the request of the employer, this person is obliged to send him documents by registered mail with notarized copies on paper.

Each party to the employment contract notifies the other party that it has received a copy of the employment contract signed by the employee and the employer in electronic form. These messages are digitally signed by the sender.

The procedure for formalizing the acceptance and transfer of an employee to remote work. The hiring and transfer of an employee to remote work is formalized by order of the employer. The basis for an employer's order to transfer to permanent remote work is an open-ended or fixed-term employment contract, as well as an additional agreement to the employment contract.

When concluding a fixed-term employment contract with employees, it is imperative to comply with the rules established by Articles 112-113 of the current Labor Code.

The basis for the employer to accept an order for a temporary transition to remote work is the employee's statement, which reflects consent to the transition to remote work and the conditions of the remote work regime.

The procedure for mutual cooperation between the remote worker and the employer. The employee and the employer determine the procedure for cooperation, which provides for a certain time for the remote worker to perform work duties within the working hours specified in the remote work agreement.

The procedure for cooperation is determined in an internal document adopted in agreement with the trade union committee, in the employment contract on remote work. A remote worker may be required to respond to calls, emails, and other requests made by the employer in a cooperative manner, as well as to respond to inquiries regarding matters related to the performance of their duties, within a specified period of time.

The employee is not obligated to respond to telephone calls, emails or requests from the employer made in any form outside the time specified in the cooperation order.

If the procedure for cooperation is not agreed upon by the parties to the employment contract on remote work, or the employee is not familiar with the relevant internal document, the employee cannot be held liable for late response or non-compliance with the employer's requests on issues related to the performance of his work duties.

Interaction between a remote worker and an employer is carried out by exchanging electronic documents using any methods specified in local regulations adopted by the employer in agreement with the trade union committee, or in an employment contract on remote work, that allow reliably identifying the person who sent the message. Each party to this exchange is obliged to send confirmation of receipt of the electronic document from the other party within the period stipulated by the employment contract for remote work.

In cases where, in accordance with labor legislation or other legal acts on labor, an employee must be familiarized in writing, including against signature, with adopted local acts directly related to his work activity, orders of the employer, notifications, requirements and other documents, a remote worker can be familiar with them by exchanging electronic documents between the employer and the remote worker.

A remote worker has the right to contact the employer with applications, provide the employer with explanations and other information related to his work activities in electronic form.

To receive temporary disability benefits, maternity benefits, and other social insurance payments, the remote worker sends by registered mail with notification to the employer the originals, and if the employee is a part-time worker, then copies of the documents required by law.

Working hours of a remote employee. When setting a production task for a remote worker, the employer must take into account the time standards for performing certain types of work so that the total working time for performing the entire complex of work per month does not exceed normal or reduced working time. That is, when an employer assigns certain tasks and tasks to an employee working remotely, he must adhere to time standards based on the nature of the work being performed.

The remote employee independently determines the work schedule and work procedure based on the duration of his working hours, the size of the production task and other conditions specified in the employment contract. It is the ability to independently determine the working time, which must be specified



in the employment contract, that is a unique feature of the working time of teleworkers. Therefore, the employer's working hours, that is, the working hours established by the internal rules of the enterprise organization, do not have any influence on the determination of working hours for teleworkers.

Working time is also considered the fixed time during which a remote worker must be in contact (directly collaborate) with the employer, and the period of online communication of this employee can be determined in the employment contract itself<sup>10</sup>. If the employer does not need to communicate with the remote employee online, another general working time mode may be established, for example, a working week with a rotating schedule with days off or other similar modes by which the employee can exercise control.

An agreement may be reached between the remote employee and the employer that he will perform his duties in a mixed mode, that is, on certain days of the week or certain hours of the working day at a stationary workplace under the direct control of the employer, with a certain remaining part of the work remotely in a place convenient for him. The duration of an employee's work in such a mixed mode, both at a stationary workplace and remotely via the Internet, is included in working hours and can be specified in the employment contract.

The working time, the order of use of which the remote worker determines independently, is paid in a single amount and is not subject to the conditions of remuneration for overtime, work on weekends and holidays, as well as for work at night.

However, in some cases, cooperation between the employer and the employee during the period of vacation of the remote worker, as well as the involvement of the employee on rest days and non-working holidays, may be allowed. This situation is formalized by order of the employer, and the remote worker is paid additional money in accordance with the established procedure for being involved in work during working hours outside the working hours established for the remote worker during rest periods and non-working holidays, at night.

Annual work leave, annual paid vacation of a remote employee. A remote worker is entitled to paid annual basic leave and various other types of vacations.

The duration of the annual labor leave of a remote employee may not be less than twenty-one calendar days if, in accordance with labor legislation, other legal acts on labor or an employment contract, he is not entitled to an annual labor leave of longer duration.

The procedure for granting annual leave and other types of leave to an employee working remotely must be defined in the employment contract for remote work.

Paying for the work of a remote employee. Remuneration for a remote employee is carried out as follows:

for the time actually worked,  
and with a piecework wage system - for the amount of work actually completed.

Production standards and prices for work are determined by agreement of the parties to the employment contract based on the normal working hours established in accordance with labor legislation. The wages of a remote worker and an employee working at a stationary workplace under the control of the employer must be the same. Due to the fact that the employee switched to remote work, his monthly salary will not be reduced.

Remuneration for the work of a remote worker, provided that he fulfills labor standards and job responsibilities, should not be less than the minimum amount of remuneration for work established by law, and should not be limited to any maximum amount.

If a territorial coefficient is established for the location of a remote worker's activities, then this coefficient is also calculated when paying wages to the employee.

Termination of the employment contract with a remote employee. An employment contract concluded with a remote worker can be terminated on the basis of the Labor Code, as well as on the basis of an employment contract, taking into account the uniqueness of this form of employment.

If a remote worker is familiarized with the employer's order to terminate an employment contract for remote work in the form of an electronic document, the employer on the day of termination of this employment contract is obliged to send the remote worker by registered mail with notification a duly executed copy of the order to terminate the employment contract on paper carrier.

Failure to comply with the terms of the contract concluded with the employee, failure to fulfill duties, as well as related disciplinary offenses are grounds for applying disciplinary action to the employee or terminating the employment contract. For example, an employee's violation of the procedure or deadlines for

<sup>10</sup> РАХИМОВ М. COVID-19ГА ҚАРШИ ӘМЛАШ ВА ХОДИМ ХҮКҮҚЛАРИ //ЮРИСТ АХБОРОТНОМАСИ. – 2021. – Т. 2. – №. 4. – С. 75-81.



submitting a report on the work done, non-use or improper use of information security tools provided or recommended by the employer. When forming the basis of the contract, it must be remembered that the employer must proceed from the employee's business qualities and must not be discriminatory.

**CONCLUSION.** During scientific researches, we studied the experience of America, some European countries and Russia, and we found out that there are five different concepts in use: teleworking, telecommuting, remote work, home based work, it based mobile work. In our legislation, this type of work is regulated by only one concept. Remote work. In order to cover the above concepts, legislation have classified the concept of remote work in different ways. These are temporary remote work, permanent remote work, remote work at the initiative of the employee, remote work at the initiative of the employer and flexible hours. We hope that soon we will try to adapt these concepts to world experience. In conclusion, I would like to say that the labor legislation of Uzbekistan strives step by step to study changes and innovations in labour law at the international level and reflect them in itself, and the reforms being carried out in this regard are commendable.

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