

NOM-037, on Telework - Safety and Health Conditions at Work

On June 8, 2023, NOM-037-STPS-2023 issued by the Ministry of Labor and Social Welfare (“STPS”) was published in the Official Gazette of the Federation (“DOF”), which establishes the safety and health conditions for workers performing Telework, in order to prevent accidents and illnesses, as well as promote a safe and healthy environment in the place of work (hereinafter “NOM-037”).

As you will recall and as a result of the reform of January 11, 2021 regarding Telework, this mode of work is applicable to all employees who perform more than 40% of their activities in a domicile other than the workplace, in which case the application of this NOM-037 will be mandatory.

Among the main obligations for the employer referred to in NOM-037 subject to inspection are the following:

- I. Keep an updated list of workers under the Telework modality.
- II. Establish a written Telework Policy, which must be implemented, maintained and disseminated in the workplace, and which must include, among other points:
 - a) The promotion of a culture of prevention of occupational risks through safety and health at work;
 - b) Communication mechanisms between employers and workers;
 - c) The duration of the agreed work shift, including the right to guidelines for rest periods, as well as the right to disconnection at the end of the work day;
 - d) The establishment of precise and clear responsibilities and obligations for employers and workers under the Telework modality;
 - e) The mechanisms to inform the employer of changes of domicile of the place of work, attention to cases of domestic violence, as well as the right to reversibility.
- III. Have a checklist to verify the safety and health conditions in Telework, which must be applied periodically to verify the continuity of the conditions in which the Telework is carried out.
- IV. Allow the Joint Commission on Safety and Health to validate the checklist of safety and health conditions in telework, as well as the evaluation of possible risks. This validation may be carried out through a visit to the workplace proposed by the worker for working under the Telework scheme, once it is authorized, or by providing the teleworker with the checklist so that, through a self-application thereof, it can be determined if the necessary safety and health conditions exist. The Joint Commission may rely on technology, photographic or video evidence to validate the place of work.
- V. Provide workers under the Telework mode (*in addition to the proportional part of Internet and electricity*):
 - a) Ergonomic chair or other type appropriate for the activities to be performed;
 - b) Supplies necessary for the proper performance of their functions;
 - c) Where appropriate, attachments that ensure ergonomic or postural conditions.

The main obligations of workers under the telework modality are:

- I.** Provide resources in writing for the physical verification of safety and health conditions or apply the checklist (*prior to performing under the Telework modality*), and with the corresponding frequency for verification.
- II.** Comply with the Telework Policy.
- III.** Safeguard and keep in good condition the equipment, ergonomic furniture and in general the work tools provided for carrying out the Telework.
- IV.** Report in writing and in advance any change of domicile, temporary or definitive, of the place of work previously agreed for the performance of Telework, in order to take the necessary steps to verify that the proposed new place of work meets the necessary requirements. Likewise, report in writing any alteration regarding the conditions of safety and health at work.
- V.** Notify the employer and the Joint Commission on Safety and Health of any occupational accident suffered.

The NOM-037 will enter into force as of 180 calendar days after its publication in the DOF, i.e., as of December 2023.

Compliance with this NOM-037 may be verified in the inspections carried out by the STPS and non-compliance may result in fines.

We would be glad to address any questions about the particularities of NOM-037 and its implementation.

Here is the link to the publication in the DOF:

https://www.dof.gob.mx/nota_detalle.php?codigo=5691672&fecha=08/06/2023#gsc.tab=0

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Mexico City, June 20, 2023.

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