

**Terms of Reference**  
**ILAW Future of Labor Law Database**  
**Telework**

**Future of Labor Law Database**

The ILAW Network is building an on-line member-accessible database that would contain model legislation that addresses priority topics, accompanied by a range of supporting documents and commentary that speak to content, process, and implementation concerns. Other databases, including ones administered by the ILO, already contain labor law legislation currently existing in different countries. However, we are not aware of any database that purports to offer the recommendations as to what could and should exist, much less one that is created, maintained, and updated by the global community of labor and worker rights lawyers, themselves. We are of course mindful that around the world there are different legal systems, cultures and histories, and that any recommendations will need to be adapted to local circumstances, though we believe that many of the principles will be transferable.

As legal, legislative, or political circumstances evolve, we expect that members will be continuously involved in providing updates or changes to posted provisions and memos, triggering further committee evaluation. Members will also be encouraged to post updates regarding their efforts to seek passage of ILAW Network proposals or other provisions on the same topic, and/or whatever use they have made (e.g. collective bargaining) of the model language as they see fit.

**Background:**

The COVID-19 global pandemic has changed how work is performed for millions of people. When governments imposed measures to restrict movement or to maintain social distance to stop the spread of the virus, businesses that perform services that can be performed online turned to telework. “Telework” is commonly understood as work performed with ICTs from outside the employer’s premises. This can involve traditional forms, such as working from home, or working from various alternative locations outside the employer’s central office. The term, generally, excludes ‘homework’, which involves work performed under the instruction of an employer or intermediary without the use of ICTs.

For some workers, telework had some positive aspects, including greater worktime or workplace flexibility, ability to attend to personal and family needs, and gaining time normally lost to transportation to and from the office. However, telework has downsides. From the perspective of occupational safety and health, the home working environment can be difficult due of the lack of appropriate technology and unsuitable working conditions and spaces. Employers may not pay the costs of upgrading home office spaces to facilitate work and to prevent accidents and injuries. Workers will of course also encounter obstacles to the ability to associate and organize, and more so to bargaining collectively with their employer. Discrimination practices can also be more easily hidden when they occur remotely and in isolation, making redress harder to obtain. Importantly,

teleworking is gendered and can tend to disadvantage women as they typically have to shoulder both childcare and household chores as well as paid employment.

To date, there is no clear definition of what telework is nor a comprehensive treaty protecting<sup>1</sup> workers in this type of work setting. The International Labour Organization (ILO) has created a practical guide for telework,<sup>2</sup> but it does not address what specific regulations and laws should be promulgated or amended to ensure such work does not create additional opportunities for exploitation of workers.

Several countries have regulated telework<sup>3</sup> and the pandemic has caused a proliferation of such regulations but with no uniformity, no real input from unions or workers, and no clear guidance from either regional or international bodies regarding workers' rights in the context of telework. This research is intended to close that gap.

### **Research:**

The ILAW Network is seeking a researcher who will conduct global research on telework laws and regulations to identify the elements of a worker' rights focused telework legislative and regulatory framework. It will require a survey of existing laws and regulations of such work with emphasis on countries where these frameworks afford workers' the highest level of protections and rights as a possible emerging good practice, as well as best practices that may not be reflected in existing laws and regulations. It will also require reviewing and analyzing how workers are able to exercise their freedom of association and collective bargaining rights in such diffused work environments. As well, it would be helpful to have explanatory memos describing the reasoning behind the language suggested.

The ILAW Network has created a list of questions to guide this research for input and discussion with the researcher.

Additionally, the ILAW Network has begun some preliminary research on this subject in particular countries in Eastern Europe and Latin America to assist in legislative advocacy campaigns in particular countries that will be shared with the researcher.

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<sup>1</sup> ILO Convention 177 on Home Work; ILO Convention 156 on Workers with Family Responsibilities; ILO Conventions 100 on Equal Remuneration; ILO Convention 111 on Discrimination; ILO Convention 190 on Violence and Harassment in the World of Work; ILO Convention 87 on Freedom of Association; ILO Convention 98 on Right to organize and collective bargaining; ILO Recommendation 204, on Transition from the Informal to the Formal Economy.

<sup>2</sup> [https://www.ilo.org/travail/info/publications/WCMS\\_751232/lang--en/index.htm](https://www.ilo.org/travail/info/publications/WCMS_751232/lang--en/index.htm); See also European Framework Agreement on Telework (2002); Joint Declaration on telework by Insurance Sector (2015).

<sup>3</sup> Countries with telework laws: Colombia, Peru, Brazil, Costa Rica, Panama, El Salvador, Chile, Argentina, Mexico, France, Spain, Portugal; Countries with telework regulations: Paraguay, Ecuador, Bolivia, Dominican Republic. See also, national agreements on telework: Italy; United Kingdom; Belgium; Ireland; and the Netherlands.

This research will part of the ILAW Network's 'Future of Labor Law Database' Project as described in more detailed below. The ILAW Network expects the researcher will likely need to consult with other knowledgeable individuals and possibly create a collaborative team to identify such an effective apparatus.

The researcher will have the ability to respond to and revise the language suggested based on the feedback received from the users of the database.

**Conditions:**

ILAW seeks this work to be conducted by September 30, 2021. Compensation to be negotiated.