Mexican Government Issues Final Health and Safety Standard for Remote Employees

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On June 8, 2023, the final version of the Mexican Official Standard NOM-037-STPS-2023 Telework-Safety and Health Conditions (NOM-037) was published in Mexico’s Official Gazette of the Federation.

Quick Hits

- Mexico’s federal government recently issued a final workplace safety and health standard for teleworkers.

- Employers’ main obligations consist of (i) maintaining an updated list of all teleworkers’ personal and work data, (ii) ensuring teleworkers’ workplaces comply with occupational health and safety requirements, (iii) having telework policies in place, and (iv) providing teleworkers with ergonomic chairs and other equipment and accessories that will support their performance.

- The telework standard will take effect on December 5, 2023.

As we noted in a July 2022 article on the decree to amend the telework rules under the Federal Labor Law, the NOM-037 has the purpose of regulating the safety and health conditions, applicable to employees who render more than 40 percent of their time at home and/or outside the workplace (i.e., teleworkers), to avoid accidents and/or illnesses. The standard is also intended to promote a safe and healthy working environment.

Further, employers’ main obligations consist of (i) maintaining an updated list of all teleworkers’ personal and work data, (ii) ensuring teleworkers’ workplaces comply with occupational health and safety requirements, (iii) having a telework policy in place, and (iv) providing teleworkers with
ergonomic chairs and other equipment and accessories that will support their performance.

However, the final version of the NOM-037 is specific in describing how the referred employers’ obligations can be met. The NOM-037 provides that, among other requirements, employers should take the following steps:

1. At least once a year, verify that each teleworker’s workplace complies with occupational health and safety requirements through (i) a visit to the teleworker workplace, after receiving the employee’s authorization; or (ii) a checklist to be completed by the employee, and a remote visual inspection conducted by the employer. The checklist will be reviewed by the Health and Safety Joint Commission.

2. At least once a year, conduct training for teleworkers related to health and safety conditions, telework policies, IT and communication tools management, and other policies required internally.

3. Include in internal telework policies rest periods for breastfeeding employees and the right to disconnection.

4. Ensure that teleworkers are using an ergonomic chair and other proper equipment.

5. Include in internal telework policies mechanisms for cases of family violence and educate employees on how to implement these mechanisms.

The NOM-037 takes effect on December 5, 2023. On that day, labor authorities will be able to start auditing and inspecting companies to verify compliance with the NOM-037.

To prepare for compliance with the NOM-037, employers may want to:

- create or modify their internal telework policies;
- identify and keep a record of the teleworkers’ data required by the NOM-037;
- prepare employment agreements applicable for teleworkers and new hires, and prepare addenda for current employees transitioning to the telework modality;
- incorporate a Health and Safety Joint Commission or modify the current incorporation writ to include telework-related activities and responsibilities;
- prepare an ideal verification list for use when inspecting and verifying whether a teleworker’s workplace complies with health and safety conditions;
- prepare telework training programs; and
- determine how the ergonomic chairs and equipment will be granted to teleworkers and the terms of said granting (directly, reimbursement, etc.).
Companies that want to implement the telework modality or continue with it will likely have enough time before the NOM-037 becomes effective to be able to carry out the corresponding actions to adapt their internal policies and processes to comply properly.

Ogletree Deakins’ Mexico City office will continue to monitor developments and will publish updates on the Cross-Border and Workplace Safety and Health blogs as additional information becomes available.


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