

Legal guide to teleworking: Impacts on social security

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1. General Principles (1)

Legal bases

Affiliation to Social Security is determined by:

- Federal law on old age and survivors' insurance (LAVS)
- UE Agreement
- AELE Agreement
- Bilateral conventions

1. General Principles (2)

Personal scope

(art. 2 R (CE) 883/2004)

Regulations coordinating social security schemes apply:

- **Swiss** nationals;
- **European Union** nationals;
- *stateless persons and refugees domiciled in Switzerland or in a member state.*

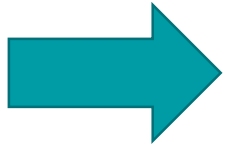
1. General Principles (3)

Personal scope

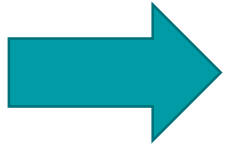
Regulation (EC) 883/2004 applies to branches of social security which concern the benefits of:

- Sickness;
- Maternity/paternity;
- Disability;
- Old ages and survivors;
- Occupational accidents and occupational diseases;
- Death;
- Unemployment;
- Early Retirement;
- Family allowances.

1. General Principles (4)



Uniqueness of the applicable legislation



Workplace affiliation

1. General Principles (5)

Uniqueness of the applicable legislation

Persons to whom this Regulation is applicable are subject only to the legislation of a single member state (art. 11 para. 1 R (EC) 883/2004).

It means that the worker is only subject to the legislation of a single state for all of their activities (salaried and self-employed), even if the activities are carried out in several member states or are in the service of several employers.

1. General Principles (6)

Workplace affiliation

A person who carries out an employed or self-employed activity in a member state is subject to the legislation of that member state (art. 11 al. 3 R (EC) 883/2004).

According to this rule, **if a person works in only one state**, they are subject to the social security of their country of employment, regardless of their place of residence or the country in which the company has its headquarters.

1. General Principles (7)

Exceptions to affiliation to the workplace

The principle of affiliation to the workplace has a few exceptions:



Pluriactivity



Payment of replacement benefits



Detachment

2. Cross border Pluriactivity – telework

Pluriactivity

There is pluriactivity **when an employee normally carries out** a salaried activity in two or more states (CH / EU).

This concerns the worker who exercises

- simultaneously
- or
- alternately

for the same employer or for different employers one or several different activities in two or more member states (art. 14 R (CE) 987/2009).

2. Cross border Pluriactivity – telework (2)

Pluriactivity

When a person normally carries out an activity in several member states, they will only be subject to the legislation of a single member state (principle of the unicity of the applicable legislation).

Determination of the applicable legislation in the event of multiple activities



R (CE) 883/2004

2. Cross border Pluriactivity – telework (3)

Pluriactivity

1) Substantial activity in the state of residence

If the employee **carries out a substantial activity** in their state of residence, whether in the service of one or more employers, **they will be subject to the legislation of their state of residence.**



State of residence

An activity which represents a quantitatively large part of all activities, namely at least 25% of working time and / or remuneration, is considered to be substantial.

2. Cross border Pluriactivity – telework (4)

Pluriactivity

Examples:

1. A French resident in France works in Switzerland for their Swiss employer at 80% and performs 20% of work at home (teleworking in France)

 Switzerland

2. A Swiss resident in France works for their Swiss employer 3 days a week in Switzerland and teleworks two days (France) for their employer.

 France

2. Cross border Pluriactivity – Home office (5)

Pluriactivity

No substantial activity in the state of residence

- a) The employee works for one or more employers who have their headquarters in the same state:

➡ State of the **Headquarters of the employer (s)**

- b) The employee works for several employers who have their headquarters in two different states, one of which is the state of residence:

➡ State **other than the state of residence**

- c) The employee works for several employers, at least two of which have their headquarters in different states, other than the state of residence:

➡ State of **residence**

2. Cross border Pluriactivity – telework (6)

Pluriactivity (end)

When a cross-border worker works at least 25% of their working time in their state of residence, they will be subject to the social security system of their state of residence.

It is therefore imperative to take into account the total % of work performed abroad so as not to fall into subjection to the social security system of one's state of residence!

3. Costs related to telework

Generality

Under Article 9 para. 1 RAVS, “ *Overhead costs are the expenses incurred by the employee in the performance of their work. The compensation for expenses incurred is not included in the determining wage*”.

3. Costs related to telework (2)

Generality

In accordance with DSD, number 3002, the employee's current maintenance costs, **which are incurred to the same or almost the same extent as whether or not a gainful activity is exercised**, are incumbent on the employee, are not related to carrying out a gainful activity and **therefore do not constitute overheads**.

To qualify as overheads, they must be **in addition to these routine maintenance costs**.

Thus, expenses, generally fixed, **which do not result decisively from the professional activity of the employee**, are not professional expenses (e.g. an internet subscription contracted by the employee in a private capacity).

3. Costs related to telework (3)

Generality

The **costs of equipment** and work clothes are considered as overheads (DSD, 3003)

Article 327 paragraphs 1 and 2 of the Swiss Code of Obligations (CO) stipulates that "*Unless otherwise agreed or customary, **the employer shall provide the employee with the work tools and materials they need.** If, in agreement with the employer, the employee themselves provides work tools or materials, **they shall be adequately compensated**, unless otherwise agreed or customary*"

3. Costs related to Home Office (4)

Generality

Article 327a CO provides that

- 1. The employer shall **reimburse the employee for all expenses incurred in the performance of the work and, when the employee is employed away from their place of work, the expenses necessary for their maintenance.***
- 2. A written agreement, standard employment contract or collective agreement may provide for the reimbursement of expenses incurred by the employee in the form of a fixed allowance, such as a daily allowance or a lump sum weekly or monthly allowance, provided that it covers all necessary expenses.*
3. Agreements under which the employee bears **all or part of the necessary costs themselves are void.**

3. Costs related to telework (5)

Generality

Overhead expenses must be deducted to the extent of their actual amount. The employer and/or the employee must prove the overhead costs (DSD, 3010).

3. Costs related to telework (6)

Types of teleworking expenses

These are:

- **equipment** (paper, ink cartridges, printers, computers, additional screen, etc.) necessary for the professional activity. This equipment can be made available to the employee by the employer or reimbursed to the employee in advance, without any social security contributions in either case
- **any other current costs**, such as electricity, heating, depreciation of private computer equipment, telephone costs, etc. The (partial) reimbursement and the submission (or not) of these costs to social security contributions is determined according to the form of telework.

3. Costs related to telework (7)

Forms of telework

1. Telework freely chosen by the employee and the provision of a fixed or non-fixed workplace on the company's premises.

This includes situations where the employer accepts the employee's request for personal convenience, e.g. for reasons of family organization. In this case, the employer may waive, in writing, compensation to the employee for telework-related expenses. The costs incurred by teleworking are not imposed by the performance of the work, but result from the employee's choice.

Thus, no eligible expenses in the sense of the AVS are to be taken into account. If expenses are reimbursed or paid to the employee as a lump sum, they must be subject to social security contributions as a determining wage.

3. Costs related to Home Office (8)

Forms of telework

2. Mandatory telework and provision of a fixed or non-fixed workplace on the company's premises:

The reimbursement of the actual costs incurred by the employee for the days of teleworking or a fixed amount corresponding to the actual costs can be accepted as not subject to social security contributions (e.g. sharing a work place on the company premises for two colleagues working full time, half of the work having to be done at home, i.e. 2.5 days per week).

Actual expenses must be reimbursed based on receipts. If a monthly lump sum for teleworking expenses is provided for, then the rate of telework should be taken into account in assessing this amount. The nature of the employee's activity should also be taken into account as well as the payment of representation costs (which already include out-of-pocket expenses).

3. Costs related to Home Office (9)

Forms of telework

3. Mandatory telework and no provision of a workplace on the company's premises:

This may include cases where the employer, for reasons of cost/workspace rationalization, decides not to offer business premises to its employees for the performance of work.

In order to determine whether or not the amount of the telework expenses paid to the employee should be subject to social security contributions, the Fund will have to examine the issue, taking into account the nature of the employee's activity and the possible payment of other expenses, such as representation costs (which already include out-of-pocket expenses).

4. Home office Agreement

The FER Genève, through the “Union des associations patronales genevoises” (UAPG), **provides companies with an agreement intended to frame the practice of telework.**

This document, which is the result of a collaboration between the legal departments of several economic organizations in French-speaking Switzerland, has a main objective to facilitate the implementation of telework.

Conceived as a “turnkey” solution, this agreement can be suitable for any type of company, whatever its sector of activity or its size. It is proposed as a model, adaptable to the specificities of the companies.

The “Telework Agreement” is completed by “Explanatory Notes”, which answer the main legal questions raised by telework.

4. Home office Agreement (2)

Agreement model published and available on FER Website:

https://fer-ge.ch/fr/web/fer-ge/w/mod%C3%A8le-de-convention-de-t%C3%A9l%C3%A9travail?p_l_back_url=%2Fweb%2Ffer-ge%2Fsearch%3Fq%3Dt%25C3%25A9l%25C3%25A9travail



Thank you for your attention!



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