



European experiences in regulating remote work and implications for the improvement of Vietnamese law

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Abstract

The rapid advancement of digital transformation and the profound impacts of the COVID-19 pandemic have accelerated the widespread adoption of remote work across many countries. In Europe, legal frameworks governing remote work have been progressively developed to ensure a balance between labor market flexibility and the protection of employees' legitimate rights and interests. This article examines legislative experiences and regulatory practices concerning remote work in selected European countries, focusing on key issues such as the concept and scope of regulation, rights and obligations of the parties in employment relationships, working conditions, working time and rest periods, occupational safety and health, data protection, and the right to disconnect. Based on a comparative analysis with current Vietnamese labor law, the article identifies existing gaps and limitations, and proposes orientations for improving the Vietnamese legal framework in order to meet practical demands and international integration trends.

Keywords: Remote work, labor law, employment relationship, europe, improvement of vietnamese law, right to disconnect

Introduction

In the context of digital transformation and the profound restructuring of the global labor market, remote work has become an inevitable trend. This working model not only enhances flexibility for enterprises and employees but also gives rise to numerous new legal issues relating to labor management, working time regulation, occupational safety and health, and privacy protection.

In Europe, many countries have developed and gradually refined legal frameworks governing remote work with a view to balancing labor market flexibility and the protection of employees' legitimate rights and interests. Meanwhile, although Vietnamese law has introduced initial provisions concerning work performed outside traditional workplaces, it still lacks a systematic and comprehensive framework addressing issues arising in practice.

Therefore, studying European legislative experiences is of significant importance for proposing orientations to improve Vietnamese law in response to the demands of digital economic development and international integration.

Overview of remote work

1. Concept of remote work

Currently, in the world there has not yet been a unified legal definition of remote work with diverse terms such as remote work, telework or work from anywhere, however, the International Labour Organization (ILO) has made an important standardization step in post-COVID-19 policy guidelines. Specifically, the ILO identifies "Remote Work" as an overarching concept, referring to "situations in which work is performed wholly or partially at an alternative location different from the default workplace." Meanwhile, "Telework" is considered a subset when defined as "a form of organizing and/or performing work using information and communication technologies (ICT) – such as smartphones, tablets, laptops – to perform tasks outside the employer's premises." Although Remote Work has broader content in terms of space, in the context of global digital transformation, the ILO currently prioritizes and

standardizes the term Telework. This approach aims to accurately reflect the decisive role of technology in modern labor, while focusing on addressing specific legal challenges arising from the digital environment which is completely different from traditional manual home-based work.

Similar to the ILO's viewpoint on the role of technology, the European Union (EU) early legalized this concept through the 2002^[2] Framework Agreement on Telework. In Article 2, the EU defines "Telework as a form of work organization using information technology within the framework of an employment contract, where work that would otherwise be carried out at the employer's premises is regularly performed outside." The progressive point in this definition is the clear identification of the legal nature of the employment relationship and the regular nature of the work, thereby clearly distinguishing remote employees entitled to social benefits from freelancers or cases of occasional home working.

On the basis of synthesizing international viewpoints, three core characteristics of remote work can be drawn: (1) the maintenance of the employment relationship; (2) the central role of technology; and (3) flexibility in space and time. However, when applied in the Vietnamese context, this model must simultaneously satisfy the fundamental concept of "employment" under Article 9 of the 2019 Labor Code, including: the expenditure of labor, generation of income, and not being prohibited by law. Combining the international theoretical framework (emphasizing the technological factor – Telework) and domestic legal provisions, the authors propose the definition: "Remote work is a method of labor organization in which the employee performs agreed tasks within the employment relationship at a location other than the official workplace of the employer, based on information technology infrastructure, electronic means and network connection, allowing assignment – performance – supervision – evaluation to be conducted through the digital environment."

2. Characteristics of remote work

Based on the analysis of definitions and operational practice, remote work can be identified as a form of labor that both inherits the legal foundation of traditional employment relationships and possesses fundamental changes in operational methods in the digital era.

Although there are differences in organizational form, in essence, remote work still fully preserves three core characteristics of traditional employment relationships:

First, it is a legal relationship established on the basis of voluntary agreement between the parties and subject to labor law, ensuring full bilateral rights and obligations and not existing outside the legal framework.

Second, the fundamental purpose of this relationship remains the exchange between labor and income; the employee performs work to receive wages, bonuses and corresponding benefits rather than merely for flexibility.

Third, the structure of task assignment and work management is still strictly maintained; although assignment or supervision methods are carried out through digital platforms, the nature of labor division, responsibility for completing tasks and performance evaluation mechanisms remain unchanged foundations.

Thus, remote work is essentially only a transformation in the method of performance and does not change the inherent legal nature of the employment relationship.

Besides these foundational elements, remote work (RW) clearly differs from traditional labor through the following specific features:

First, flexibility and dematerialization of workspace. RW breaks the thinking of fixed locations, forming borderless mobile offices. Employees may work anywhere and flexibly adjust working time (synchronously or asynchronously), optimizing biological rhythms and accessing global job opportunities without geographical constraints.

Second, high autonomy is associated with security responsibility. This environment shifts employees from being managed to self-operating. Such autonomy requires strict personal discipline to avoid stagnation or burnout.

Especially, employees must share responsibility for data security and information safety (managing VPNs, passwords, devices) when working outside the secure zone of the enterprise's internal network system.

Third, the decisive role of technology. In RW, technology shifts from a supporting tool to becoming the core working environment. Internet infrastructure, cloud platforms and digital skills not only affect productivity but also determine the maintenance of the employment relationship. Loss of connection means production interruption.

Fourth, engagement based on digital data. The relationship between the parties is not reinforced by physical presence but based on trust and interaction through digital platforms. Commitments are legalized by digital signatures and electronic data, clearly distinguishing official employees (with benefits and career paths) from freelance workers.

Fifth, result-based management. This is an evolution in management thinking: shifting focus from process control (working hours) to evaluation of output effectiveness. Supervision is conducted transparently through task management software and KPI/OKR indicators, ensuring fairness and focusing on the actual quality of products.

The necessity of recognizing remote work

Labor practice is changing faster than the speed of legal adjustment. Many employment relationships are currently

established and implemented outside traditional workplaces but are still mainly governed by norms designed for direct on-site working models. This gap between practice and legal framework is particularly evident in the field of remote work. For Vietnam, properly identifying the legal nature of this labor model and establishing appropriate orientations for legal improvement is an important condition to both ensure employees rights and avoid restraining innovation in production organization models.

From the international trend, it can be seen that the international community early recognized the importance of establishing a legal corridor for remote work as a component of the digital labor market. From the early 2000s, Europe issued the 2002 European Framework Agreement on Telework, setting out foundational principles such as voluntariness, equality of rights, data protection, responsibility for equipment provision and occupational safety. On that basis, many European countries internalized these principles through laws or amendments to Labor Codes to specifically regulate remote work. France stipulates the "right to disconnect" in its Labor Code; Spain promulgated the 2020 ^[14] Law on Remote Work detailing agreements, costs and rights; Portugal amended labor law to establish employer obligations and limit after-hours contact. Outside the EU, countries such as Japan have issued national guidelines on telework; the United States has specific telework laws and policies in the federal sector; Canada and Australia also have official frameworks and guidance on flexible work. The general trend shows that many legal systems have shifted from encouraging flexibility to establishing relatively specific regulatory norms, considering remote work as an official labor form requiring legal governance.

Next, from the perspective of Vietnamese policy and law, the requirement to improve the regulatory framework on RW is clearly practical. Remote work is a relatively new field, broad in scope, associated with the digital environment and non-traditional management methods, therefore inherently difficult to control and standardize by conventional labor management tools. However, up to now there has been no specialized and systematic legal framework directly regulating this field. Current provisions only appear indirectly, are few in number, scattered across different groups of norms and not designed specifically for off-site work contexts, thus causing difficulties in uniform application in practice. The 2019 Labor Code has made certain progress by recognizing the legal validity of electronic labor contracts, expanding freedom of agreement between parties and not rigidly limiting workplace location, and allowing electronic means in labor management, but these provisions are mainly general principles. Some norms on working time, occupational safety and hygiene, and technology-based management may be applied by analogy to remote work, but only at the level of interpretative application. To date, the law has not provided a clear legal definition of RW, has not stipulated mandatory minimum contents of remote work agreements, nor specific rules on cost allocation, digital monitoring, data protection and responsibility for ensuring working conditions outside employer-controlled premises. The absence of a specialized normative structure, while related provisions remain fragmented, has made legal application in practice heavily dependent on individual agreements and subjective interpretation, increasing legal risks and disputes.

Moreover, from the perspective of social practice and labor market operation, improving law on RW is an urgent requirement. According to general principles of legislative science, when building or amending law regulating a social relationship, lawmakers must prioritize ensuring lawful rights and interests of participating subjects and maintaining balance of common interests.

Law therefore needs updating when labor methods significantly change.

For employees – the weaker party in the employment relationship – RW generates new risks such as prolonged working hours due to constant connectivity, increased technological surveillance, intrusion into private life, personal data risks and limited promotion opportunities. If lacking clear provisions on rest time, surveillance limits and equal opportunity principles, remote workers may become a new vulnerable group.

For employers, although there is demand to apply remote models to increase flexibility and efficiency, the lack of specific legal provisions makes it difficult to manage, evaluate work, allocate costs and secure information, thereby increasing dispute risks. A clear legal framework will provide greater stability and predictability in labor organization.

For society in general, RW contributes to expanding employment opportunities, utilizing digital human resources and enhancing economic adaptability. Practice during the Covid-19 period shows that organizations effectively implementing remote work could maintain operations and reduce disruption. This further demonstrates the need to build a complete legal corridor for this labor model.

Law on remote work in some European countries

1. Law on remote work of the French Republic

France is considered one of the pioneering countries in building a modern and comprehensive legal framework on remote work. This concept first appeared in the National Interprofessional Agreement (Accord national interprofessionnel) dated 19 July 2005, was officially legalized through the 2012 Warsmann Law, and incorporated into the Labor Code of the French Republic in Articles L1222-9 to L1222-11. The core provisions on remote work are stipulated in the Labor Code, clearly defining the concept, principles and mechanisms for implementation. Accordingly, telework is defined as a form of work organization carried out voluntarily outside the company's premises through information and communication technologies (Article L.1222-9). The legal framework is built upon fundamental principles: bilateral voluntariness (the employee has the right to refuse with legitimate reason), flexible implementation mechanisms through collective or individual agreements, and the employer's responsibility to ensure equipment and occupational safety and hygiene.

The outbreak of the Covid-19 pandemic in 2020 created an urgent need for a more detailed and practically appropriate legal framework. As a result, a new National Interprofessional Agreement was signed on 26 November 2020, supplementing detailed guidance and strengthening the right to disconnect (*droit à la déconnexion*) – a progressive highlight in French labor law. In 2016, Labor Code No. 2016–1088 (*Loi Travail*) adopted provisions on the right to disconnect employees. A typical example of the binding nature of this right is Article L.2242-17 of the Labor

Code, according to which enterprises with at least 50 employees are required to conduct annual negotiations with trade unions on the implementation of this right, while smaller enterprises may regulate it through internal rules.

Thus, France's legal framework on remote work is a typical model reflecting efforts to harmonize the necessary flexibility for enterprises with comprehensive protection of employees' rights.

2. Law on remote work of the Federal Republic of Germany

Famous for its strict employee protection system, German law regulates remote work through a unique classification mechanism between “Telearbeit” (fixed telework) and “Mobile Arbeit” (mobile work). While Telearbeit obliges enterprises to assume comprehensive responsibility for home facilities as a branch office, Mobile Arbeit plays the role of a flexible “safety valve,” reducing the burden of establishing fixed workstations. However, in either form, employees are protected by the Working Time Act with the requirement of 11 consecutive hours of rest; sending emails late at night will “reset” the rest clock, forcing employees to postpone working time the next day. This mechanism, combined with the 2022 ruling on recording actual working time, has created a solid foundation for enforcing the “right to disconnect” and preventing overwork.

Besides the aspect of working time, occupational safety and health is also approached in a modern direction. The Occupational Safety and Health Act (*ArbSchG*) requires not only assessment of physical risks but also special attention to psychosocial risks. Enterprises must implement measures to prevent stress, isolation, or blurred boundaries between work and private life. At the same time, under the General Data Protection Regulation (GDPR) and the Federal Data Protection Act, employee privacy is placed at the forefront. Any intrusive monitoring behavior such as using keystroke-tracking software or automatically activating webcams is strictly prohibited, except where there is specific suspicion of criminal conduct.

An indispensable feature of German labor law is the powerful role of the Works Council (*Betriebsrat*). According to the Works Constitution Act, employers may not unilaterally issue remote work regulations or apply digital management tools without agreement with the Works Council. This co-determination right ensures that remote work policies are always the result of negotiation and balancing of interests, concretized through detailed “company agreements” on cost support and employee benefits.

Although possessing an extensive regulatory system, Germany remains cautious in establishing an absolute “right to work remotely.” Proposals for legislation granting employees an automatic right to work from home have faced opposition from the business community and have not been fully adopted. Instead, current law tends toward a “duty to discuss,” obliging employers to seriously consider employee requests while retaining final decision-making power based on operational reasons.

3. Law on remote work of the Kingdom of Spain

In Spain, this country approaches remote work as a distinct issue with a detailed and strict level of regulation. The legal framework was formed during the Covid-19 pandemic

through Royal Decree-Law No. 28/2020, later adopted as Law No. 10/2021^[14, 15] on Remote Work.

The Law clearly determines the scope of application through the proportion of working time. Accordingly, remote work is only legally recognized when the employee performs at least 30% of working time remotely within a specified reference period, thereby clearly distinguishing stable remote work from occasional home-based work. On that basis, the law imposes strict obligations on employers, particularly responsibility for providing equipment and paying all costs arising from remote work, while strictly prohibiting transferring financial burdens to employees. The law also recognizes remote work as voluntary for both employees and employers. Furthermore, the law requires that remote work must be established through a written agreement containing essential contents.

Thus, the strength of Spanish law on remote work lies in ensuring legal certainty and safety through close intervention and control of related issues. At the same time, the level of protection granted to participating parties is maximized.

Orientations and requirements for improving law on remote work in Vietnam

Through research on legislation and practical application in some countries regarding RW and flexible labor forms, it can be observed that the common trend is early establishment of a specialized legal framework to ensure balance of interests between parties, control arising risks and promote development of the digital labor market. These legislative experiences and regulatory models are important references for Vietnam to selectively learn and adopt in the process of legal improvement. However, the approach to international experience must be placed under the consistent principle of ensuring suitability with domestic socio-economic conditions and strict compliance with the viewpoints and orientations of the Party and the State on labor market development, digital transformation and institutional improvement. Therefore, building and improving the legal framework regulating employment relationships in the context of remote work in Vietnam should be oriented to meet the following basic requirements: First, it is necessary to officially recognize remote work and establish a mechanism balancing interests in digital employment relationships.

In labor law regulation, when a method of work organization becomes common and stable in practice, it is an important basis for lawmakers to officially recognize and directly regulate it. Remote work is no longer an exceptional form but has become a method of implementing employment relationships in many sectors, associated with digital environments and flexible management. If not recognized by clear legal norms, this labor form will continue to exist in a regulatory “grey area,” leading to difficulties in legal application, increased dispute risks and inconsistency in enforcement. Official recognition not only has conceptual significance but also forms the basis for designing appropriate allocation of rights and obligations between parties. According to labor law principles, employment relationships inherently involve asymmetry in bargaining power; therefore, law must establish minimum protection standards for employees while ensuring legitimate managerial rights of employers. In remote work, this balance needs to be re-established through provisions

on working agreements, working time – rest time, privacy, technological monitoring, costs and working conditions.

Second, ensuring constitutional foundation and consistency with core labor law principles.

Improving law on RW must be based on constitutional principles and ensure internal consistency of the legal system. New provisions must conform to constitutional rights on work, freedom of business, privacy, personal data and information security, and must not reduce the level of protection of human and citizen rights recognized by the Constitution. At the same time, RW regulations must be consistent with core labor law principles, particularly employee protection, freedom of agreement within legal limits, and safe and fair working conditions. The regulatory mechanism should not create a “legal exception” weakening general protection standards but be designed as an extension of the existing protection system. Synchronization with civil law, information technology law, cybersecurity law and personal data protection law must also be ensured.

Third, associating with domestic socio-economic conditions and the socialist-oriented market economy model.

Labor law and RW regulations can only be effective when built in accordance with the level of socio-economic development, labor market structure and domestic management capacity. Vietnam’s labor market still shows clear stratification between high-skilled and unskilled labor, between technology-service enterprises and traditional production sectors, and between urban and rural areas. Digital infrastructure readiness, digital skills and enterprise management capacity are uneven. Most enterprises are small and medium-sized with limited compliance capacity. Therefore, legal provisions must avoid mechanical transplantation of foreign models and ensure adaptability, balancing flexibility with protection objectives under the socialist-oriented market economy.

Fourth, approaching international standards and meeting global labor market integration requirements.

In the context of globalization and cross-border digital labor, Vietnamese law on RW should be compatible with fundamental international standards and practices. Many countries focus on core issues such as agreements, working time – rest time, cost responsibilities, data protection and limits of technological monitoring. Approaching such standards enhances transparency, predictability and reduces legal conflicts in foreign-related employment relationships. However, integration must be selective and consistent with domestic policy orientation.

Fifth, ensuring feasibility, transparency and enforceability.

A decisive requirement in improving law on RW is ensuring that norms are practically applicable and effective. Legal provisions must clearly define concepts, scope of application, basic rights and obligations and mandatory minimum contents of remote work agreements to reduce interpretative differences and dispute risks. Legislative techniques should combine mandatory minimum standards with flexible agreement space. In addition, implementation effectiveness depends on guidance documents, inspection and supervision mechanisms, dispute resolution systems and compliance support tools. Only by ensuring feasibility, transparency and enforceability can the legal framework on RW become an effective regulatory instrument rather than merely policy orientation.

Conclusion

Remote work is an inevitable trend of the labor market in the context of digital transformation and deep international

integration. Practice in European countries shows that building a clear and flexible legal framework while ensuring employee protection principles is a key factor for effective and sustainable operation of this working form. Provisions on rights and obligations of parties, working time, occupational safety and hygiene, personal data protection and the right to disconnect have contributed to balancing economic interests and human rights in employment relationships.

For Vietnam, although labor law has made certain progress, it still needs further improvement toward specifying the concept, scope of regulation and enforcement mechanisms regarding remote work. Selectively referencing experiences of European countries, in accordance with domestic socio-economic conditions, will contribute to building a coherent legal framework meeting digital economic development requirements and ensuring harmony of interests among subjects in employment relationships.

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