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Hybrid Remote Work: Social and Legal Aspects. Part 1***

[Praca zdalna hybrydowa: kontekst społeczny i prawny. Cz. 1]

Abstract

The article discusses the concept of hybrid remote work, which was introduced into the Polish legal system by an amendment to the Labour Code (effective from 7 April 2023), adding Chapter IIc on remote work. The aim is to analyze the new legal institution and assess its shape in the context of social changes, the reconciliation of professional and work-life balance, the consequences of its implementation for international mobility, including the situation of Ukrainians on the labour market, the position of privileged persons in terms of a binding request to the employer, the importance of remote work for the labour market and employment, as well as for the possibility of maintaining continuity of work by Ukrainians, who are sometimes forced into *ad hoc* mobility due to the difficult political situation.

Keywords: remote work, labour market, employment, privileged persons, work-life balance, binding employee request, Ukrainians on the labour market.

In the article, the authors analyze changes in legal regulations regarding remote work, examine current regulations, and attempt to answer the question about the legislator's purpose in introducing new regulations in 2023 – they point to the need to adapt other areas of law to changes resulting from labour law modifications in this area, as well as the social conditions for implementing remote work on a broader scale.

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This article focuses on analyzing hybrid remote work, which combines traditional work at the employer's premises with remotely performed work, and also discusses in detail the mutual rights and obligations of employees and employers within this form of employment. The article aims to present the current state of applicable regulations, advantages and disadvantages of this form of work, as well as the rights and obligations associated with its performance on both sides of the employment relationship.

Ratio Legis and Directions of Remote Work Regulations

The direct impulse for introducing the first regulations regarding flexible forms of remote work was the outbreak of the Covid-19 epidemic in 2020 and its accompanying restrictions. The declaration of an epidemiological emergency state and the requirement for social isolation led to an unprecedented reorganization of work arrangements.

Employees in professions that allowed work outside the employer's premises were massively delegated to work from home or other locations ensuring isolation. This situation revealed the weakness of the then-existing regulations governing remote work (i.e., telework regulations), which were assessed as rigid and disconnected from reality. The pandemic experience accelerated the legislative process aimed at comprehensively regulating issues related to remote work duties in the labour code, and the flexibilization of regulations and experiences from the Covid-19 period are leading to increasingly widespread use of this form of work after the end of the epidemiological state in the country. The *ad hoc* decisions introduced at that time demonstrated that remote work, although it may sometimes generate certain temporary difficulties, is ultimately sustainable on a permanent basis. Additionally, this solution aligns with civilizational progress and the transformation of human life into smart life. The development and widespread use of modern technologies enables continuous remote work, which has both advantages and disadvantages, supporters and opponents. Employees are increasingly working either completely or partially outside the workplace, which has broad legal, organizational, and social consequences. The lack of need for physical commuting to offices leads to less congestion on streets (especially in large metropolitan areas), better time utilization (no need to spend time commuting to and from work), and a range of other organizational and social consequences.

Telework vs. Remote Work

The process of changing regulations regarding remote work in Polish law has undergone a significant metamorphosis in recent years. Until the Labour Code amendment in 2023, telework, previously regulated in Articles 67⁵–67¹⁷ of the Labour Code (LC), constituted the only legally sanctioned form of work performed outside the employer's premises.²

The definition of telework, introduced into the Polish legal system on October 16, 2007, through the Act of August 24, 2007, amending the Labour Code and certain other acts (Journal of Laws No. 181, item 1288), defined it as work performed systematically outside the workplace, using electronic communication tools.³ A person performing work under this mode was defined as a teleworker.⁴

The key aspects of this solution originally included: the requirement for mutual consent of the employer and employee (Article 67⁷ LC), the necessity for agreements with trade unions (Article 67⁶ and subsequent LC), systematic performance of work outside the workplace (Article 67⁵ LC), use of electronic communication means (Article 67⁶ LC, Article 67¹³ LC), the employer's obligation to provide work tools and detailed formal and organizational requirements (Article 67¹¹ and subsequent LC).

The year 2018 brought an expansion of Article 67⁶ of the Labour Code concerning telework by adding points 5–7,⁵ introducing the possibility to request telework in written or electronic form, regardless of existing agreements or workplace regulations.⁶ This modification imposed on the employer an obligation to positively consider an employee's request submitted in a specified form.

² Legal status prior to the changes that entered into force on April 7, 2023.

³ Article 675 § 1 of the Labour Code, legal status prior to the changes that entered into force on April 7, 2023.

⁴ Article 675 § 2 of the Labour Code, legal status prior to the changes that entered into force on April 7, 2023.

⁵ Article 676 § 5 added by Article 2 point 1 of the Act of May 10, 2018 (Journal of Laws, item 1076) amending the Labour Code Act effective June 6, 2018.

⁶ Article 2 in the Act of June 26, 1974 – Labour Code (Journal of Laws of 2018, items 917 and 1000) introduces the following changes: (1) in Article 676, § 5–7 are added as follows:

“§ 5. The performance of work in the form of telework is also permissible upon an employee's request submitted in paper or electronic form, regardless of the conclusion, in the manner provided for in § 1–4, of an agreement specifying the conditions for the use of telework or the specification of these conditions in the regulations.

§ 6. The employer shall accept the employee's request referred to in Article 1421 § 1 points 2 and 3, for performing work in the form of telework, unless this is not possible due to work organization or the type of work performed by the employee. The employer shall inform the employee about the reason for refusing the request in paper or electronic form.

§ 7. The provision of § 6 applies to employees referred to in Article 1421 § 1 points 2 and 3, also after the child reaches 18 years of age.” (Act amending the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities and certain other acts of May 10, 2018 [Journal of Laws of 2018, item 1076]).

This change was introduced by the amendment of May 10, 2018,⁷ aiming to support work-life balance and facilitate work for persons covered by the provisions of the Act on Vocational and Social Rehabilitation.⁸ To achieve these objectives, the amendment introduced an explicit provision obligating the employer to accept the employee's request (Article 67⁶ § 620 of the Labour Code).

The new regulation concerning remote work emerged with the introduction of the Act of March 2, 2020, which dealt with counteracting COVID-19 and other infectious diseases and related crisis situations. This solution significantly differed from the previous telework provisions contained in Articles 67⁵–67¹⁷ of the Labour Code, which resulted in two separate systems of remote work operating simultaneously during the pandemic period: remote work (from the so-called COVID Act)⁹ and telework (from the Labour Code).¹⁰ Undoubtedly, these forms of work had much in common. Their simultaneous existence was justified only by the special nature of remote work, which during the pandemic was regulated in a very general and abbreviated manner¹¹.

In the justification to the government draft bill amending the Act on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and crisis situations caused by them, and certain other acts, it was very briefly stated only that “in connection with the threat of spreading SARS CoV-2 virus infections, there is a need to introduce special solutions enabling actions that minimize the threat to public health, complementing basic regulations [...] The draft introduces the principle that in order to counteract COVID-19, the employer may order the employee to perform duties towards the employer, at a specified time at home – remote work [...]”¹²

Finally, in 2020, the issue of remote work was regulated very generally and very flexibly in Article 3 of the enacted Act¹³, which reads: “in order to counteract COVID-19, the employer may order the employee to perform, for a specified period, work specified in the employment contract, outside its permanent place of performance (remote work).”

⁷ Act amending the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities and certain other acts of May 10, 2018 (Journal of Laws of 2018, item 1076).

⁸ Act of August 27, 1997, on Vocational and Social Rehabilitation and Employment of Persons with Disabilities (Journal of Laws of 2023, item 100, as amended).

⁹ Act of June 26, 1974, Labour Code (Journal of Laws 1974 No. 24, item 141).

¹⁰ Act of June 26, 1974, Labour Code (Journal of Laws 1974 No. 24, item 141).

¹¹ A. Prusik, *Praca zdalna. Praktyczny przewodnik po nowych przepisach* [Remote Work: Practical Guide to New Regulations], Warszawa 2023, pp. 31–35.

¹² Justification to the government draft bill amending the Act on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and crisis situations caused by them, and certain other acts (printed matter 299) with amendment (printed matter 299a), p. 1.

¹³ Act of March 2, 2020, on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and crisis situations caused by them (Journal of Laws 2020, item 374).

The assumption of the 2023 Labour Code amendment was to integrate these two forms into a single model called remote work. The adoption of this specific terminology (i.e., the term introduced in Article 3 of the COVID Act of 2020, and moving away from the term “telework” from the earlier version of the Labour Code) is deliberate and purposeful by the legislator.

It can be presumed that the institution of telework aroused reluctance among both employees and employers. In common perception, telework was viewed as excessively formalized and complicated in practice, while remote work is associated with an effective and uncomplicated solution introduced during the pandemic. The use of telework remained minimal (despite being in the Labour Code for over a decade). The significance of work performed remotely in the form of home office increased only during the pandemic. In the preceding period, working from home was treated by employers as an additional benefit and organized sporadically, with limited use of telework regulations. This way of operating was reflected in the draft amendment to the Labour Code, where the concept of “occasional” remote work was introduced (Article 67³ of the Labour Code).

In the now-defunct Article 67⁵ of the Labour Code, telework was defined as work performed regularly outside the workplace, using electronic means of communication within the meaning of provisions on electronic service provision. The reference pertained to the Act of July 18, 2002, on Providing Services by Electronic Means (consolidated text, Journal of Laws of 2020, item 344). According to Article 2 point 5 of the mentioned Act, “electronic means of communication” are technical solutions, including ICT devices and cooperating software tools, which enable individual remote communication through data transmission between ICT systems, particularly electronic mail. In contrast to telework, the scope of remote work is significantly broader. It includes not only the transmission of work results through various means of remote communication, including fax or telephone, but also other forms of work performance outside the permanent workplace, including production or service activities resembling cottage industry work. Thus, it can be work involving the “production” of physical items in a place other than the employer’s workplace and collecting manufactured products from the remote work location.

From the comparison of these regulations, it appears that the possibilities of applying remote work under current provisions are significantly broader than in the case of telework. The voluntary element, which was a fundamental characteristic of telework, has been transferred to the new provisions on remote work in the Labour Code as one of the possibilities. The provision of telework required developing an agreement between the parties to the employment relationship, meaning reaching a consensus. Such arrangements could occur at the time of signing the employment contract or during the later

period of employment. The introduction of telework during the employment relationship was possible with mutual consent, and the initiative could come from either the employee or the employer. Each party had the right to submit a mandatory request to return to previous work conditions within 3 months of starting telework. The change of working conditions to the previous ones had to occur within a timeframe mutually agreed upon by the parties, not exceeding 30 days from the receipt of the request. The employer did not have the authority to unilaterally introduce telework, even within their managerial powers. Article 67⁷ § 4 of the Labour Code excluded the possibility of applying Article 42 § 4 of the Labour Code, namely temporary transfer to telework.

In the case of using telework, consultation with employee representation was required. The formal rules for performing telework had to be specified in an agreement between the employer and the trade union operating at their establishment. If several trade unions operated in the workplace – the employer was obligated to reach an agreement with all of them. In the absence of agreement within 30 days from the employer's presentation of the project to trade unions, the employer independently proposed telework conditions in the regulations, however, taking into account any arrangements made with trade unions during negotiations (if any were made). Where there were no trade unions – the employer determined the rules of telework in the regulations after conducting consultations and negotiations with employee representatives, chosen according to the principles functioning at the given employer. In this respect, a significant part of the legal solutions previously concerning telework has been adapted to the new provisions on remote work in the Labour Code (Article 67⁶ of the Labour Code, legal status before April 7, 2023).

Employees who were performing work in the form of telework at the time of introducing the amendment – remained in this form of work provision for a maximum period of 6 months from the entry into force of the new regulations.

Although the telework regulations did not explicitly prohibit combining remote work with office work, their construction suggested that telework should be permanent in nature. This was indicated by requirements regarding the precise specification of the workplace in the contract and the requirement for its regular provision. The employer was obligated not only to provide necessary equipment but also to insure it and cover all costs related to its operation.

The complicated formal requirements and low flexibility of telework regulations made employers reluctant to use it. The necessity to establish detailed telework conditions at the stage of signing the contract or later concluding additional agreements often created a barrier in initiating discussions about the possibility of providing telework. The lack of clear provisions about the possibility of partial remote work and partial office work raised legal doubts about applying such a mixed model.

Although theoretically, the regulations did not prohibit a hybrid (mixed) work model, in practice their rigidity hindered flexible work management and did not correspond to contemporary labour market needs, which expected greater freedom in organizing remote work.

The situation changed with the entry into force of new regulations on remote work, introduced by the Act of December 1, 2022, amending the Labour Code. Most of these provisions came into force on April 7, 2023,¹⁴ which was caused, among other things, by the postulates of employers' organizations (opinion of the Confederation of Polish Employers Lewiatan, opinion of the "Employers of Poland" organization, and the position of the Supreme Court on the draft amendment to the Labour Code, printed matter 2335), particularly the provisions introducing remote work. The reason for postponing the date of these provisions taking effect was the argument that employers would not manage to prepare and adapt regulations to the new, revolutionary changes.

The new Act removed the previous regulations on telework (Articles 67⁵–67¹⁷ of the Labour Code) and replaced them with a new Chapter IIc on remote work (Articles 67¹⁸–67³⁶). It should be added that the provisions on remote work from the COVID Act remained in force until July 7, 2023, i.e., three months after the end of the state of epidemiological threat.

The currently binding provisions on remote work, contained in the amended Labour Code, define it as work performed wholly or partially in a location chosen by the employee and agreed upon with the employer.¹⁵

The most important innovation compared to telework was granting the employer the ability to independently issue decisions about transitioning to remote work, without the necessity of obtaining employee consent, which was the opposite of telework, where a joint decision of both parties was required. Moreover, the manager can withdraw from delegating an employee to remote work at any time, which provided greater freedom compared to the more rigorous rules of telework.¹⁶

The new provisions also do not require remote work to be systematic, as was the case with telework (Article 67⁵ § 1 of the Labour Code). Already under the COVID Act regulations (Article 3[1] of the Act of March 2, 2020), remote work could be performed for a specified period, without imposing a fixed schedule, and could be combined with office work (if sanitary regime solu-

¹⁴ In the Act of December 1, 2022, amending the Act – Labour Code and certain other acts (Journal of Laws of 2023, item 240), according to Article 21 of the Act, the Act enters into force after 14 days from the date of announcement, except for Article 1 point 2, Article 3 points 1 and 3, Article 4 points 1 and 3, Article 5 point 1, Article 6, Article 7, Article 8, Article 9, Article 10 point 1, Article 12, Article 13 points 1 and 2, Article 15, Article 18, and Article 19, which entered into force after two months from the date of announcement on February 6, 2023, i.e., from April 7, 2023.

¹⁵ Article 67¹⁸ of the Labour Code.

¹⁶ See also: M. Król, *Praca zdalna – cechy, uwarunkowania, implikacje dla procesu pracy* [Remote Work: Characteristics, Conditions, Implications for Work Process], Katowice 2022, pp. 8–26.

tions allowed). Currently – the solution consisting of combining office work with remote work – is defined by the term hybrid remote work.

A different approach than in the case of telework was also applied to equipment issues. While with telework the employer had to provide necessary equipment, the new provisions introduced in the COVID Act allowed for the use of the employee's private equipment, provided adequate protection of confidential data was ensured (Article 3[4] of the Act of March 2, 2020).

Health and safety regulations were also simplified compared to telework. Instead of applying all detailed occupational safety and health requirements, it was sufficient to establish basic principles for safe remote work performance (Article 3[8] of the COVID Act). These temporary solutions, introduced under the special act, later became the foundation for introducing permanent changes to the Labour Code that entered into force in 2023.

The integration of two legal orders and organization of provisions introducing the possibility of performing remote work was implemented in 2023. It was the legislator's intention that in connection with the need to protect the life and health of employees and their families (which was the direct cause of the urgent introduction of COVID Act provisions in March 2020), work was undertaken to prepare provisions enabling the provision of this form of work permanently. The draft act amending the Act – Labour Code and certain other acts (printed matter 2335),¹⁷ which was submitted to the Sejm on June 7, 2022, assumed a number of changes in labour law, including remote work performance. The justification to the act indicates that one of the two specified goals that guided the drafter was the necessity to meet the justified needs of employees and employers regarding the introduction of regulations concerning remote work as a permanent solution.

The amending Act was passed on December 1, 2022. The Senate's amendments were not considered. The Act was signed by the President on January 27, 2023, and published in the Journal of Laws on February 6, 2023. The new provisions regarding remote work entered into force on April 7, 2023 (as an exception to the 14-day period for the Act's entry into force – they entered into force 2 months after its publication).¹⁸

¹⁷ This Act amends the following acts: the Act of October 26, 1982, on Upbringing in Sobriety and Counteracting Alcoholism, the Act of April 6, 1990, on the Police, the Act of October 12, 1990, on the Border Guard, the Act of August 24, 1991, on the State Fire Service, the Act of August 27, 1997, on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, the Act of May 24, 2002, on the Internal Security Agency and Foreign Intelligence Agency, the Act of April 20, 2004, on Employment Promotion and Labour Market Institutions, the Act of June 9, 2006, on the Central Anti-Corruption Bureau, the Act of April 9, 2010, on the Prison Service, the Act of January 28, 2016 – Law on the Prosecutor's Office, the Act of November 16, 2016, on the National Revenue Administration, the Act of December 8, 2017, on the State Protection Service, and the Act of March 2, 2020, on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and crisis situations caused by them.

¹⁸ In the Act of December 1, 2022, amending the Act – Labour Code and certain other acts (Journal of Laws of 2023, item 240), according to Article 21 of the Act, the Act enters into force after 14 days from the date of

During the legislative process, the legislator submitted the draft for opinion to a number of relevant institutions (Employers of Poland, Confederation of Polish Employers Lewiatan, Chief Labour Inspector, Supreme Court, and others). From the analysis of the positions taken by these institutions, it appears that the main points.

Areas where the reviewers submitted comments and the need for amendments concerned, among others:

1. Establishing compensation costs and lump sums that employers were to bear in connection with the necessity to reimburse remote work costs incurred by employees performing remote work,¹⁹
2. The need to specify costs that the employer should reimburse to remotely working employees, including the exclusion of certain costs (e.g., desk or chair costs),²⁰
3. Increasing the dimension of occasional remote work from 24 to 36 days,²¹
4. Moving away from the necessity to agree each time with the employer on the remote work location in favor of a more permanent solution (e.g., permanently indicating two addresses or establishing a solution in this regard in internal workplace regulations),²²
5. Moving away from requiring employees to submit declarations each time that they have appropriate premises or technical conditions for performing remote work,²³ especially in urgent situations requiring directing employees to remote work *ad hoc*,²⁴
6. The necessity to regulate tax provisions in the context of the new form of work,²⁵
7. Improving regulations regarding the deadline and possibility of preparing an accident report by the accident team in case of work accidents,²⁶

announcement, except for Article 1 point 2, Article 3 points 1 and 3, Article 4 points 1 and 3, Article 5 point 1, Article 6, Article 7, Article 8, Article 9, Article 10 point 1, Article 12, Article 13 points 1 and 2, Article 15, Article 18, and Article 19, which entered into force after two months from the date of announcement on February 6, 2023, i.e., from April 7, 2023.

¹⁹ President of the Lewiatan Confederation, Mr. Maciej Witucki, letter dated June 21, 2022, to printed matter 2335 (draft act), ref: KL/237/116/RL/2022 and President of the Management Board of Employers of Poland Mr. Rafał Baniak, letter dated September 9, 2022, ref: CML/0397/09.22/BS/KS.

²⁰ President of the Management Board of Employers of Poland Mr. Rafał Baniak, letter dated September 9, 2022, ref: CML/0397/09.22/BS/KS.

²¹ President of the Lewiatan Confederation, Mr. Maciej Witucki, letter dated June 21, 2022, to printed matter 2335 (draft act), ref: KL/237/116/RL/2022 and President of the Management Board of Employers of Poland Mr. Rafał Baniak, letter dated September 9, 2022, ref: CML/0397/09.22/BS/KS.

²² President of the Lewiatan Confederation, Mr. Maciej Witucki, letter dated June 21, 2022, to printed matter 2335 (draft act), ref: KL/237/116/RL/2022.

²³ *Ibid.*

²⁴ President of the Management Board of Employers of Poland Mr. Rafał Baniak, letter dated September 9, 2022, ref: CML/0397/09.22/BS/KS.

²⁵ *Ibid.*

²⁶ *Ibid.*

8. Too short time to agree on arrangements with trade unions (especially for large employers),²⁷
9. Lack of provisions ensuring the obligation to create documentation from controlling work of an employee performing remote work,²⁸
10. Proposal to prepare a “universal” risk assessment for work performance at a given work position (instead, it was postulated to remove the term “universal” in this point),²⁹
11. Too short *vacatio legis* period,³⁰
12. Specifying the grounds for employer’s refusal to consider the employee’s binding request submitted under Article 67¹⁹, so that the refusal – besides justification in the form of work organization and type of work – could also be dictated by premises such as: employee skills (and their lack), employee approach and engagement in work performance understood as situations where it may turn out that the employee does not guarantee appropriate engagement, effectiveness, and such work formula has not proved effective in their case. In such a case, according to the reviewer, the employer should have the right to recall the employee.³¹

None of the reviewing institutions and organizations raised any objections to the remote work formula in general, nor to the introduction of new possibilities for its implementation, i.e., occasional and hybrid. No one also questioned the legitimacy of maintaining in the provisions the regulations concerning the binding employee request previously included in Article 67⁶ § 620 of the Labour Code (during the validity of telework), and in the Act passed on December 1, 2022 (based on the reviewed draft printed matter 2335) regulated in Article 67¹⁹, and the amendment of the Lewiatan Confederation regarding the possibility of refusing an employee due to dissatisfaction with the quality of performed work – was not considered.

In connection with the legislator’s decision to enable employees to perform work in the form of remote work, the paradigm of subordinate work, in which work organization belongs to the employer, has fallen.³² Thus, an employee working from home independently plans tasks and determines time for their completion, which is directly presented in current labour law literature.³³

²⁷ President of the Lewiatan Confederation, Mr. Maciej Witucki, letter dated June 21, 2022, to printed matter 2335 (draft act), ref: KL/237/116/RL/2022, Employers of Poland, Supreme Court.

²⁸ Chief Labour Inspector, Ms. Katarzyna Łażewska-Hrycko, letter dated July 7, 2022, to printed matter 2335 (draft act), ref: UNP:GIP-22-38178, GIP-GPP.400.6.2022.2.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² See more broadly M. Gładoch, *Praca zdalna w praktyce. Zagadnienia prawne* [Remote Work in Practice: Legal Issues], Warszawa 2020, Legalis [accessed: 27.12.2024], p. 11.

³³ K. Walczak, M. Wojewódka (eds), *Prawo pracy dla sędziów i pełnomocników* [Labour Law for Judges and Legal Representatives], § 5, <https://sip.legalis.pl/> [accessed: 16.01.2025]; M. Gładoch, *Praca... [Remote...]*, Legalis [accessed: 27.12.2024], *ibid.*

Therefore, from the very essence of remote work follows independent organization of working time during the working day.³⁴ Additionally, it should be noted that the application of remote work transfers its performance to the employee's private space, which means that in the case of employer control, the employer is obligated to conduct it in agreement with the employee and without disturbing the domestic peace of the employee and their relatives.

Remote Work – Current Solutions

As mentioned earlier, remote work regulations were largely based on the previously regulated telework in the Labour Code, taking into account provisions regarding remote work resulting from the COVID Act. The final shape of provisions included in the Act considers not only experiences from applying telework and remote work during the pandemic but also represents a compromise resulting from arrangements with social partners who reviewed the draft act during the legislative process in 2022. Remote work ultimately regulated in the Labour Code is therefore not a uniform institution, as the shape of provisions must combine different objectives arising from the needs of employees and employers, and even the state (e.g., resulting from state health policy).³⁵ Consequently, in Article 67¹⁸, the legislator prepared different types of remote work in the Act: complete (permanent), sporadic (hybrid, i.e., combining office work with work outside the workplace, which can be pre-planned (and performed with specific frequency) or implemented *ad hoc* (Article 67³³ § 1 LC).

Remote work in its basic assumption is voluntary and requires mutual consent of both parties, and the initiative for remote work can come from either the employer or employee. According to the position expressed in literature, when agreeing to start remote work implementation, the employer and employee should agree on at least basic elements: the will to perform remote work, its scope (whether it will be partial or complete remote work) and the place of remote work performance.³⁶

Remote work can be established between the employer and employee both when concluding an employment contract (Article 67¹⁹ § 1 LC) and during employment through mutual agreement. In the case of implementing remote

³⁴ Such understanding of remote work means that the employer cannot reproach the employee for organizing their workday, for not answering the phone at a given moment, or calling back only after half an hour, as well as not responding to an email immediately.

³⁵ See: M. Sidor-Rządkowska, *Kształtowanie przestrzeni pracy. Praca w biurze, praca zdalna, coworking* [Shaping Work Space: Office Work, Remote Work, Coworking], „Zarządzanie Zasobami Ludzkimi” [‘Human Resources Management’] 2021, 4, 141, p. 64.

³⁶ K. Walczak, M. Wojewódka (eds), *Prawo...*, *ibid.*, <https://sip.legalis.pl/> [accessed: 16.01.2025].

work in full or partial form, Article 67²⁰ LC imposes on the employer the obligation to establish rules for its provision jointly with trade unions, and in the absence of agreement – independently through regulations.

The new provisions impose on the employer the obligation to provide the employee with all necessary means to perform work, particularly technical equipment (Article 67²⁴ § 1 LC). Additionally, the employer is obligated to bear all costs directly related to remote work, especially electricity and internet charges.

Health and safety regulations, contained in Article 67³¹ LC, require the employee to submit a declaration (paper or electronic) confirming appropriate working conditions in the chosen location. The employer, on the other hand, is obligated to conduct an occupational risk assessment related to remote work and inform the employee about its results and safe work principles.

Article 67²⁸ LC introduces important guarantees for remote workers, prohibiting any discrimination and unequal treatment in areas of employment, professional development and training, both when establishing and terminating the employment relationship.

The Concept and Essence of the Hybrid Remote Work Model

Hybrid work represents a modern model of work organization that is dynamically developing in contemporary organizations worldwide.³⁷ According to the definition adopted by the International Labour Organization (ILO), hybrid work is a flexible form of employment combining work performed at a traditional workplace with work carried out remotely. This model gained particular significance during the COVID-19 pandemic when organizations worldwide had to quickly adapt to new operating conditions.

The experiences of American corporations such as Microsoft and Google show that hybrid work can take various forms. Some organizations adopt a 3–2 model (three days in the office, two days remote) or 2–3 model (two days in the office, three days remote), while others allow teams greater flexibility in determining the proportion between office and remote work. For example, Microsoft introduced a “hybrid workplace flexibility” policy that allows employees to perform up to 50% of work remotely without requiring special supervisor approval.

In Europe, particularly interesting hybrid work solutions have been introduced in Scandinavian countries. In Sweden and Denmark, the hybrid model is viewed as an element of broader work-life balance policy. Companies like

³⁷ Hybrid Work Is Just Work. Are We Doing It Wrong?, ‘Work Trend Index Special Report’ 2022, Sept. 22, <https://www.microsoft.com/en-us/worklab/work-trend-index/hybrid-work-is-just-work> [accessed: 15.01.2025].

Ericsson and Spotify provide employees with significant flexibility in choosing their work location, focusing on results rather than physical presence in the office.

The Japanese approach to hybrid work is more conservative, stemming from a deeply rooted office work culture. However, even there, gradual changes are observed, particularly in the technology sector. Companies like Fujitsu have implemented “Work Life Shift” programs that assume a permanent transition to a hybrid model for most employees.

An important aspect of hybrid work is its impact on organizational culture. Research conducted by Harvard Business Review indicates that organizations effectively implementing the hybrid model maintain a strong organizational culture through conscious planning of team interactions and use of technology to maintain bonds between employees. An example is the Dutch ING Bank, which introduced the concept of “digital-first, but not digital-only” – combining the advantages of remote work with regular team meetings in the office.

It's also worth noting the spatial aspect of hybrid work. Companies like Siemens and Unilever are transforming their offices into spaces primarily dedicated to teamwork and creative work, while individual work can be performed remotely. This approach, called “activity-based working” – assumes that different types of tasks require different work environments.

International experiences also show that effective implementation of the hybrid model requires proper preparation from both the employer and employees. French company Capgemini developed a comprehensive training program for managers and employees, focusing on developing competencies necessary in a hybrid environment, such as time management, effective communication, and use of digital tools.

Having analyzed international examples of hybrid work implementations, it can be observed that there is no single universal model. Each organization must adapt solutions to its specific characteristics, organizational culture, and employee needs. However, maintaining balance between flexibility and the need to maintain organizational cohesion and effective team collaboration is key.

Hybrid work can also be effective for work performed by Ukrainians. While several years ago, Ukrainian work in Poland mainly consisted of physical labour, very often additionally illegal. However, for several years, due to changes in diploma recognition, the need to fill gaps in the Polish labour market, and thus utilizing their competencies and professional skills for tasks in the Polish labour market. Simplification of procedures for labour market access, residence legalization access, and significant reduction in the costs of these procedures – led to a change in the situation of Ukrainians in the Polish labour market. Currently, Ukrainians in Poland live legally and most often work legally as well, so in their case, remote work implementation would

also be justified. It would also allow traveling between Poland and Ukraine without having to resign from work and maintaining employment stability and continuity.

Hybrid work constitutes an innovative work organization model that flexibly combines traditional office work performed at the employer's premises with remote work performed outside of it. This model allows for adapting the workplace to current organizational and employee needs while maintaining key advantages of both forms³⁸. Unlike full remote work, the hybrid model enables maintaining direct contact between employees, which is fundamental for building organizational culture and effective team collaboration.

The genesis of hybrid work dates back to the period before the COVID-19 pandemic, however, the 2020 health crisis became a turning point in its popularization. Initially, a solution forced by circumstances evolved into a consciously chosen work organization model that gained recognition among both employees and employers. Experiences from the pandemic period showed that remote work can be as effective as office work, and the hybrid model allows benefiting from both forms.

From employers' perspective, introducing the hybrid model brings a series of measurable benefits. First and foremost, it allows for optimization of costs related to maintaining office space, which has significant economic importance in the era of rising rental prices. The hybrid model also enables increasing work efficiency through better adaptation of the workplace to the nature of tasks. Additionally, offering hybrid work possibilities increases employer attractiveness in the labour market and allows for acquiring talents from various geographical locations.

Agreement on Hybrid Remote Work: Amendment to the Contract

According to current regulations (Article 67¹⁹ § 2 of the Labour Code), an employee's request for complete hybrid remote work or occasional work should be submitted in paper or electronic form. If there exists an employee portal in the workplace where, among other things, working time is recorded (entry, exit), through which vacation requests, social benefit applications, business trip requests, work outside the employer's premises, etc. are submitted – then

³⁸ See also: P. Binder, *Praca zdalna w czasie pandemii i jej implikacje dla rodzin z dziećmi – badanie jakościowe* [Remote Work During the Pandemic and Its Implications for Families with Children: Qualitative Research], Instytut Filozofii i Socjologii PAN 2022, 18, 1, pp. 84–87, I. Mędryk (ed.), *Zarządzanie zasobami ludzkimi w nowej przestrzeni fizycznej i społecznej* [Human Resource Management in New Physical and Social Space], Warszawa 2021, *passim*.

in this portal (or in another analogous tool – there should also be a tab with an electronic form for requesting remote work (including its hybrid form). In such a case, submitting the request through this portal and conducting the entire procedure (reviewing the submitted request, final consideration of the request) should be treated as a formal agreement on remote work (including hybrid).³⁹ In the case of complete remote work, the organizational problem is smaller, as it is sufficient to submit a request with one continuous term agreed with the employer (e.g., selected consecutive months or the entire year). The situation becomes more complicated when requesting hybrid work, which by its nature is performed partly at the employer's premises and partly remotely. In such a case, it is reasonable for the IT tool used in the employer's workplace (employee portal) to have functionality enabling submission of hybrid remote work requests for specific days in the month.

If this tool does not have such technical capability, then a paper request should be submitted to the employer, specifying concrete remote work dates proposed by the employee. This issue can also be regulated in such a way that the employee and employer agree that it will be, for example, the first and third week of each month. It is important that the requested scope and schedule of hybrid remote work corresponds to the arrangements contained in the employer's internal legal acts.

In connection with the definition of remote work contained in Article 67¹⁸ of the Labour Code, the request should also indicate the place of remote work performance. If due to the presence of all necessary functionalities in the employee portal – the request submitted electronically in this way contains all the indicated elements and was subsequently accepted by the employer, it can be considered that remote work has been agreed upon, and thus an amendment to the employment contract regarding remote work has been concluded. Electronic documentation used by the employer makes paper requests unnecessary, although the latter provide greater evidentiary security.

Exclusion of Remote Work Application and Binding Employee Request

It should also be noted that the employer can at any time exclude the possibility of applying complete, hybrid, or occasional remote work, as the regulations adopted in 2022 concerning remote work list and define its 3 types but do not mandate their application. The employer has the right to determine that due to the type of activity, nature, or organization of work – this type

³⁹ See: E. Drzewiecka, *Uzgodnienie pracy zdalnej. Praktyczne wyjaśnienia* [Agreement on Remote Work: Practical Explanations], <https://sip.legalis.pl/> [accessed: 16.01.2025], *passim*.

of work form is not advisable or possible in their workplace. In such a case, only the possibility of submitting a request under Article 67¹⁹ remains, but this mode applies to a very narrow, privileged group of employees who, by the legislator's will, legally acquire the right to submit a request that binds the employer.

The remote work provisions that entered into force on April 7, 2023, give special rights to specific groups of employees who can effectively demand the employer's consent for remote work (which was partially regulated already in the Labour Code amendment of May 10, 2018, during the telework period), and according to Article 67¹⁹ § 6 and 7 of the Labour Code,⁴⁰ these groups include:

- (1) pregnant women,
- (2) parents of children up to 4 years old,
- (3) parents of children with disabilities (according to Article 142¹ § 3 LC, also after children reach adulthood),
- (4) persons caring for disabled members of immediate family or cohabitants with appropriate disability certificates.

G. Spytek-Bandurska emphasizes in her analyses that "[...] the employer is obligated to accept a remote work request submitted independently by employees with special family situations, for whom this form of employment constitutes a significant facilitation in reconciling private matters with professional ones. [...] The principle is to accept the request, as it has a binding character."⁴¹

The legal construction of Article 67¹⁹ § 6 gives the employee the possibility to effectively pursue their rights against the employer, who essentially cannot refuse consent for remote work if the employee meets the conditions specified in the provision. This position corresponds with the position presented by A. Sobczyk in the Labour Code commentary, speaking of the obligation to consider such a request in connection with pro-family policy.⁴²

⁴⁰ Article 67¹⁹ LC § 6. The employer is obligated to accept the request of an employee referred to in Article 142¹ § 1 points 2 and 3, a pregnant employee, an employee raising a child until the completion of its 4th year of life, as well as an employee providing care for another member of immediate family or another person living in the same household, who have a disability certificate or a certificate of significant degree of disability, for remote work performance, unless it is not possible due to work organization or the type of work performed by the employee.

⁴¹ G. Spytek-Bandurska [in:] W. Muszalski, K. Walczak (eds) *Labour Code Commentary*, Warszawa 2024, Legalis [accessed: 27.12.2024], *Komentarz do art. 67¹⁹: Wykonywanie pracy zdalnej* [Commentary on Article 67¹⁹: Working remotely], pkt 3: *Praca zdalna dla wybranych kategorii pracowników* [point 3: Remote work for selected categories of employees].

⁴² The Labour Code Act introduces a mandate to accept the request of an eligible employee for remote work performance in the cases mentioned in § 5 and 6, which is related to the implementation of pro-family policy. The Act does not specify the form of such request. It seems that considering the objectives that serve to grant employees the right to demand work performance in remote form, the employer should, in principle, accept any location indicated by the employee – A. Sobczyk [in:] A. Sobczyk (ed.) *Labour Code Commentary*, C.H. Beck 2025, Legalis [accessed: 27.08.2025], *Komentarz do art. 67¹⁹* [Commentary on Article 67¹⁹], pkt 10: *Zakres związania wnioskiem pracownika* [point 10: Scope of the employee's request].

Also, the latest 2024 Infor publication “Remote Work. Obligations and rights of employees and employers, Payroll and HR Essential Guide” confirms that although the employer has freedom in deciding on remote work requests, they must accept them in the case of employees listed in Article 67¹⁹ § 6 and § 7 of the Labour Code.

Analysis of the literature shows that the request submitted under Article 67¹⁹ § 6 in connection with 142¹ § 1, 2, 3 cannot be rejected by the employer, and by the legislator’s will, there is an order to accept and implement it. The legislator provided two exceptions to this principal rule, indicated in the content of Article 67¹⁹ § 6.

Thus, we are dealing with a statutory obligation causing that the employee’s request for remote work (complete / hybrid or occasional) must be considered positively by the employer even when the employer generally does not implement remote work in their workplace.

There are only two exceptions to this generally applicable statutory principle if the nature of the performed work meets the premises of such type of work that makes it impossible to perform remotely or such organization of it.

Premises for Refusing an Employee’s Request

The doctrine emphasizes that only these two (and no other) premises authorize the employer to refuse the request in accordance with legal provisions and only the occurrence of one or both of them simultaneously gives the employer the possibility to reject the employee’s binding request.

The employer may not accept the employee’s request for remote work only in a situation where it is unfeasible due to the method of work organization or the nature of performed official duties.⁴³ An analogous solution was adopted in Article 18^{21e} § 2 of the Labour Code regarding an employee’s request to combine parental leave with work. Examples of obstacles related to “work organization” can include the necessity to provide work in a continuous system (e.g., on a production line) or in close cooperation with other employees requiring identical working hours,⁴⁴ as well as conducting classes as a foreign language teacher (unless the school offers online courses).⁴⁵

⁴³ See: T. Kowalski, (ed.) *Praca zdalna. Obowiązki i uprawnienia pracowników i pracodawców. Niezbędnik kadrowo-płacowy* [Remote Work: Obligations and Rights of Employees and Employers. HR-Payroll Essential Guide], 2024, 4, „Serwis Prawno-Pracowniczy Inforlex” [accessed: 04.01.2025].

⁴⁴ See: M. Latos-Miłkowska, *Komentarz do art. 1821e* [Commentary to Article 1821e] (in:) Florek L. (ed.), *Kodeks pracy. Komentarz* [Labour Code: Commentary], Warszawa 2017, LEX/el., Nb.

⁴⁵ See also: B. Samoraj-Charitonow, *Praca zdalna a wiążący pracodawcę wniosek pracownika* [Remote Work and the Employee’s Binding Request to the Employer], „Zabezpieczenie Społeczne. Teoria, Prawo, Praktyka” [‘Social Security: Theory. Law, Practice’] 2024, 19, pp. 68–79.

On the other hand, examples of “type of work” excluding the possibility of remote work are: sales (except for e-commerce), cleaning services, production work, as well as professions such as surgeon, nurse, social welfare home caregiver, mail carrier, installer, or train driver – all these professions require the physical presence of the employee at the workplace due to the nature or organization of performed tasks, therefore in practice remote work requests can be submitted mainly by administrative-office workers and sales representatives.⁴⁶

The concept of “work organization” refers to management processes and is often linked to the company’s business profile – according to the “Encyclopedia of Management,” the simplest definition of work organization specifies “what needs to be done and who should do it”.⁴⁷ Meanwhile, “type of work” is a legal term, usually referring to the occupied position – it is obvious that certain professions (e.g., driver, baker, cleaner, mail carrier) cannot be performed remotely, so in such cases, the employee’s request must be rejected, as its implementation would require assigning different duties to the employee.⁴⁸

During the opinion-giving stage of the draft law introducing the application procedure from Article 67¹⁹ § 6, only one reviewer (Lewiatan Confederation) raised objections to the content of this provision and expected the addition of more premises under which the employer could refuse to positively consider the employee’s binding request: the manner of performing remote work and the employee’s skills. The opinion proposed that this fragment of the provision should read as follows:

The employer is obligated to accept the request of an employee referred to in Article 142¹ § 1 points 2 and 3, a pregnant employee, an employee raising a child until the completion of its 4th year of life, as well as an employee providing care for another member of immediate family or another person living in the same household, who have a disability certificate or a certificate of significant degree of disability, for remote work performance, unless it is not possible due to work organization or type of work performed by the employee, the manner of its performance by the employee, or the employee’s skills.⁴⁹

The justification for the proposed amendment stated, among other things, “[...] already during the performance of work in remote format, it may turn out that the employee does not guarantee appropriate engagement, efficiency, such cooperation formula has not proved effective”.

⁴⁶ Ibid.

⁴⁷ https://mfiles.pl/pl/index.php/Organizacja_pracy [accessed: 18.10.2022].

⁴⁸ M. Głądoch, *Praca zdalna. Kontrola trzeźwości. Nowelizacja kodeksu pracy. Komentarz. Linia orzecznicza* [Remote Work. Sobriety Control. Labour Code Amendment. Commentary. Case law], Warszawa 2023, Legalis [accessed: 15.01.2025], *passim*.

⁴⁹ Opinion of the Lewiatan Confederation of Employers on the draft act amending the Labour Code Act of 2022 (printed matter 2335), p. 8.

The legislator decided not to include the requested change in the content of the proposed Article 67¹⁹, and in this regard took a firm position, rejecting the proposed change to the provision's content about adding two additional premises enabling rejection of the request. Such an unequivocal position of the legislator during the legislative process clearly shows that the legislator did not intend to give employers the possibility to refuse or withdraw consent for remote work due to reasons such as unsatisfactory work performance or insufficient employee skills. Therefore, not only does the current wording of the provisions exclude such bases for request rejection, but the course of the legislative process itself confirms that the legislator deliberately opposed the introduction of criteria related to assessing the quality of work or the manner of its performance by the employee in remote mode.

Abstrakt

Artykuł omawia zagadnienie pracy zdalnej o charakterze hybrydowym, która została wprowadzona do polskiego systemu prawnego nowelizacją kodeksu pracy (obowiązującą od 7 kwietnia 2023 r.), dodającą rozdział IIc o pracy zdalnej. Celem jest analiza nowej instytucji prawnej oraz ocena jej kształtu w kontekście: zmian społecznych, godzenia ról zawodowych i work-life balance, konsekwencji jej realizacji dla mobilności międzynarodowej, w tym także dla sytuacji Ukraińców na rynku pracy, pozycji osób uprzywilejowanych w zakresie wniosku wiążącego pracodawcę, znaczenia pracy zdalnej dla rynku pracy i zatrudnienia, jak również dla możliwości utrzymania ciągłości świadczenia pracy przez Ukraińców, na których trudna sytuacja polityczna wymusza niekiedy mobilność *ad hoc*.

Słowa kluczowe: praca zdalna, rynek pracy, zatrudnienie, osoby uprzywilejowane, work-life balance, wiążący wniosek pracownika, Ukraińcy na rynku pracy.

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