

# Collective Bargaining In The Age Of Telework: A New Paradigm



**The COVID-19 pandemic showed us that we can rely on telework to remain productive and that its flexibility provides undeniable benefits.**

It only makes sense that the right to telework is now a trade-union requirement in some collective-bargaining agreements.

## **The Employer's Right to Manage Telework as a Principle**

As telework is part of an employee's working conditions, the employer has a right to manage this matter. Accordingly, the employer has the right to determine which employees may benefit from the scheme, under what terms and conditions, and for how many days per week.

As telework is bound by the company's operational requirements, it is in the employer's interest to retain its decision-making powers in this area. In addition, maintaining minimal attendance in the workplace may prove essential for training new employees, promoting social interaction, and building a corporate culture and sense of belonging among employees.

To ensure appropriate management of telework within the company, the employer may consider adopting a telework policy. As a result, it reserves the right to withdraw or review access to telework depending on the company's circumstances and requirements.

The new reality of remote work, however, must be implemented in compliance with the rights set forth in the current collective agreement. Telework, for instance, must not alter employment status, working hours, seniority, pay, benefits or any other condition of employment stipulated in the agreement.

## **Collective Bargaining for Telework in the Federal Public Service**

In the context of industrial relations, it may be in the union's interest to ask the employer to allow employees a degree of flexibility in determining how their work may best be carried out by enshrining the right to telework in the collective agreement.

Indeed, that is what happened during the collective-bargaining process between the Treasury Board and the Public Service Alliance of Canada. The issue of telework

sparked intensive negotiations. Following the employer's request to return to on-site work two days a week, the union asked that the right to telework be officially included in the collective agreement and that its terms and conditions be governed by it.

On May 2, 2023, a letter of agreement regarding telework was finalized between the Treasury Board and the union. It stipulates that managers will have to assess telework requests individually, "on a case-by-case basis and in consideration of operational requirements," and respond in writing. The letter of agreement also provides for the creation of union-management committees on telework, which would enable both parties to discuss the application of the telework policy and make recommendations to management regarding telework-related disputes with an employee.

Undoubtedly, these telework-related union demands in the federal public service will have an impact on many future collective-agreement negotiations in the public and private sectors.

## **The Effects of Telework on Interpreting the Collective Agreement**

In addition to its impact on collective-agreement negotiations, telework also has a bearing on the areas of interpretation and application, which accounts for the multiple instances of collective-agreement provisions being amended to reflect this new reality.

An arbitration award in 2023, for example, confirmed that the employer's right to manage its business allowed it to require its employees, who had been teleworking since the start of the pandemic, to be present at its offices one day a week. In this case, the collective agreement neither provided for the right to telework at any time nor contained any waiver of the employer's right to determine the place of work. The arbitrator concluded that this choice remained one of the attributes of the employer's right to manage.

In another arbitration award, also rendered in 2023, the union filed a group grievance contesting the employer's decision not to pay a minimum of five hours' compensation to teleworking employees when they are called back to work on an urgent or unscheduled basis. Having interpreted the provisions of the collective agreement, the arbitrator concluded that telework did not preclude applying this allowance.

In collective agreements containing provisions on telework, it may be difficult to impose a unilateral telework policy without negotiating the terms and conditions with the union, by claiming that it is part of the employer's residual rights to manage its workload. The inclusion of such provisions in the collective agreement may allow the union to claim that the employer is seeking to change working conditions, which must be negotiated with the union.

It is clear that we have seen only the tip of the iceberg when it comes to telework in the context of collective labour relations. It is likely that unions will increasingly seek to enshrine the right to telework in collective agreements, thereby removing the employer's unilateral right to manage the issue.

For this reason, adopting a clear telework policy is preferable, as it affords the employer the necessary leeway to manage company needs, while preventing this issue from becoming the subject of grievances under the collective agreement.

**To find out more about trends in collective bargaining, join us on April 30, 2024 at our Strategic Forum on Labour and Employment Law: [Be sure to sign up for the event now!](#)**

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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