



Article

Working from Home, Telework, Equality and the Right to Privacy: A Study in Kazakhstan

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Abstract: Remote work displays the flexibility of labor relations and expands the possibilities of conducting professional activities balanced with fulfilling personal needs. Simultaneously, when implementing the telework mode of labor relations, the problems of ensuring the equality and confidentiality of employees require special attention. Given the current global and internal threats, the effective organization of teleworking is an issue to the fore, even in countries where it was not previously given the attention it deserves. This study aims to explore the labor legislation norms of the Republic of Kazakhstan as far as remote work is concerned from the viewpoint of effectiveness. This paper includes a sociological survey among Kazakhstani organizations to determine the conditions of employees working remotely and to use it for conclusions about the effectiveness of the legislation in preventing violations of workers' rights. The study proposes mechanisms and rules aimed at the effective regulation of remote work to address the problems of confidentiality and the equal treatment of the employee, regardless of the mode of conducting his/her professional activities. This research advances knowledge in the field of legal and ethical aspects of the regulation of remote work, demonstrating the experience of developing countries with the study of the experience of Kazakhstan.

Keywords: remote work; equal rights; right to privacy; telework; non-standard working conditions; employment; labor market; flexible work schedule; life balance; flexibility; Kazakhstan



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1. Introduction

The modern era, with its constant changes, forced digitalization and emerging global threats, requires new approaches to the legal regulation of many processes of social life. The observed patterns, which have caused notable shifts in the global agenda, demonstrate that the existing approach for regulating legal regimes via cases and individuals applying practices in experimental mode must absorb the necessity of fundamental transformation by almost every institute that provides the efficient functioning of social and economic processes. The modern challenges and the readiness of state and society for them largely depend on legal institutes' level of development, flexibility, consistency and efficiency. The COVID-19 pandemic has accelerated many processes; for instance, millions of people have switched to teleworking while creating a workplace in their own households. Remote work displays the flexibility of the labor relationship and expands the possibilities of work activities balanced with fulfilling personal needs. Simultaneously, the remote mode of work affects the right to personal privacy, as well as putting the employee in a clearly unequal position (Katsabian 2020). Reflecting this reality, the home office reproduces inequality from the private sphere of the employee into the context of the workplace (Katsabian 2020). It reproduces gender-specific traditional family roles in the labor market, along with socioeconomic differences (Katsabian 2020).

In Kazakhstan, regulations on telework first came out in 2012 (Adilet 2016). However, before July 2021, they were more of a general nature, having scarce terminology and

leaving, for the most part, all the details of regulation in the field of employment contracts and employer regulations. The period of forced transition to the remote form of labor in Kazakhstan revealed plenty of positive and negative aspects. Among the positive aspects are traffic reduction and therefore benefits for the environment, cost-effectiveness in terms of transportation costs, the need to ensure working conditions, the reduced risk of the transmission of viral diseases, the possibility of combining work with household duties and more opportunities to achieve a work–life balance (Sullivan 2012; Shirmohammadi et al. 2022). Besides the positive aspects, there are also hidden negative ones, which to a greater extent impact the rights of workers and include the unequal treatment of remote and traditional-work-format workers; moreover, the combination of a workplace and personal space at home leads to the violation of privacy rights and the lack of legal protection (Juchnowicz and Kinowska 2021; Ferreira et al. 2021; Van Zoonen and Sivunen 2022). Additionally, the family role of women, which sticks to traditional patterns in Kazakhstan, affects professional life, especially when working remotely. While socio-economic inequalities affect the technological skills of workers, their access to technology and suitable workplace impact professional performance.

In our opinion, the current legal policy of the state does not take into consideration these negative consequences; the legal norms are one-sided and do not contribute to the equal treatment of remote workers compared with traditional ones.

Analyzing the existing legal norms in Kazakhstan, we have realized that the legislation lacks solutions aimed at fixing and implementing the right of employees to influence the balance in an employer's manifestation of power in relation to employees and preserving privacy. Additionally, there are no systematic solutions at the state level to support low-income socio-economic groups and women integrated into the labor market through remote work.

The evolution of remote work in Kazakhstan raises the issue of regulation and the discussion of good practice. Simultaneously, regulation may follow two trajectories: the first is legal regulation, which lies in the plane of law, workers' rights and equal treatment; the second is regulation by introducing new management, based on the concepts of efficiency and flexibility. Issues of efficiency and stability are raised, especially in the context of legal regulation via the imperative and dispositive norms used. The established pattern in employment contracts of co-operation expectations from the employee and fair treatment by the employer has come under strain due to the employer's increasing expectations of functional flexibility and entrepreneurial activity on the part of the employee (Collins 2006). Hence, this paper studies the norms of the labor legislation of the Republic of Kazakhstan in the field of telework from the perspective of their effectiveness in the realization of the employee's rights to inviolability, confidentiality and the possibility of receiving equal treatment.

This research extends the knowledge about the legal regulation of telework in Kazakhstan.

The study contributes to a better understanding of the legal regulation of telework in Kazakhstan to prevent violations of confidentiality and to ensure equality, considering that problems in this area have become more common during the pandemic (Katsabian 2020). This article conducts a sociological survey among Kazakh organizations to determine the conditions of employees working remotely and on this basis to draw conclusions about the effectiveness of legislation in preventing violations of the privacy of employees. In modern social-economic conditions, the role of an employee's personal data security increases significantly due to the formation of a market economy and the escalation of social problems. After the development of accessible mass communication technologies, opportunities for the abuse of gathered personal information proportionally increased. Means of integration and the fast processing of personal data have emerged, and they are effectively used, threatening the rights and legal interests of human beings (Kalimova 2019). The statistics from 2018–2020 shows that more than 11 million accounts with personal data and payment information have leaked, according to a report on confidential information leaks (Forbes 2020). Activities of inner violators caused 72.7% of those incidents. Actions

of personnel, deliberate or accidental, caused by the human factor, are behind all those leaks (Forbes 2020). This paper proposes specific mechanisms and rules aimed at the effective regulation of telework to solve the problems of privacy and the equal treatment of employees, despite the format of their conductance of their professional activities. This research advances knowledge in the field of legal and ethical aspects of the regulation of telework, demonstrating the experience of developing countries on the study of the experience of Kazakhstan.

2. Literature Review

The effective legal regulation of telework identifies the position of the state in the development of non-standard forms of employment and determines the degree of the digital maturity of the state. At the international level, various forms of non-standard labor relations, new forms of employment have long been recognized; research in the field of the influence of remote format of work in ensuring equality and privacy has been conducted in numerous studies by researchers across the world (Arlinghaus et al. 2019; International Labour Office 2016; Wood et al. 2018). In Kazakhstan, these problems remain unexplored. In this paper, aspects of the legal regulation of remote work in Kazakhstan will be considered to determine whether the norms available in the national laws in the field of telework from the perspective of their effectiveness in the realization of the employee's rights to inviolability, confidentiality and the possibility of obtaining equal treatment.

The extrapolation of certain factors affecting the future provides a basis for conclusions about the criteria of normative acts' effectiveness and therefore for developing a method of legal-regulations prognostic assessment (factor: forced shifting to telework because of the pandemic; consequence: law was not ready to regulate such relationships, since the norms of telework generally existed, but their implementation was impossible due to various matters not considered). The calculation of legal regulation efficiency suggests using methodologies related to the analysis of the relationship between the law and the social context.

The literature review uses the work by Athanasiadou and Theriou (2021), which presents a taxonomic classification of the literature on telework, as well as an extensive bibliography and future research program, based on an analysis of 2000–2020 studies. This study is a systematic literature review of the existing scholarly work on telework.

In terms of economic impact, the area has been studied quite extensively. For example, the advantages and disadvantages of telework usage in social-economic areas are well analyzed in the study by Kohont and Ignjatovic (2022). The use of information technology in work organizations has raised the question of the impact on sustainable economic development (Messenger 2019), methods for managing remote labor relations (Mahler 2012), developing economic strategies for the use of hybrid forms of work organization (Lopez 2020), and creating virtual offices and other forms of online workplace organization (Brinzea and Secara 2017; Messenger and Gschwind 2016).

Political and legal research on remote labor issues is of no small importance. They are conducted both at the level of international regulation and at the national level of individual countries. International studies are widely enough represented in the works devoted to disadvantages and advantages, as well as to development prospects and the experience of the European Union (Gschwind and Vargas 2019; Komendová 2015) and the experience of BRICS countries (Chudinovskikh and Tonkikh 2020). Since this article is aimed at the study of national legislation, the work of scholars on the political and legal aspects of the organization of distant labor in individual countries is of interest.

A significant part of the research examines the social aspects of the use of distant technologies in labor, namely, who predominantly resorts to remote labor and why (Bailey and Kurland 2002). Scholars across the globe consider aspects of the impact of remote work on health (Tavares 2017) and regard remote labor as an instrument of inclusion (Schopp 2004; Igeltjörn and Habib 2020). Enough papers have focused on the social issues of remote work implementation during the pandemic (Vološevici 2020; Katsabian 2020).

These studies on the principle of non-discrimination and the equal rights of employees were also of interest for our study (Van den Broek and Keating 2011; Lott and Abendroth 2020).

The above-mentioned works played a significant role in our study, becoming a reference point for understanding the crucial aspects in the organization of remote work.

Very few works have been devoted to the issues of the legal regulation of telework in Kazakhstan and they are not enough. The research in this paper, supported by the results of a sociological survey, is conducted for the first time. Studies conducted by scholars in Kazakhstan in this area are informational and narrative in nature and have been conducted on the basis of old norms (Khamidullina 2016). Articles and speeches of Kazakh scientists in the last 2 years were more in the nature of commenting on the introduced amendments, explaining their meaning, and bringing them to the attention of the public (Gileva 2021; Tretiakova 2021). The issues of the legal regulation of remote work in Kazakhstan were also considered in a very limited way (Yesirkepova et al. 2021).

3. Methodology

This paper used the following methods to achieve its goal:

A desk-research methodology was used as a starting point for the study (Sileyew 2019). In particular, we used online desk-research methods by collecting information through the official websites of government agencies and relevant national and international organizations, including industry and business websites. When studying scientific studies on national legal policy on remote labor, we embraced the principle of similarity of legal systems with the legal system of Kazakhstan; the basic research work study included the legal regulation of remote labor in the Roman law system (Onica-Chipea 2020). We separately analyzed the research experience of scholars from Hungary (Bankó 2016), Romania (Vallasek and Mélypataki 2020), France (Aguilera et al. 2016), Germany and Austria (Hiessl 2018), and Russia (Kozhevnikov and Chudinovskikh 2020). For the modulated search, we used several search engines as well, such as www.sciencedirect.com (accessed on 1 November 2022), link.springer.com (accessed on 1 November 2022), www.researchgate.net (accessed on 1 November 2022), and others.

This literature review relies on a semi-systematic approach (Snyder 2019). It is the most acceptable because various groups of scientists studied the topic of telework with various methods and in various areas, which made the process of system review problematic. This method proved to be useful to summarize the current state of knowledge and the dynamics of research in this area and to develop a plan for our own research.

When investigating the substantive meaning of the legal norms used in this study, we applied the methods of legal linguistics, which allow us to comprehend and unfold the content of the norms and to analyze the lexico-semantic features of legal terminology (Vogel et al. 2018).

The study used a method of analyzing the texts of the collective agreements of some organizations in Kazakhstan, which are publicly available on the official websites. The use of this method allowed the authors to assess the real meaning of the norms of collective agreements in ensuring the equality of the position of remote workers compared to traditional workers, as well as ensuring the right to confidentiality. Collective agreements of the following organizations were considered and analyzed: The National Company Kazakhstan TemirZholy (Kazakhstan TemirZholy n.d.), LLP Management Company Kazmedia Centre (Kazmedia n.d.), state company Multipurpose Children's Regional Hospital (Multipurpose Children's Regional Hospital 2021), Kazacturikmunai LLP (Kazacturikmunai 2017), Astana International Airport (Astana International Airport 2017), BogatyrKomir LLP (BogatyrKomir 2017), Arcelor Mittal Temirtau Joint Stock Company (Arcelor Mittal Temirtau 2022), non-profit joint-stock company I. Altynsarin Arkalyk Pedagogical Institute (I. Altynsarin Arkalyk Pedagogical Institute 2021), and others.

The lack of judicial practice and the insufficiency of official data on the application of legal norms of remote labor regulation in Kazakhstan made it possible to identify possible

problematic issues in this area using the method of surveying through an online survey. The online survey was conducted in the period from 1 February 2022 to 28 February 2022. The questions were formulated according to the research goals.

The sociological research, compilation, and analysis of the results occurred in two stages. First, we identified factors that may affect the provision of equal treatment of employees who perform their functions remotely and the provision of additional safeguards to maintain personal privacy. The second stage included collecting and evaluating survey results using a qualitative research method. A combination of these methods helped formulate the main research questions.

The procedure of the investigation was performed in the following way. As a first step, organizations were selected depending on their accessibility for the researchers. Then, based on an analysis of organizations' activities, it was established that, in the interest of proper coverage, organizations must be selected by such criteria as type of ownership, number of staff members (more than 100), and field of activity. The experimental base of the research included the following organizations: Alikhan Bokeikhan University; Otbas Bank; Financial Investment Corporation "ALEL"; Nazarbayev Intellectual School of Semey; Semey High School № 6; Chamber of Legal Advisors of Semey, Semey; Chamber of Legal Consultants, Almaty; City Court No. 1, Semey; Department for Court Support under the Supreme Court of the Republic of Kazakhstan, Semey; Temirtransservice LLP; and the Institute of Legislation and Legal Information under the Ministry of Justice of the Republic of Kazakhstan.

Respondents were selected through non-probability quota sampling (Bhardwaj 2019); the selection for the general population adopted the following criteria: the period (employees were selected for interviewing by the criterion of work activity in their employment contract from 2019 until 2021 or during the pandemic and emerging changes in Kazakhstan legislation), the number of employees, and the presence of remote workers. Quotas (the population is divided into categories; elements from each category are then chosen) were set according to the possibility of a wider coverage of activities: education, financial activity, service, production. Furthermore, the criterion of quotas was to ensure the coverage of both the budgetary and the private sector.

After defining the organizations that are the most fitting for interviewing, HR managers of those companies were approached for further selection. A method of exponential non-discriminative snowball sampling (Bhardwaj 2019) was utilized here, which means that a single person (HR manager of a company) provides information about company workers. Following that, we formed a group of the most fitting respondents according to these criteria: experience of telework, different areas of activity, and different ownership types of the company.

The first group of respondents was selected by HR services of the aforementioned organizations from their employees; then, the authors selected a group of workers who directly received the questionnaires.

Questions for the questionnaire were formulated following the aims of the research. In other words, they were designed for obtaining information about the reasoning of telework utilization, working conditions, wage matters, working schedule, security, and confidentiality.

The disadvantage of this method is the impossibility of randomizing the sampling process and therefore to cover the whole pool. Still, this sampling method is the most convenient for this research, considering the homogeneity of the Kazakhstan legal system. Furthermore, this method has its advantages: the variability of sampling and chart volume, delivering convincing results, and low time and effort expenses.

The first selected group (experimental) comprised 100 people; further, according to the specified criteria, questionnaires were sent to 65 people (representative group).

The respondents were recruited using the following techniques and criteria:

- Questionnaires were sent out with the help of human resource managers of both budgetary and non-budgetary organizations using the e-mails posted on the official websites;

- Questionnaires were sent to organizations that were not small businesses, namely with the number of employees over 100 (the category is defined in accordance with the legislation of the Republic of Kazakhstan). This sample was carried out in connection with the fact that, with such a number, the probability of the availability of workers who can perform their functions remotely increases significantly. Moreover, such organizations have many resources in the field of remote working conditions;
- A guideline for selecting employees for the survey was the requirement for remote labor relations (questionnaires were not sent to the self-employed, freelancers, etc.);
- The main criterion for selecting a worker for the survey was the implementation of remote work in the period from the beginning of 2020 to the time of the survey.

The survey was conducted in three stages:

- verification;
- formation;
- control (Braun et al. 2021).

4. Results

The main prerequisite for the introduction of new norms for regulating remote work in Kazakhstan was found to be the introduction of the state of emergency during the pandemic. Most of the respondents interviewed (89.8%) carried out remote work because of the state of emergency (Figure 1).

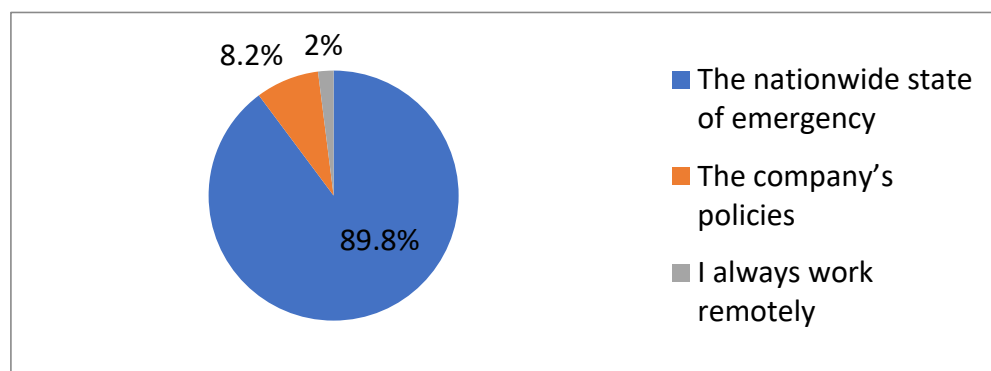


Figure 1. Reasons for conducting activities in a remote format.

The results of research in the field of dynamics of development of the Labor Code of Kazakhstan also prove this. Norms related to telework were first introduced in 2015 when adopting the new RK Labor Code (Art. 138). In the period from 2015 to 2022, the RK Labor Code was amended and supplemented 32 times (Adilet 2015). Amendments to the code regarding the regulation of telework were introduced 2 times, with significant changes occurring on 7 January 2021 (Adilet 2012). The results of the analysis of the dynamics of changes in the Republic of Kazakhstan Labor Code are in Table 1. Dynamics represented based on the criteria developed from the Kazakhstan Labor Code articles and norms. Furthermore, the criterion of confidentiality issues legal regulation was included, since the research topic aims for it as well (Legal Information System of Regulatory Legal Acts of the Republic of Kazakhstan 2021).

The following results were obtained on the basis of a survey of remote workers:

Table 1. Dynamics of changes in the Republic of Kazakhstan Labor Code.

Criteria	Code Norms as of 23 November 2015	Code Norms after Changes on 4 May 2020	Code Norms after Changes 1 July 2021
Status	Remote work is a special form of the labor process.	The same status	Labor relations in a remote format do not carry any special status and are equal to the standard relationship.
Grounds and moment of establishment	No norms	No norms	1. The possibility of establishing distant work both at the time of the conclusion of the employment contract and during its validity has been introduced. 2. Introduced voluntary and compulsory grounds for performing work in a remote format 3. Establishes mandatory requirements for the employer's act in establishing remote work forcibly
The concept	1. Outside the employer's location 2. Using ICT	The concept is the same.	1. The concept of combined remote work is introduced. 2. Expanded the concept by introducing, in addition to the employer, the host party (for outstaffing) 3. The understanding of off-site location is expanded; not only the location of the subject, but also its objects, are considered.
Supply and reimbursement	Provision is made for the provision and reimbursement of expenses by the employer both mandatorily and by agreement of the parties.	No change	The same approach remains in the provision of equipment and the reimbursement of expenses, with the obligation of the employee in the performance of his duties, to use exactly the equipment provided by the employer or the host party. Also introduced is the indication of the validity of the costs of employees seeking reimbursement.
Working hours and organization of working hours (work schedule)	A fixed record of working hours and the control procedure are within the competence of the employer.	No change	1. The compulsory limitation of daily working hours is additionally introduced. 2. Mandatory availability of the employee within working hours only 3. The possibility of recording working time by the volume of work performed (if it is impossible to record the time) is fixed. 4. The possibility of establishing a flexible working hours regime to combine the social, domestic, and other personal needs of a distant worker with the interests of production has been enshrined.
Occupational health and safety	No norms	The obligatory determination of labor protection and safety standards for remote workers in the acts of the employer is enshrined.	Specifies a specific list of responsibilities for compliance with health and safety standards for remote workers

Table 1. Cont.

Criteria	Code Norms as of 23 November 2015	Code Norms after Changes on 4 May 2020	Code Norms after Changes 1 July 2021
Confidentiality of the employee, availability of additional guaranties against excessive control by the employer	No norms	No norms	-
Wages	No norms	No norms	Wages for telework shall be paid in full when the specified amount of work is performed.
Privacy	No norms	No norms	The obligation is enshrined in the employment contract to maintain the preservation and non-disclosure of confidential information of a distant worker

4.1. Reasoning for Employing Telework

Regarding the organization of remote work in the organization, most of the respondents indicate that, when switching to remote work, the employer has adopted the appropriate directives (71.4%) and special internal rules for the organization of remote work with the mandatory introduction to the employees (65.3%). Regarding the use of EDS for signing the labor contract and performing other legal actions in the organization, 63.3% responded positively.

4.2. Workplace of a Teleworking Employee

The survey regarding workplace equipment and the use of necessary resources showed that 55.1% of respondents did not discuss their workplace with their employer. Simultaneously, 89.8% of respondents used their own house (apartment) as a workplace during work remotely, and 65.3% of respondents used their own equipment and ICT. Simultaneously, the results on the issue of paying for their own expenses were obtained according to Figure 2.

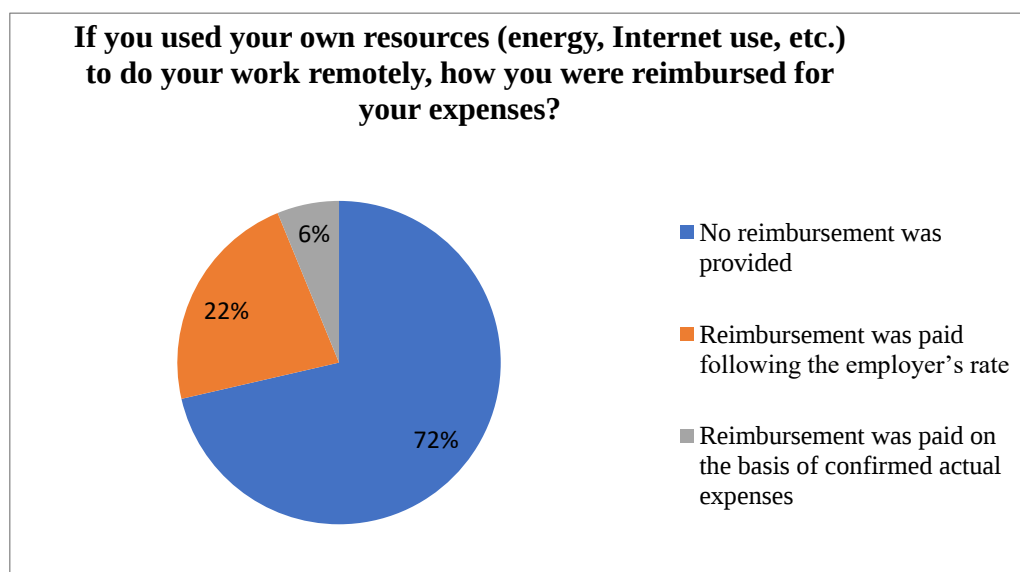


Figure 2. “If you used your own resources (energy, Internet use, etc.) to do your work remotely, how you were reimbursed for your expenses?”.

4.3. Working Conditions

When asked about the employer's actions to assess working conditions, workplace safety, and equipment, 73.5% of the respondents answered that no actions to assess working conditions at the remote workplace were performed. In parallel, the survey revealed that when working remotely, for 26.5% of respondents, the employer assessed the intensity of the work process, namely intellectual, sensory, emotional stress, monotony of work, and work mode.

In terms of wages, there has been no change, as confirmed by 98% respondents.

4.4. Information Security

Concerning information security in the context of remote work, 85.7% of respondents indicated that no additional documents aimed at ensuring the organization's information security were signed by them. Simultaneously, when asked "Has the employer taken additional measures to ensure information security of the organization when transferring employees to a remote format (instruction, installation of special software, secure connection solutions, authentication services, information leakage control systems, etc.)?", 59.2% responded that no measures were taken, 28.6% indicated that a minimum-security connection package was installed and training was provided, and 12.2% indicated a very high level of remote workplace security.

The analysis of the texts of collective agreements of Kazakh companies showed the absence of norms regulating remote work in the organization or a superficial approach, by duplicating the norms already stipulated in the Labor Code. There are no separate rules regulating the workplace, wages, payment of expenses, control procedures, and social guaranties, ensuring safety for distant workers.

5. Discussion

Overall, the results of the survey and other secondary data research revealed the main factors affecting employers' equal treatment of remote workers compared to traditional workers and ensuring the right to privacy. The study will provide relevant conclusions for legal policy at both the state entrenchment and corporate regulatory levels.

5.1. Reasoning for Employing Telework

The reference to the declaration of a state of emergency during a period of COVID-19 pandemic and mass disturbances as the main reason for the transition to remote labor in Kazakhstan indicates that employers in Kazakhstan are not yet sufficiently prepared to use a remote or hybrid format of labor activity. Although according to the International Telecommunication Union (ITU) ICT Development index (IDI = 6.79), Kazakhstan ranks 52nd out of 176 countries ([International Telecommunication Union 2017](#)), the Kazakhstani employer, accustomed to working in a traditional mode, needed an additional powerful push to use the available opportunities.

One of the main challenges of the COVID-19 pandemic is undoubtedly the connection between the labor market and digital transformation. New social restrictions affected the labor market, changing employment expectations and intensifying the society digitalization as a solution for solving the tensions of the labor market ([Simionescu and Raišienė 2021](#)). The pandemic-caused crisis has affected all countries, both developed and developing ones without exception ([Bartik et al. 2020](#)). To prevent the spread of the pandemic, the Republic of Kazakhstan, like most countries in the world, has introduced a state of emergency ([Decree of the President of the Republic of Kazakhstan 2020](#)), regarding which the state was not prepared, particularly on the part of the organization of labor relations. According to the Ministry of Labor and Social Protection of the Republic of Kazakhstan, the State Labor Inspectorate conducted 1,908 inspections in the first half of 2020. As a result, 1088 orders were issued to employers, and the total number of fines was KZT 86.7 million ([Committee of Labor, Social Protection and Migration 2020](#)). Presumably, 52,000 small-business employees (19%) were on leave without pay ([Chairman of the Board of the Atameken National](#)

[Chamber of Entrepreneurs of the Republic of Kazakhstan n.d.](#)). After mass isolation was imposed as the main way to prevent the spread of the disease, Kazakhstani employers faced a real need to apply the norms of remote labor relationships, including remote work.

An additional test of the effectiveness of the new legal norms introduced during the pandemic concerning remote workers were the events that occurred in Kazakhstan in January 2022. These were mass disturbances in the cities of Kazakhstan, which led to the state of emergency, a curfew, and the order of the administration in the need to transfer most of the workers to remote mode. Repeated experience of the application of mass transfer to the remote mode became indicative for Kazakhstan and was an indicator of the effectiveness of the legal policy of the state in this sphere.

Forced measures have shown Kazakhstani companies that the change in the format of work has positive consequences, which have begun changing the attitude of the subjects of the labor process to the remote organization of work. According to expert estimates, in Kazakhstan, about 2.2 million employees, or every fourth employee, can work remotely in such sectors as education (up to 80% of employees in the industry), finance and insurance (62%), public administration (58%), professional, and scientific activities (50%), and information and communication (45%). As a result, employment in these industries did not shrink much during the lockdown, and somewhere, in contrast, it increased. According to official statistics, in Q1 2021, only 73,700 people, or 0.8% of the employed population, officially worked outside the workplace, 86% of whom used their own means of communication, 70% were women, and 69% were urban residents ([Center for Workforce Development 2021](#)). Based on the analysis of the number of remote workers in Kazakhstan in the period from 2018 to 2021, we may witness a rapid increase of 15 times.

Organizing the work to conclude a contract with a distant worker is an integral factor affecting the equality of access of this category of workers to labor activity and the possibility of freely formalizing their legal relations. As far as the subjects of initiation of remote work and the finalization of an employment contract under such conditions are concerned, the norms are aimed at equalizing the parties to an employment contract in the application of the remote form of labor relations and preventing unilateral changes in the conditions of the remote nature of work.

Simultaneously, the Kazakh legislator in Art.1 par. 55–1, 55–2 of the Labor Code applies to the category of remote workers, a rather broad notion, which includes all sorts of variations, without reference to a specific location, as is customary for telework ([Blainpain and Lyutov 2013](#)), also performed both completely and partially (combined remote work) and with the mandatory use of information and communication technologies. In contrast to mobile work, which is mentioned in the studies of the European Fund 2015, the question of the frequency and regularity of remote work is not regulated in the legislation of Kazakhstan. Setting the order and conditions of the application of such alternation is left to the discretion of the labor agreement of the parties.

Essential from the viewpoint of ensuring the principle of equality are the results of the survey regarding the method for concluding an employment contract. According to Article 33 of the Kazakhstan Labor Code: “The employment contract shall be concluded in writing in at least two copies and shall be signed by the parties. One copy of the employment contract shall be kept by the employee and the employer. The conclusion of the employment contract, amendments and additions to it may be made in the form of an electronic document certified by an electronic digital signature.” We would also like to draw your attention to the fact that amendments and additions to an employment contract shall be made in the same way as stipulated for the conclusion of the employment contract. It is impossible to overlook that the *de jure* application of the electronic method for concluding a contract is very expedient and efficient for distant workers.

The normative regulation of social relations in the obtention, verification, and use of electronic digital signatures was received in the legislation of Kazakhstan ([Adilet 2012](#)). Applying the remote format of concluding an employment contract points to the possibility of using an electronic digital signature only for electronic documents and for specifically

defined purposes, namely, to confirm authenticity, the belonging of an electronic document to a particular individual or legal entity, and the invariability of the content of the submitted document. On this basis, we can assert that the legislator recognizes that the existence of one without the other is impossible, namely, an electronic document will not be recognized as such without its certification by using an EDS. That is, in this case, the law clearly defines the requirements for an electronic digital signature, the availability of a registration certificate, and the compliance of all procedures with the requirements established by the above law.

Remote work is called to expand the geography of the search of workers and the possibility of concluding labor contracts remotely for workers from other states leads us to the simulation of a situation on the conclusion of a labor contract for workers from other countries and as consequence to the question of the recognition of the electronic digital signatures of foreign states in the territory of Kazakhstan. According to Article 10 of the law, one of the mandatory conditions for the recognition of electronic digital signatures of another state is that the electronic digital signature has been created and the registration certificate has been issued by the National Certification Authority of the Republic of Kazakhstan ([National Certification Authority of the Republic of Kazakhstan 2022](#)) or by a foreign certification center registered with a trusted third party of the Republic of Kazakhstan ([Trusted Third Party of the Republic of Kazakhstan 2022](#)).

A simplified interaction between the employer and the employee at the conclusion of the contract through the exchange of electronic documents can be considered quite progressive, but the question of the effective applicability of this norm is debatable. Herein, it is important to consider the following:

1. Is it possible for an employee to obtain an EDS? If, for citizens of the Republic of Kazakhstan, there is such an opportunity, then for foreign nationals, this procedure is quite difficult, as shown by the above analysis of the application of the rules on EDS?
2. Does the employer use electronic document management that can be used to enter employment contracts?

The question “Does the employer use electronic document management with the possibility of using a digital signature in legal support of labor relations?” was answered by 63.3% of respondents. A total of 63.3% of respondents answered that the organization uses electronic document management; the rest pointed out that the electronic support of processes in the organization is not provided.

The use of an electronic method for concluding a labor contract with a distant worker requires certain efforts from both the employer and the employee. If efforts to use EDS were not made in advance, then taking them only to conclude an employment contract is quite costly and it will be easier to apply the traditional written method, which will put a distant employee in a knowingly unequal position, since he often cannot be present at the signing of the employment contract in person. Moreover, this may lead to the inability to ensure the rights of distant workers to review the acts of the employer and to express their consent or disagreement in making any decisions in the framework of labor relations.

5.2. Teleworking Conditions

The next important factor that affects the issues of ensuring the equal treatment of a distant worker and preserving the balance between the personal space and the workspace of the worker, including his confidentiality, is the organization of working conditions. The issues of the legal regulation of the place of work are important for remote work. Organizational and social-economic support of the employees is an imminent part of worker resources ([Kohont and Ignjatovic 2022](#)). Only with the support provided can the organization can expect increased investment by a worker; that is how the social exchange principle works ([Emerson 1976](#); [Shanock and Eisenberger 2006](#)). Although the place of work, according to Article 28 of the Labor Code of the Republic of Kazakhstan, is one of the mandatory conditions of the employment contract, the law provides for a reservation that, in distant work, the place of work is not specified. Simultaneously, the place of work must

be understood as the workplace, not the employer's location. From a practical perspective, this clause gives full freedom in regulating critical issues, such as workplace equipment, labor protection, insurance, etc. The survey also shows a formal approach to these issues. Hence, the failure to establish a place of work for a remote worker leads to the deprivation of the guaranties that the law provides for traditional workers. Considering what is listed above, all of these may cause negative consequences for distant workers, such as increased uncertainty and instability at work and the area and quality of living space (Kohont and Ignjatovic 2022). Negative consequences for the employer exist as well, such as weakening cooperation and corporate culture, slowing work pace, dissatisfaction by employees, and a decrease in their general productivity (Green 2016; Kohont and Ignjatovic 2022).

By choosing a distant worker's own home (apartment) as a place of work and not prescribing the details of providing this workplace, the employer creates for himself a knowingly advantageous position concerning his own responsibility and a disadvantageous position concerning the employee's responsibility. Advantages for the employer are indicated by the results of the survey, which show that only a small percentage of employers care about equipping a remote worker's workplace, paying expenses related to the performance of work, or checking working conditions and occupational safety.

An effective strategy for evaluating employees in a company is a combination of tangible and intangible measures. Today, to improve the performance of the company, it is not enough for the employer to only provide flexibility in the organization of the labor process but also to pay a competitive wage, while remote workers cannot be infringed in terms of additional compensation and guaranties. As Kazakhstani legislation suggests, the issue of remuneration to a distant worker is settled unambiguously, namely the remuneration in distant work is paid to the full extent of the scope of work specified in the labor contract, depending on the employee's qualifications and the complexity and quality of work performed (item 6 of Article 138 of the Kazakhstan Labor Code). Issues of additional incentives for the employee are at the discretion of the employer and depend on the strategy that the company has chosen to support the employee and whether the company expands the use of remote labor in the company. If we pay attention to the results of the survey, the companies of Kazakhstan are not sufficiently interested in this development and perhaps because the experience of using remote labor is rather imposed on them, the question of bearing additional costs is unacceptable for the employers. The lack of elaboration of the mechanisms of responsibility and procedural aspects of bringing it to the employer in case of non-payment of these costs indicates the ineffectiveness of this norm, especially if distant labor is used in the organization based on the act of the employer in connection with the need. Based on the results of this survey, we can confidently say that, in Kazakhstan, the strategy of building a system of material incentives for employees is not adapted to the development of remote labor, and the existing legislative norms are a confirmation of this, as they only duplicate the existing norms on wages for traditional workers without considering the specifics of remote labor.

One of the important issues of remote work is the organization of working time. The organization of working time creates the impact of new information and communications technologies (new ICTs), such as smartphones and tablet computers, which enable constant connectivity. These new ICTs have resulted in a blurring of the boundaries between paid working time and both the times and spaces that are normally reserved for personal life (Messenger 2018).

Legal norms in this area have undergone changes, but it is hardly possible to call them functional. The main purpose of establishing a work schedule involves the need to maintain efficiency and to preserve health, and, for remote workers, working mostly in the home office, it is also to maintain a life-balance. Paying attention to the effective legal regulation of working hours, we agree with the opinion that a rational distribution of working and rest time reduces tension between employees and employers, prevents the occurrence of stressful situations that lead to industrial conflicts, and, leaving enough free time for the recuperation of employees, provides the necessary conditions for personal development

([Borodina 2019](#)). However, the norms of the distribution of working time for remote workers under Kazakh legislation may have low efficiency and the reality of their application is limited. Thus, the regime of working time and the specifics of the control of working time follow the employment contract or the act of the employer (Article 138 paragraph 5 of the Republic of Kazakhstan Labor Code). This alternative, due to the dependence of the employee on the employer, tips the scales toward the regulation by the employer's act, which is unilateral. Because of this norm in Kazakhstan, the most viable model of the flexibility of working time determined by the employer, although studies recognize that the type of flexibility WTA, focused on the employer, is directly related to the demands of business and leads to a non-standard work schedule, overtime, etc. ([Fagan et al. 2012](#)). Simultaneously, there is a norm, which stipulates that for employees engaged in distant work, there is a fixed record of working time in compliance with the limitations of daily working hours. By this norm, the legislators of Kazakhstan tried to resort to a "balanced" type of the organization of working time to meet the interests of both the employee and company ([Messenger 2018](#)). This norm could have a positive value because it does not allow for excesses in managing the schedule of a remote worker, but according to Article 74, paragraph 1 of the Republic of Kazakhstan Labor Code "For employees, including distant workers, flexible working hours may be established to combine their social, domestic and other personal needs with the interests of production"; paragraph 5 of the same article states that the duration of daily work (work shift) and (or) weekly work in flexible working hours may be more or less than the number of hours per day. As a result, when interpreting these two norms, we conclude that they are contradictory and thus ineffective, while the norm that the reference period for flexible working hours may be up to six months, in our opinion, may lead to abuse by the employer and the violation of the employee's life balance. Hence, due to the contradictory and ineffective norms regarding the organization of remote worker's working hours, employers take the path of least resistance, using the normal work schedule used for standard employees, which does not lead to the development of remote work in Kazakhstan.

5.3. Safety and Security of Remote Workers

In accordance with the legislation of the Republic of Kazakhstan on labor issues, employers must ensure the safety and security of workers. This includes creating and maintaining a work environment that does not pose health and safety risks and providing appropriate protective equipment for workers performing their work ([Occupational Safety and Health at Work Convention 1981](#)). This issue appears urgent regarding ensuring the labor safety of remote workers, since the place of work is not obliged to be fixed, and, therefore, all issues related to safety are largely outside contractual regulation. With such a nature of work, the employer and employee at the conclusion of the labor agreement should pay increased attention to it. The ineffectiveness of the existing norms stems from the lack of special methodological recommendations on the implementation of these obligations in relation to a remote worker and his place of work; secondly, from the insufficiency of legal mechanisms to hold employees accountable for non-compliance with these labor norms; thirdly, from the dispositive nature of many norms in relation to a remote worker.

Digital and physical security, leaks of confidential information are among the most important risks. As can be seen from the results of the survey, as well as analyzing the regulatory framework of the country, Kazakhstan has not properly responded to the increase in cyber threats because of the transition to telework. There are no specific laws related to cybersecurity in Kazakhstan. Of the multitude of norms in the area of labor-relations regulation, no norms that would regulate company responsibility for data protection issues have been considered. For example, such norms as part of the mass transition to a remote format of work were quite widely represented in the legislation of EU countries (Hungary, Romania, and Poland): using only verified platforms, security regarding the use of devices, e-mail, networks, and cloud environments in the context of remote work, and using encrypted communication channels, the mandatory briefing

of remote workers, etc. (Škiljić 2020). Kazakhstan has followed the path of providing employers the freedom to choose how to respond to such threats without enshrining the corresponding responsibility. Thus, each employer is given the right to decide and apply their own measures to ensure information security and the control of remote work.

Remote employees work with documents outside the office, and the risk of leaking confidential information increases. Although there are many solutions for the information security of companies and experts predict that the number of leaks of client databases of companies by employees transferred to remote work may increase by 2–3 times: employees' work-at-home computers that are not protected from cyber-attacks, transfer valuable business information to each other in messengers and social networks (Kolomoets 2022). All of this leads to the need to monitor and control the activities of employees by the employer. At the same time, the results of the study show that, in Kazakhstan, there are no special norms that would impose any restrictions on the implementation of control to ensure the right to the privacy of the employee. In world practice, the issue of the legality of control by using computer programs and the limits of interference with privacy has repeatedly become the subject of judicial proceedings, as well as scientific debates (Cabeza Pereiro and Rodríguez Rodríguez 2017). Surveillance without fixed limits can negatively affect the employee, and if this control extends beyond the office, as it does for remote workers, it can also negatively affect family members and the employee's home climate.

Based on the results of the study, we can conclude that, both at the legislative level and at the level of corporate culture, Kazakh society has poorly adapted to the digital economy and does not contain a clear framework defining the limits of employer control over employees.

5.4. Policy Recommendations

Given the above, it is important to develop a strategy that, along with the current trend toward flexibility in work organization, will contain tools that do not allow for rigid restrictions, while not permitting the regulation of all of the above issues to the employers' sole judgment. Faced with protecting the right to privacy together with the inviolability of homes, the development of new technologies and the possibility of developing work from home has opened the door to a series of new conflicts that require us to provide a specific legal framework by which such situations can be addressed (Arroyo-Abad 2021).

In every legal norm concerning the remote worker in Kazakhstan, we sense the uncertainty of the legislator, dictated by the fear of driving into the framework of essentially flexible labor relations. However, such indecision leads to a violation of equality, the possibility of total control, and the violation of the right to privacy.

We propose to move away from the principle of total permissiveness, hiding it under the guise of freedom of labor legal relations and the flexibility and non-standard format of remote work. It is important to establish clear normative and technological limitations on the level of legislation with respect to ensuring the privacy of employees. The need is to develop technical and organizational recommendations at the level of the relevant ministry, which would have a more effective impact on a developing country like Kazakhstan.

Besides, in the field of the regulation of the labor of remote workers and the development of this type of activity, such a tool as a collective agreement may prove helpful. Collective agreement takes the leading place among sources of local labor regulation, and the norms of collective agreement serve as a supplement to legislative prescriptions. It considers industry specifics of production and fills the gaps in the law. There is an opportunity to increase the level of social protection compared to labor law and general, industry, and regional agreements. However, despite the presence of such a tool, employers and employees through trade unions do not pay due attention to this document. The analysis showed that those issues in the field of distant work, which legislation refers to the consideration within the framework of a collective agreement, are not reflected in the texts we reviewed. It is first connected with the absence of responsibility measures for failure to provide in the contract those measures, which refer to their subject of regulation.

Thus, clear criteria for auditing the issues of remote workers' rights observance, including the right to ensure confidentiality, must emerge for controlling authorities.

When looking at the legislative fixes of telework in Kazakhstan, we can conclude that the original purpose was lost in the regulation, and, under the influence of the pandemic, the legislation became more of a gap-filling nature. Initially, the goal was to implement a policy of employment in connection with the emergence of new opportunities, the promotion of flexibility, and the development of atypical forms of work organization. The consolidation of norms, turning employers and employees to a wider use of telework, and the application of incentives at the legislative level will lead to a wider use of this format and achieve the original goal of expanding employment opportunities. We also believe that the development of incentives at the level of state regulation will be an effective tool in the protection of the rights of distant workers, their equal treatment, and, ultimately, the development of this format in Kazakhstan.

6. Conclusions

This paper allows us to come to the following conclusion:

The dynamics of the development of legislation in the field of telework in Kazakhstan indicate that changes in the legislation began to be forced only under the pressure of emerging circumstances related to the pandemic. Previously, the process of the legislative regulation of this format of organization of labor relations in Kazakhstan was a too long and unenthusiastic process.

The currently available Kazakhstani legislation on the regulation of telework is to a small extent aimed at the development of this format of employment; it is more of a descriptive and demonstrative nature with a greater degree of referential and dispositive norms without specific mechanisms of protection and responsibility. This leads to a violation of the rights of remote workers, discrimination against them on the basis of the format of work, and the violation of the right to privacy.

The analysis of the available results allowed drawing conclusions that such institutions of labor relations as wages, security measures, guarantees of payment of additional expenses, workplace safety conditions, cybersecurity issues, and the organization of work schedules are not detailed in relation to remote workers. The legislator passes on the regulation of these issues further to the contractual regulation between the employee and the employer. Due to the lack of relevant experience in this area, employers do not develop or do not sufficiently develop these issues in their own acts and collective agreements, and employees mostly take a passive position by agreeing to the proposed conditions.

The ineffectiveness of the regulation of distant work leads to the impossibility of providing proper equal treatment to distant workers and the decent protection of their private interests. Privacy as a constitutional right requires interpretation and possible revision due to the widespread use of information technology.

This study is an approach to assessing the existing legislation in Kazakhstan in the field of telework. In future work, it is necessary to consider ways to overcome the problems identified in this study. Understanding the current situation of the possibilities of the application of legislative aspects in practice is a key component to the further development of recommendations for improving the tools for the legal and technical organization of remote work and, in the future, for the wider development of this mode of work to ensure the sustainable development of the state.

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