



## Teleworking as an instrument for balance of personal and family life: problems in its implementation

El teletrabajo como instrumento de conciliación de la vida personal y familiar: problemas para su implementación

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### Abstract

This paper addresses the feasibility of teleworking as a work-life balance tool and its implementation challenges, given that the regulations make a generic reference without distinguishing between the various modalities or typologies and without noting the various ways of combining it. It is concluded that for teleworking to be a work-life balance tool, it will require certain requirements (home-based teleworking, offline, with flexibility and time control by the worker) that Chilean legislation does not fully address.

**Keywords:** *Teleworking; Work-life balance; Gender perspective.*

### Resumen

El presente trabajo se plantea la pregunta sobre la factibilidad del teletrabajo como herramienta de conciliación y sus problemas de implementación, dado que, la normativa hace una remisión genérica sin distinguir sobre las diversas modalidades o tipologías y sin advertir las diversas formas de combinación del mismo. Se concluye que para que el teletrabajo sea una herramienta de conciliación requerirá de determinados requisitos (teletrabajo a domicilio, desconectado, con flexibilidad y control del tiempo por la parte trabajadora) que la legislación chilena no contempla cabalmente.

**Palabras clave:** *Teletrabajo; Conciliación; Perspectiva de género.*

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## I. INTRODUCTION

Although remote work is an already old form of work <sup>2</sup>, the emergence of information and communication technologies has raised a specific form of remote work called teleworking, since it involves a form of work outside the physical space of the company or business carried out specifically by computer, technological or telecommunications means.

Its express recognition in the Chilean legal system begins with Law No. 19,759, 2001 <sup>3</sup>, which incorporates it into the regulation corresponding to the working day <sup>4</sup> - by excluding them from it - this was criticized at the time by scholars, precisely because this type of work can establish more sophisticated forms of control of the start and end of the day; on the other hand, it was valued that it had been regulated, since there was doubt about the labor and subordinate nature of this way of providing services through the system of indications <sup>5</sup>.

Subsequently, through Law No. 20,940 of 2016, work-life balance agreements were introduced, which provided workers with family responsibilities with the option of flexible work location, work schedule adjustments, and work control methods, among other options. However, these agreements have not developed as expected <sup>6</sup>.

Law No. 21,220 of 2020, which amended the Labor Code regarding remote work, incorporated Chapter IX, entitled Remote work and teleworking, <sup>7</sup> into Title II of Book I, introducing a new special employment relationship to the already extensive catalog in the Labor Code. This regulation was enacted in March 2020, within the framework of a set of legislative provisions to address the COVID-19 pandemic that was declared in Chile by the middle of that month.

An emergency rule was created, but it had permanent effects on these forms of work. The main characteristics of the regulation are, on the one hand, its flexibility and deregulatory nature at the individual level and, on the other, its scant reference to collective autonomy and the role of the union <sup>8</sup>.

Subsequently, various laws have been passed that have developed the idea of teleworking as a tool for balancing personal and family life, primarily aimed at workers who care for children, adolescents, and dependent individuals, in the Chilean case, in both the public and private sectors.

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<sup>2</sup>In the 20th century, this form of work was the formula for the productive system to be able to market its products, such as traveling salesmen, insurance agents, collectors, etc. Now, with the introduction of technologies, although they have not disappeared, today they coexist with automated forms of marketing through the Internet and social networks. Home work is also seen as a form of decentralized work, for example.

<sup>3</sup>On teleworking in this regulatory framework, see RUAY (2017).

<sup>4</sup>Law 19.759, 2001, "Sole Article. - The following amendments are introduced to the Labor Code: ... 7. Article 22 is amended as follows: ... b) The following new final paragraph is added: *"Likewise, workers hired to provide their services preferably outside the place or site of operation of the company, through the use of computer or telecommunications means, are excluded from the limitation of working hours."*

<sup>5</sup>UGARTE (2004), p. 160.

<sup>6</sup>By virtue of the collective agreements that came into force in 2023, according to the 2023 Statistical Yearbook of the Labor Directorate, there were 96 agreements for the balance of work with family responsibilities, representing 3.51% of the instruments in force. DIRECCION DEL TRABAJO, Anuario Estadístico 2023, p. 18. Available at [https://www.dt.gob.cl/portal/1629/articles-126308\\_archivo\\_01.pdf](https://www.dt.gob.cl/portal/1629/articles-126308_archivo_01.pdf). Accessed: December 16, 2024.

<sup>7</sup>Teleworking was originally planned to be regulated within the labor relations that could be called general by Law 19,759 of 2001, but was transformed into a special labor relationship according to the *ad hoc regulation* of 2020 cited above.

<sup>8</sup>SOTO (2021a), p. 3.

It is suggested that teleworking would be an instrument that would help to reconcile the personal and family life of workers<sup>9</sup> or that the use of new forms of hiring that have emerged under the wing of technological development in recent times would make it possible to advance in the establishment of a new balance in gender roles<sup>10</sup>. However, this statement can be put into perspective, since teleworking is a form of work that is carried out remotely and by technological means. Therefore, it does not necessarily imply an adaptation of the working day nor a formula to ensure reconciliation in care, as will be demonstrated below.

On the other hand, it should be noted that, based on the experience associated with the COVID-19 pandemic, *ad hoc legislation was developed* and its use became widespread. However, its implementation was reversed when the pandemic was declared over. Given this, the difficulties faced by workers who provided services under this form of work in certain modalities in achieving work-life balance became apparent.

This research is based on the premise that there are various forms or modalities of teleworking, therefore, it is necessary to clarify which of these modalities are compatible with the reconciliation of personal and family life and which of them would be more problematic in achieving this goal. Once this analysis has been carried out, it is possible to compare the modalities with the possible combinations of working hours that are allowed, i.e., teleworking and face-to-face work, exemption and control of working hours, etc., in order to finally be able to analyze the compatibility of these forms of work with the reconciliation of family and personal life.

On the other hand, this study refers to problems regarding regulation in the private sector and excludes analysis of the public sector, given that its particularities require its own study<sup>11</sup>.

When is teleworking a tool for work-life balance? Why might teleworking be problematic for work-life balance? These are the questions this article will attempt to answer.

## II. THE DIFFERENT MODALITIES OF TELEWORKING

### 2.1. The typologies of teleworking

Beginning to clarify what is meant by teleworking, it is possible to state that there is not just one typology, but rather various modalities. Therefore, to answer the questions posed, it is necessary to identify them, as indicated by specialized scholarship.

From a spatial or locative point of view<sup>12</sup>, three modalities are distinguished: home-based teleworking, teleworking in telecenters, itinerant or nomadic teleworking<sup>13</sup> or “mobileteleworking”<sup>14</sup>; from a qualitative or technological point of view two forms are visualized: *off-line* or disconnected teleworking and *on-line* or connected teleworking; within these forms two subtypes are distinguished: *one-way line* or *single-direction teleworking* and *two-way line* or interactive<sup>15</sup> teleworking. These types of teleworking are raised in a specific

<sup>9</sup> QUINTANILLA (2017), p. 362.

<sup>10</sup> CAAMAÑO (2010), p. 83.

<sup>11</sup> To this end, the regulations have been *ad hoc* through public sector readjustment laws, decentralized to service heads, on an annual basis, and shaped by the jurisprudence of the General Comptroller of the Republic.

<sup>12</sup> THIBAUT (2000), p., 33. GARCÍA (2020), p. 97.

<sup>13</sup> MARTÍN-POZUELO (2020), p. 22-23.

<sup>14</sup> POQUET (2020), p. 40.

<sup>15</sup> MARTÍN-POZUELO (2020), p. 24-25. PÉREZ DE LOS COBOS (2001), p. 24. LIZAMA (2020), p. 127-128. GUIDI (2023), p. 57-58.

territory and under its specific regulations, given that there may also exist what is called transnational<sup>16</sup> or cross-border teleworking<sup>17</sup>, where we are situated in an international employment relationship<sup>18</sup> that has its specific implications and which are not the subject of study of this work.

It is also proposed that remote work would be the general category, which would encompass several sub modalities, including home-based work and teleworking, which would also include home-based teleworking, teleworking in telecenters, nomadic teleworking and mobile teleworking<sup>19</sup>.

It is also important to keep in mind that all of these methods, according to various perspectives, can be implemented in a mixed or hybrid manner, either among themselves or by combining in-person work and teleworking.

The ILO (International Labour Organization), for its part, distinguishes “remote work” from “work done on a predefined place”. Then, “telework” is a particular case of remote work, requiring the use of electronic devices. “Home work” is defined as activity done completely or partially in the worker’s home; home work can be remote or done on a predefined place. “Home-based work” is a subcategory of home work, and it is defined as work usually carried out at home. These concepts can be combined and therefore, there is “telework done at home” and “home-based telework”.<sup>20</sup>

It has been pointed out that teleworking would be a subspecies of remote work and that in this context “the species wins over the genus”<sup>21</sup>. This is explained because the norms that regulate remote work really intensively regulate teleworking; this reference has been made to the Spanish case, but it is applicable to Chile, because when remote work is regulated in the Law, its content ends up exhaustively regulating teleworking.

Teleworking is also classified from the point of view of the distribution of the working day or the fraction of dedication or intensity. Primary teleworkers are those whose teleworking occupies the majority of the working day; substantial teleworking, when teleworking is a regular and frequent activity, and marginal teleworking, when its use is sporadic<sup>22</sup>.

Regarding Chilean legislation on teleworking modalities, it should be noted that since the enactment of Law No. 21,220 of 2020, which regulates remote work, it has been normatively developed as a special employment relationship and organized as a special contract.

Remote work is conceptualized as that in which the worker provides his/her services, totally or partially, from his/her home or another place or places other than the establishments, facilities or work sites of the company. On the other hand, said remote work will be called

<sup>16</sup>To this effect, see: DIRECCION DEL TRABAJO, October 4, 2021, Opinion No. 2318, which indicates that it is inadmissible to administratively grant effects abroad to Law No. 21,220, on Teleworking, even with the agreement of the parties in the employment relationship, regarding the factual assumption related to the consultation on the provision of services from abroad for the benefit of an employer located in Chilean territory.

<sup>17</sup> See DIRECCION DEL TRABAJO, December 4, 2021, Opinion No. 2794.

<sup>18</sup> See ORTEGA (2023). PÉREZ (2022). ESPINIELLA (2022).

<sup>19</sup> POQUET (2020), p. 41.

<sup>20</sup> OIT, COVID-19: Guidance for the collection of work statistics: Definition and measurement of distance work, telework, home work and home-based work. 2020. [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@stat/documents/publication/wcms\\_758333.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@stat/documents/publication/wcms_758333.pdf), accessed: 26 November 2024, p. 3.

<sup>21</sup> GINÈS I FABRELLAS (2022), p. 48.

<sup>22</sup> GARCÍA (2021), p. 66-67.

teleworking if the services are provided through the use of technological, computer or telecommunication means or if such services must be reported through these means<sup>23</sup>.

It makes a distinction and delimits teleworking in telecenters by stating that it will not be considered remote work or teleworking if the worker provides services in places designated and enabled by the employer, even if they are located outside the company's premises, since said provision of services corresponds to another special contract called the "teleoperator contract", incorporated by Law No. 21,142, 2019, and therefore, excludes the modality of teleworking in telecenters from the regulation of remote work and teleworking, given the *ad hoc legislation* that exists for this purpose; now, the previous statement does not imply that said special contract is a form of teleworking from the rationale of the indicated categories.

From the perspective of the various modalities, or from a spatial or location perspective, Chilean legislation allows for home-based teleworking and itinerant or nomadic teleworking. The law states that the parties must determine the location where the employee will provide services, which may be the employee's home or another specific location. However, if the services, by their nature, are likely to be provided in various locations, they may agree that the employee may freely choose where she/he will perform her/his duties<sup>24</sup>.

Off-line teleworking and online teleworking and the two subtypes, one-way line and the two-way line or interactive, would also be admissible in Chilean legislation, since it is inferred from the concept provided by the law, because it indicates that services can be provided through the use of technological means or if they should just be reported through them.

As it can be observed, teleworking allows for various modes and forms of connection, so it will be necessary to clarify, in addition to the mode, the working day or its exemption, to determine which forms are compatible or not with work-life balance.

## 2.2. The teleworking day established by law

From the perspective of working hours, the regulation allows for mixed or hybrid work arrangements, since remote work or teleworking may cover all or part of the working day, combining in-person work at company premises, facilities, or work sites with work outside of the company<sup>25</sup>. In this case, alternative combinations of these work periods may also be agreed upon, which the employee may choose. The employee must notify the employer of the chosen option at least one week in advance<sup>26</sup>.

Now, regarding the distribution of working hours or exemption from them, the legislation makes a distinction in the legal regime on remote work, since it establishes that for people who provide remote services, if the nature of their duties allows, the parties may agree to freely distribute their working hours according to the schedules that best suit their needs, subject to the maximum limits on daily and weekly working hours in accordance with the general rules.

On the other hand, in the case of teleworking, the parties may agree that the worker is excluded from the limitation of the working day as long as it complies with the general regulation, i.e., they work without immediate superior supervision due to the nature of the work performed or they perform managerial or representative functions of the employer, as provided in the second paragraph of art. 22 of the Labor Code, this regulation is reinforced

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<sup>23</sup> Article 152 quarter G (Labor Code)

<sup>24</sup> Article 152 quarter H (Labor Code)

<sup>25</sup> First paragraph of article 152 quarter J (Labor Code)

<sup>26</sup> Fifth paragraph of article 152 quarter J (Labor Code)

when the rule states that it will be presumed that the teleworker is subject to the ordinary working day when the employer exercises supervision or functional control over the manner and opportunity in which the work is carried out <sup>27</sup>.

It should be noted that in the case of remote work where it is agreed that the employee's working day will be freely distributed according to the schedules that best suit their needs, or in teleworking where the hypothesis of exemption from working hours is configured, the employer must respect the right to disconnect <sup>28</sup>.

In remote work, the working day can be distributed, but cannot be exempt from it and the general rules apply. In the case of teleworkers, they can be exempt from the working day in accordance with them. Moreover, this is reinforced since within the stipulations that must be fulfilled by the remote work or teleworking contract, including the general ones contained in art. 10 of the Labor Code, those of art. 152 quater K number 5 are added, since it provides that the circumstance must be expressly stipulated that it has been agreed that remote workers may distribute their working day in the schedule that best suits their needs or that the teleworker is excluded from the working day limitation. On the other hand, in the case of the person who provides services remotely, the employer must implement at its own cost a reliable mechanism for recording compliance with the remote work day, in accordance with the provisions of art. 33 of the Labor Code, i.e., in accordance with general standards.

Regarding administrative scholarship, it should be noted that, in a first stage, it was accepted that it was possible within the framework of teleworking, for the parties to agree that the employee would work certain periods subject to a limitation of the working day and others excluded from said limit to the extent that the combination of face-to-face work and teleworking had been carried out in different weeks <sup>29</sup>, the only restricted hypothesis would be within the same week, according to said scholarship. However, this does not prevent face-to-face work from being combined with teleworking in the same week, but in all cases subject to a working day <sup>30</sup>.

A second stage begins once Law No. 21,561, 2023, which modifies the Labor Code in order to reduce the working day, is approved and comes into force. In the fourth paragraph of article 152 quater J of the Labor Code, the phrase "in accordance with the provisions of the fourth paragraph" is replaced by the following: "as long as it complies with the provisions of the second paragraph." Therefore, the exception that teleworkers may be exempt from working hours is eliminated and they are subject to the general regime for this purpose <sup>31</sup>.

Based on this amendment and the restrictive interpretation of the second paragraph of Article 22 of the Labor Code by the administrative body, it can be concluded that a combination of in-person work and teleworking is possible, provided that they are subject to a working day and are time-controlled in accordance with Article 33 of said regulatory body. However, the hypothesis of exemption from working hours follows the general rules for both in-person work and teleworking.

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<sup>27</sup> It must be kept in mind that this rule does not respond to the original regulation of Law No. 21,220, 2020, since it referred to the fourth paragraph of article 22, which expressly authorized the exemption of the working day for teleworkers as regulated by Law No. 19,759, 2001, the delimitation to the general rule is given by Law No. 21,561, 2023, which modifies the Labor Code in order to reduce the working day.

<sup>28</sup> See UGARTE (2024).

<sup>29</sup> DIRECCION DEL TRABAJO, November 16, 2020, 3079/031/2020.

<sup>30</sup> DIRECCION DEL TRABAJO, September 12, 2023, Ordinary No. 1224.

<sup>31</sup> See DIRECCION DEL TRABAJO, February 6, 2024, 84/4/2024. DIRECCION DEL TRABAJO, February 1, 2024, 81/2/2024.

The amendment to Law No. 21,561 of 2023 brings the working day of teleworkers within the framework of those public order regulations, removing them from private autonomy as had been proposed since its introduction in 2001. Nevertheless, this must be weighed against the introduction of flexible working hours, which relativizes the above, and which depends on the agreement of the parties or the imposition or mere will of the employer, as provided for in Article 22 bis introduced to the Labor Code by Law 21,561 of 2023.

In conclusion, the Chilean system allows all possible forms of teleworking, with different working hours, although regulations passed after 2020 limit the exemption from this. Having said this, from a contractual perspective, it is a flexible system based on the autonomy of the parties, which poses a problem based on the basic principles of labor law. However, which of these forms are compatible with the reconciliation of personal and family life, and which of them could be problematic? This will be discussed below.

### III. PROBLEMS OF TELEWORKING AS AN INSTRUMENT FOR RECONCILIATION OF PERSONAL AND FAMILY LIFE

#### 3.1. History of the emergence of teleworking as a conciliation measure

It should be noted that the concept of teleworking was born from the American engineer Jack Nilles<sup>32</sup> as a form of organizational decentralization, in the context of the energy crisis (oil) of 1973 and in order to reduce the costs of work displacement (transportation) and improve environmental indicators. In a second moment, the idea of teleworking re-emerges, now from the perspective of globalization and as a business organization policy (offshoring), in order to increase competitive advantages in the nineties of the twentieth century; finally, a third moment occurs with the COVID 19 pandemic, which forced to reduce social contact, where teleworking was one of the ways to maintain productivity. From this historical trajectory, it is seen that it was not aimed at reconciling personal and family life<sup>33</sup>, therefore, it has been said that it is a policy designed to adapt the labor market of industrial society to the new reality of the knowledge society and the digital world<sup>34</sup>.

On the other hand, policies and measures for reconciling personal and family life are based on the visualization of the structural problem between productive and reproductive (domestic) work, the latter being situated in women's bodies by cultural patterns. It has been pointed out that it is an "original sin"<sup>35</sup> of labor law, which limited women's employment opportunities due to their socially assigned gender role, which entails taking responsibility for childrearing and caregiving.

These policies initially aim to make work—especially for women—compatible with the roles society has assigned them. Thus, the traditional family structure is maintained without shifting toward a gender-equal family model<sup>36</sup> or what is known as parental co-responsibility. Conciliation measures then gain new impetus from low birth and mortality rates and the resulting aging of the population. These policies are therefore incentivized to promote birth rates and care for the elderly<sup>37</sup>.

<sup>32</sup> NILLES (1975), p. 1142-1147.

<sup>33</sup> ROIG (2020), p. 596.

<sup>34</sup> ROIG (2020), p. 598.

<sup>35</sup> CAAMAÑO (2014), p. 14.

<sup>36</sup> ROIG (2020), p. 598.

<sup>37</sup> ROIG (2020), p. 600.

In the Chilean case, it does not differ from what has been systematized previously, since, in the history of Law 19,759, 2001, and with respect to the executive's message, it is mentioned within the objectives of the new types of hiring that there was a transformation of the labor market, the structure of employment and the organization of work; it was argued with respect to teleworking that "other forms, of more recent appearance, require regulation, particularly because they respond to organizational forms of work and companies that are projected towards the future, to the extent that technology continues to develop, such as work that is provided in a place other than the company's premises through modern technological means or teleworking"<sup>38</sup>.

Continuing with the history of the law, in the floor discussion on July 3, 2001, Senator José Antonio Viera Gallo stated at the time that "with existing information technology, teleworking will become increasingly common, especially for executives and middle managers in companies. These people will work from their own homes"<sup>39</sup>.

The project justification, in its section on new ways of employment, states "new ways of work organization are regulated, such as part-time contracts, teleworking, and contract-training, that essentially ease women and youngsters aged 18-24 enter the labor market"<sup>40</sup>. This justification is included in the report from the Labor Committee of the Chamber of Deputies and in the second constitutional step of the project. It was added a goal of women's inclusion to the labor market and youngsters' inclusion to telework. However, telework as a conciliation tool was absent both in the executive's message and during the law approval process. Now, the arguments are aligned with the historic background of this form of work.<sup>41</sup>

It was only in 2018 when the bill that gave rise to the current Law 21.220, 2020 on remote work was presented that the link between teleworking and conciliation appears. In the message sent by the executive, the assumptions of conciliation policies are presented since it emphasizes the aging of the population and increase in life expectancy, technological change, concern for the environment, the incorporation of groups excluded from the labor market<sup>42</sup> and parental co-responsibility. As explained, the processing of this regulation was accelerated

<sup>38</sup> BIBLIOTECA NACIONAL DEL CONGRESO. *History of Law No. 19,759*. Document generated on September 4, 2023.

[https://www.bcn.cl/historiadelaley/fileadmin/file\\_lev/6023/HLD\\_6023\\_749a0d2dec7072ac83d52ebf0f2ff393.pdf](https://www.bcn.cl/historiadelaley/fileadmin/file_lev/6023/HLD_6023_749a0d2dec7072ac83d52ebf0f2ff393.pdf). accessed: December 11, 2024, p. 6.

<sup>39</sup> BIBLIOTECA NACIONAL DEL CONGRESO. *History of Law No. 19,759*. Document generated on September 4, 2023.

[https://www.bcn.cl/historiadelaley/fileadmin/file\\_lev/6023/HLD\\_6023\\_d1ef0a5e8adaea66a33cc04b987d5ce2.pdf](https://www.bcn.cl/historiadelaley/fileadmin/file_lev/6023/HLD_6023_d1ef0a5e8adaea66a33cc04b987d5ce2.pdf). Accessed December 11, 2024, p. 25.

<sup>40</sup> BIBLIOTECA NACIONAL DEL CONGRESO. *History of Law No. 19,759*. Document generated on September 4, 2023.

[https://www.bcn.cl/historiadelaley/fileadmin/file\\_lev/6023/HLD\\_6023\\_945b0386b5606586f2796c50a8775bc3.pdf](https://www.bcn.cl/historiadelaley/fileadmin/file_lev/6023/HLD_6023_945b0386b5606586f2796c50a8775bc3.pdf). Accessed: December 11, 2024, p. 6.

<sup>41</sup> A bill introduced in the same decade, in 2006 (Bulletin 4712-13), argues for regulating teleworking as a special employment relationship, based on technological changes and the globalization and integration of the global economy. This bill was a motion presented by Senators Carlos Bianchi and Pedro Muñoz. The same argument is made in the bill (Bulletin 7199-13), introduced during the first administration of President Sebastián Piñera in September 2010.

<sup>42</sup> The message refers to: "people living in areas far from urban centers; mothers or fathers responsible for their children; adults caring for sick or elderly relatives; people with disabilities who have difficulty getting around; elderly people who, despite being active, are unable to move around easily; and young people who must balance work and their studies." BIBLIOTECA NACIONAL DEL CONGRESO. Message No. 071-366/ of August 8, 2018, from the President of the Republic, initiating a bill to amend the Labor Code regarding remote work. Available at



given the urgency posed by the COVID-19 pandemic, since it was in the second constitutional process since December 2018 and without movement until March 20, 2020 when it was legislated and approved in just four days, the law being published on March 24, 2020; the discussion in those days revolved around the needs of the health crisis and there was no further parliamentary reflection on teleworking as an instrument of conciliation than the arguments given in the project proposal.

As can be inferred, the regulation was not born as a conciliation policy but rather as a labor market adaptation and response to it. Furthermore, there was little reflection on this instrument as a conciliation tool throughout the legislative debate.

However, following the approval of the law regulating remote work, various bills have been introduced<sup>43</sup> aimed at reconciling personal and family life, with teleworking as a tool to facilitate this.

### 3.2. Regulation of teleworking as a conciliation measure

Since teleworking is identified as a conciliation instrument, legislation is enacted in this regard in force during the health crisis, to this effect Law 21,260, 2020 is enacted, which adds a new final paragraph to article 202 of the Labor Code, insofar as it establishes the duty of the employer to offer the worker - in the event of a State of Constitutional Exception - the modality of remote work or teleworking, in the same sense Law 21,498, 2022, extends the assumption to the health alert, as instruments that enable the exercise of the right.

From this inflation of motions that regulated the matter, these projects are merged and systematized in the message sent by the Government of President Gabriel Boric, in the month of July 2023; it is based on the difficulties associated with care work, the need to reconcile work and personal and family life, the idea of a mechanism for women's employability and the reduction of gaps is repeated, it is argued that in the post-pandemic the world of work would have been transformed and that there was a set of voices that placed these modalities as "a new tool that can contribute to facing the challenges in terms of reconciling personal, family and

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[https://www.bcn.cl/historiadelailey/fileadmin/file\\_ley/7735/HLD\\_7735\\_9ffd40617cd5d85d61c9a58fb036b1b4.pdf](https://www.bcn.cl/historiadelailey/fileadmin/file_ley/7735/HLD_7735_9ffd40617cd5d85d61c9a58fb036b1b4.pdf). Accessed: December 11, 2024. p. 5.

<sup>43</sup>Bulletin 13886-13, of November 11, 2020, amending the Labor Code to regulate the teleworking modality for workers in charge of the personal care of children under twelve years of age, during states of constitutional exception due to epidemics or pandemics of contagious diseases. Bulletin 14171-13, of March 19, 2021, amending Laws No. 21,247 and No. 21,260 to regulate the criteria for the benefits they grant regarding preventive parental medical leave and teleworking. Bulletin 14302-04, of June 8, 2021, amending Law No. 19,070 to regulate remote work for education professionals and establishes regulations on the matter applicable to education assistants. Bulletin 15361-13, of September 26, 2022, amending the Labor Code to allow parents to access the teleworking modality after the completion of the postnatal period. Bulletin 15405-13, of October 5, 2022, amending the Labor Code to enshrine the teleworking modality as a right of those who exercise personal care for preschool-aged children, neuro-divergent children, or children with disabilities. Bulletin 15966-13, of May 25, 2023, amends the Labor Code to promote remote work or teleworking in the cases indicated (specifically, people who care for people with disabilities). Bulletin 16013-13, of June 5, 2023, amends the Labor Code in relation to the protection, guarantees, and organization of workers in the teleworking system. Bulletin 16014-13, of June 13, 2023, amending the Labor Code to extend the application of the remote work or teleworking modality to the cases indicated (specifically to people caring for children under five years of age affected by various respiratory viruses). Bulletin 16107-13, of July 11, 2023, amending the Labor Code to authorize the teleworking modality for caregivers and pregnant workers. Bulletin 16250-13, of August 30, 2023, amending the Labor Code to incorporate criteria regarding remote work and teleworking.

work life" <sup>44</sup>, added to the savings in transportation costs, which once again supports the idea of teleworking as an effective mechanism for this purpose.

In this way, Law 21,645 of 2023 is enacted, which aims to ensure that workers who perform unpaid care work can carry out all or part of their daily or weekly workday under the modality of remote work or teleworking, under certain conditions and requirements. The principles of positive parenting <sup>45</sup>, social co-responsibility <sup>46</sup> and protection of maternity and paternity are incorporated, the right to preferential holidays related to the preferential right to vacations of people who have as dependents a child under 14 years of age or an adolescent under 18 years of age with a disability or dependency, related to the school calendar established by the Ministry of Education, in the same way they will have the right to temporarily modify the shifts or the distribution of the daily and weekly hours, during the vacations defined by the educational authority. It establishes the duty of employers to promote work-life balance by taking actions aimed at informing, educating, and raising awareness about the importance of reconciling personal, family, and work life.

Likewise, the union may agree to temporarily reduce the working day during vacations set by the educational authority, with the exception that in these cases there is no age limit for dependent or disabled persons. A final paragraph is added to Article 376 of the Labor Code, which regulates conciliation agreements, introduced by Law 20,940 of 2016.

The right to remote work or teleworking is also established for workers who perform unpaid care work, a new article 152 quater O bis is added, which establishes the duty of the employer to offer the worker - while the employment relationship is in force - that all or part of the daily or weekly workday can be carried out under the remote work or teleworking modality, under certain requirements, namely: that the worker has the personal care of a child under fourteen years of age or is responsible for the care of a person with a disability or in a situation of severe or moderate dependency, regardless of the age of the person being cared for, without receiving remuneration for said activity and to the extent that the nature of their duties permits.

Rules are created to determine the applicability of the right (new article 152 quater O ter); the worker must submit a written request, with the documents that prove to be in the hypothesis of the norm, and must also propose the modalities of combining the work day. The employer has 15 days to respond: the employer can accept the proposal, propose an alternative or reject it if the nature of the services does not allow such modality of work; the employer can also refuse the request if there are no connectivity conditions where the remote services will be provided or if adequate conditions of safety and health at work are not met, as declared by the insurance managing entity.

The agreement may be revoked unilaterally by both parties, in the case of the employee for a supervening cause, and in the case of the employer for reasons that allow them to reject the employee's proposal. Any of the above must be notified within 30 days to all parties.

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<sup>44</sup> BIBLIOTECA NACIONAL DEL CONGRESO. History of Law No. 21,645. Document generated on January 5, 2024. Available at [https://www.bcn.cl/historiadela ley/fileadmin/file\\_ley/8256/HLD\\_8256\\_10fa90c41da2c89d4676c115377312c3.pdf](https://www.bcn.cl/historiadela ley/fileadmin/file_ley/8256/HLD_8256_10fa90c41da2c89d4676c115377312c3.pdf). Accessed December 16, 2024. p. 4.

<sup>45</sup> "This principle includes the practical capacities and functions of responsible adults to care for, protect, educate, and ensure the healthy development of their children." DIRECCION DEL TRABAJO, January 26, 2024, 67/01/2024, p. 3.

<sup>46</sup> "It includes the promotion of a balance between personal, family, and work life in society, especially for workers who perform unpaid care work." DIRECCION DEL TRABAJO, January 26, 2024, 67/01/2024, p. 4.

In summary, the right to remote work or teleworking of workers who perform unpaid care work is recognized, as well as the preferential right to use the legal holiday during the vacations defined by the Ministry of Education in accordance with the school calendar for caregiver workers and, in the same sense, the right to the temporary modification of shifts or the distribution of the daily and weekly working day. Unions are authorized to agree to the reduction of working hours during the vacation period defined by the Ministry of Education, in accordance with the calendar of the respective school year.

One issue that should be highlighted in the standard is the use of gender-neutral language, as it uses the concept of working person, which is inherent to the principle of social co-responsibility incorporated in the standard itself, given that the fact that ownership is recognized indistinctly and that they can be exercised under equal conditions implies "at least to a certain extent, the idea of co-responsibility"<sup>47</sup>.

Now, for the purposes of this study it is important to highlight the recognition of the right to remote work or teleworking of workers who perform unpaid care work, however, as has been pointed out, it is a generic reference to the gender (remote work) and the species (teleworking) and therefore, the norm does not distinguish the various modalities that are recognized in the law, since it is important to ask if it is possible to reconcile whether teleworking is one of those modalities of *online or connected* teleworking and the two subtypes, *one-way line* teleworking or *two way line* or interactive teleworking? These require a constant connection and only the location of the service delivery changes, with no flexibility, time control, or autonomy.

### 3.3. When is teleworking a conciliation measure?

In which of the options or possible forms of teleworking, could it be assumed that the change from face-to-face work to teleworking could result in conciliation? In this case, it would seem that the *off-line* or disconnected teleworking modality could be more compatible because it allows workers to control their time and gives them flexibility. Now, the above can also be analyzed from a spatial or location point of view, since nomadic teleworking poses problems in this regard, given that its nature prevents determining a fixed place of work. It would seem that the assumption that best fits the viability of conciliation is teleworking from home in the *off-line* or disconnected modality. However, this modality blurs the line between family and work life, making this separation difficult<sup>48</sup>. It also extends or lengthens the working day - if there is no time control - affecting the physical and mental health due to work exhaustion and lack of rest of workers<sup>49</sup>.

On the other hand, can it be reconciled if there is a fixed type of working day in this modality? That is, in the Chilean case, only remote work (gender) allows the distribution of the working day to be established or its exercise to be recognized to the worker in the event that it is agreed upon. Nevertheless, as was raised in the case of teleworking, this hypothesis does not exist and the worker could only be exempt from time control in the case of being subject to the general hypothesis of art. 22, second paragraph of the Labor Code, since what is argued in favor of teleworking as an instrument of conciliation is precisely the control of time by the

<sup>47</sup> IGARTUA (2019), p. 71. In the same sense RODRÍGUEZ (2020), p. 17.

<sup>48</sup> See PINTO (2022), p. 44.

<sup>49</sup> MELLA (2021), p. 190.

worker and the flexibility that this would generate; however, such flexibility entails the problems indicated in the previous paragraph.

From a gender perspective this becomes more evident, since, when teleworking is configured as a conciliation measure, it implies a series of risks for working women, since it perpetuates<sup>50</sup> gender stereotypes or roles<sup>51</sup>. It is suggested that it would be a "double-edged sword"<sup>52</sup> for women caregivers, since it can deepen labor discrimination, entails a return of women to the home, perpetuates their domestic role and increases their working day<sup>53</sup>. Therefore, it cannot only be a tool that promotes conciliation but also co-responsibility<sup>54</sup>. On the other hand, it is suggested that teleworking would be a "new trap"<sup>55</sup>, by offering poorly paid and intermittent jobs to women.

A study on the Italian reality has concluded that *smartworking* (remote work) is not entirely effective when prejudices and stereotypes guide one's choices regarding caregiving and housework<sup>56</sup>. Following this line of thought, and regarding teleworking during the COVID-19 pandemic, women's unpaid work increased, generating work overload<sup>57</sup>.

On the other hand, previous studies are not conclusive in any sense, neither for nor against teleworking as an instrument that helps or encourages conciliation; in general they pose advantages and disadvantages<sup>58</sup>, to this effect, as the ILO points out, the bibliography on the relationship between the use of ICT (Information and Communication Technologies) to work outside the employer's premises and the referred perceptions of conciliation between work and personal life is complex<sup>59</sup>; in addition it is argued that all these findings suggest that the effects of T / ICTM (Teleworking and Information and Communication Technologies) on the conciliation between work and personal life are highly ambiguous and perhaps even contradictory<sup>60</sup>, in the same sense the accompanying report that supports the bill that led to Law 21,645, 2023 stated that the evidence on the impact that the implementation of teleworking effectively has on work-family conciliation is still insufficient<sup>61</sup>, said report recognized that the limitations in the information, the available evidence accounts for ambivalent effects, assumed that teleworking has proven to be a tool that can facilitate and improve, as well as hinder and even worsen work-family balance, with particularly harmful effects for women<sup>62</sup>. Similarly, it is emphasized that despite the good intentions and proper planning of a teleworking program, this does not necessarily ensure better work-family balance

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<sup>50</sup> GINÈS I FABBRELLAS (2022), p. 36.

<sup>51</sup> LÓPEZ (2020), p. 108.

<sup>52</sup> ROMERO (2021), p. 149.

<sup>53</sup> FERNÁNDEZ (2022), p. 201.

<sup>54</sup> GALA (2021a), p. 182. VARAS (2024), p. 50.

<sup>55</sup> FRANCONI (2022), p. 210.

<sup>56</sup> GUAGLIANONE (2021), p. 92.

<sup>57</sup> ARTEAGA-AGUIRRE (2021), p. 15.

<sup>58</sup> OIT (2023), p. 134.

<sup>59</sup> OIT (2019), p. 28.

<sup>60</sup> OIT (2019), p. 34.

<sup>61</sup> SUBSECRETARIA DEL TRABAJO (2023), p. 92.

<sup>62</sup> SUBSECRETARIA DEL TRABAJO (2023), p. 92.

<sup>63</sup> SOTO (2021b), p. 43.

In short, whether teleworking is a tool for work-life balance depends on the organizational perspective<sup>64</sup>, i.e., the way time and work are organized, according to the specific modality and the control of the working day by the worker.

#### IV. CONCLUSIONS

The approach of this research was related to questioning the idea that teleworking in itself can be a tool for reconciling personal and family life as has been stated in recent years, since, as developed, there are various typologies that are recognized in the law and also various forms of combination with the so-called face-to-face work, in this aspect, limited forms of provision of services via teleworking could be compatible as long as there is control of time by the worker, subject to a working day and complying with the right to disconnect.

On the other hand, it is clear that the issue of conciliation has been used as a strategy for the approval of teleworking bills. Furthermore, there is evidence of a risk of privatization of care by focusing the measures only on workers who care for dependent persons, and there are no comprehensive policies in which society as a whole contributes to this situation.

Chilean regulations suggest that work-life balance is possible with remote work, since the worker can distribute his/her workday. Teleworking, on the other hand, follows the general work-life balance rules and, therefore, there is no possibility of worker control over time. In this sense, hybrid or mixed work-life balance modalities appear to be a form that approximates work-life balance, as long as the premises are respected.

Finally, from a gender perspective, there are psychosocial effects and risks for women, such as work overload and returning to the private sphere. This situation is completely real, based on what the cited studies indicate.

For teleworking to be a tool for work-life balance, it will require certain requirements (home-based teleworking, offline, with flexibility and time control by the employee) that Chilean legislation does not fully address, as has been demonstrated.

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<sup>64</sup> GALA (2021b), p. 303.

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