

## Publication of the NOM-037-STPS-2023 concerning teleworking

Tax & Labor - June 23, 2023

The Federal Labor Law ("LFT") provides that telework is any employment relationship that is performed in a place other than the work center through the use of information technology and does not require the physical presence of the employee. Any workday developed beyond 40% of the time performed under this modality is considered teleworking. The same LFT, in its transitory articles, provided the Federal Executive with a term to publish the Official Mexican Norm NOM-037-STPS-2023 ("NOM", per its acronym in Spanish) to govern the obligations of this modality.

The Ministry of Labor and Social Welfare ("STPS" per its acronym in Spanish) granted approval to the NOM draft and it was published in the Official Gazette of the Federation on June 8, 2023. The purpose of the NOM is to establish occupational health and safety conditions in places where teleworkers perform their activities, in order to avoid accidents and promote an adequate work environment. This NOM will enter into force in December 2023, at which time it will be mandatory to comply with the provisions contained therein.

Two things stand out from the entry into force of the NOM: first, that the workplace chosen by the worker must have connectivity for the use and management of Information and Communication Technologies and have occupational health and safety conditions; second, the reaffirmation of the right to disconnection of workers.

Said NOM, as referred to in the LFT, obliges employers to take additional measures in favor of workers under the telework modality, among which the following stand out: (i) establish, promote, comply with and document a mandatory telework policy that includes elements of safety and health at work, communication and contact mechanisms and promotes the gender perspective, among other points; (ii) verify the safety and health conditions of the work center proposed by the worker; (iii) provide the worker with the necessary tools and means for the execution of the work.

On this third point, employers must provide ergonomic desks and chairs, computer equipment and the necessary accessories for these and, in addition, assume the costs derived from teleworking, such as internet services and a proportional part of the electric power bill.

From a tax perspective, since the expenses to be incurred by employers to comply with the aforementioned requirements derive from the obligations established in the LFT, we consider that such expenses should be considered as strictly necessary and, thus, deductible for income tax purposes. However, there are no clear provisions regarding how the deduction of these concepts shall be claimed or about the supporting documentation required.

On another note, it is necessary to define if the expenses assumed by an employer will be considered for the workers as taxable income, as exempt income, or as necessary tools for the execution of the work.

The Mexican tax authorities have not yet issued any criteria in this regard, but according to inquiry 23 of the "First Bimonthly Meeting of 2021 with the National Coordination of Taxpayer Syndics", all the earnings received by employees (whether taxed, exempt, or not considered income) must be recorded in the electronic tax invoice corresponding to their payroll.

Our Firm's labor and tax practice are able to assist our clients in any matter related to the compliance with the new NOM-037-STPS-2023 related to teleworking provisions.

In case of doubts or comments, please do not hesitate to contact us.

## Contact us:

### Nora Morales

Partner | nmorales@macf.com.mx

Tax

### Enrique Ramírez

Partner | eramirez@macf.com.mx

Tax

### Claudio Jiménez

Partner | jimenezdeleon@macf.com.mx

Labor

### Rodrigo del Valle

Partner | rdelvalle@macf.com.mx

Labor

+52 (55) 5201 7400

For further information, visit:

[www.macf.com.mx](http://www.macf.com.mx)

