

# New Ways of Working

## 02. Outline the key data protection risks associated with remote working in your jurisdiction.

### France

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Employers must ensure the protection of their company's data but also of employees' data.

According to article L. 1222-10 of the French labour code, the employer must inform the teleworking employee of the company's rules regarding data protection and any restrictions on the use of computer equipment or tools. Once informed, the employee must respect these rules.

The collective national agreement of 26 November 2020, provides more details in article 3.1.4. It is the employer's responsibility to take necessary measures to protect the personal data of a teleworking employee and the data of anyone else the employee processes during their activity, in compliance with the GDPR of 27 April 2016 and the rulings of the National Commission for Technology and Civil Liberties (the CNIL).

The CNIL said in its 12 November 2020 Q&A on teleworking that employers are responsible for the security of their company's personal data, including when they are stored on terminals over which they do not have physical or legal control (eg, employee's personal computer) but whose use they have authorised to access the company's IT resources.

The National Agreement of 26 November 2020 recommends three practices:

- the establishment of minimum instructions to be respected in teleworking, and the communication of this document to all employees;
- providing employees with a list of communication and collaborative work tools appropriate for teleworking, which guarantee the confidentiality of discussions and shared data; and
- the possibility of setting up protocols that guarantee confidentiality and authentication of the recipient server for all communications.

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## 03. What are the limits on employer monitoring of worker activity in the context of a remote-working arrangement and what other factors should employers bear in mind when monitoring worker activity remotely?

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The rules for monitoring employees do not differ between teleworkers and office workers. Thus, like any employee, teleworkers must be informed in advance of the methods and techniques used to monitor his or her activity (article L. 1222-3 of the labour code).

The implementation of a device allowing the control of the employee's working time must be justified by the nature of the task to be performed and proportionate to the purpose (National Agreement of 26 November 2020).

The CNIL said in a Q/A on 12 November 2020 that the devices used to monitor employees' activity must not be aimed at trapping employees and cannot lead to permanent surveillance of employees. Thus, audio or video devices, permanent screen-sharing or keyloggers must not be implemented.

If the employer exercises excessive surveillance on his employee, it may receive a financial penalty.

Finally, the CNIL advises employers to prioritise monitoring the completion of missions by setting objectives rather than monitoring the working time or the daily activity of employees.

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## **10. Are there some workplaces or specific industries or sectors in which the government has required that employers make access to the workplace conditional on individuals having received a Covid-19 vaccination?**

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Please see above (questions 8 and 9) regarding the workplaces and specific industries concerned by making the access to the workplace conditional on individuals having received a Covid-19 vaccination.

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