

## Work-From-Home – The Legal Status of Sri Lanka

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**Abstract** — Work from Home (WFH) is not a novel concept theoretically. However the practical application of WFH did not impact on many types of employment in the world until the COVID 19 situation. During WFH, the contract of employment still exists between the employer and the employee, subject to few modifications. The place of work is different from usual employment and still the employer has the control over the employee's service. However, it is pertinent to identify the legal framework with regard to WFH, specifically in Sri Lanka due to many reasons. During the last few months, it was observed manipulation of labour, deduction of salaries, lay offs and unlawful termination which have not been addressed though a solid legal protection. WFH is also such initiation that was operated during COVID 19 situation without much expressed legal basis or guidelines. Therefore, the problem addressed in this research paper is whether the legal status of Sri Lanka with regard to work from home condition is adequate enough to protect the interests of both the employer and the employee. Methodology followed in the research was the black letter approach predominantly. However, the socio legal approach was also followed through observation and semi structured interviews conducted. Moreover, the international standards on work from home was taken as a prototype to recommend a proper legal mechanism for work from home condition. Analysis revealed that both the private sector and the public sector lack proper legal guidelines in terms of work from home condition. Moreover, the types of employment which cannot be functioned through work from home should also be considered and provided with a relief to protect the interests of both

parties to the employment relationship. On the other hand, the implementation of management and control during work from home, working hours, contacting hours and facilities should be considered when formulating legal guidelines to work from home. Finally, a proper legal guideline for both private and public sector in Sri Lanka was recommended in the research in order to protect all the parties in the employment relationship which is a much needed gap that required to be filled.

**Keywords – Work from Home, Employment Relationship, Protection of Labour Interests, Legal Guideline for work from Home**

### I. INTRODUCTION

The year of 2020 has surprised the conventional lifestyle of the society including the job market. Although concepts such as work from home (WFH) has already been recognized as a method of doing jobs by management studies, it wasn't good enough to obtain attention until the lockdown situation due to Covid 19 pandemic (International Labour Organization, 2020).

Dingel and Neiman (2020) use occupational descriptions from the Occupational Information Network (O\*NET) to estimate the degree to which different occupations in the United States can be done remotely (International Labour Organization, 2020). They then aggregate these estimates using US employment in occupational categories as weights. Their preferred estimate is that 34% of American jobs "can plausibly be performed from home." (International Labour Organization, 2020). South Asia's case is different from the above statistics, but is relatable. Based on data from labour force surveys, the ILO estimates that 7.9% of the world's workforce worked from home on a

permanent basis prior to the COVID-19 pandemic, or approximately 260 million workers (International Labour Organization, 2020). The ILO estimates that while not all occupations can be done at home, many could—approximately one in six at the global level and just over one in four in advanced countries (International Labour Organization, 2020).

Obviously the law on WFH was silent in many jurisdictions and Sri Lanka is no exemption to it. In the meantime the requirement of proper guidelines with regard to WFH popped up due to unfairness and unbalanced experiences faced by the actors in the contract of employment; namely, the employer, employee and the State. It was observed that none of the abovementioned stakeholders were upto the standard level of performance due to lack of guidance from legal framework in terms of WFH.

WFH is considered in this research, employment in which the work is fully or partly carried out on an alternative worksite other than the default place of work, specially at the residence of the employee.

## II. METHODOLOGY

The research was carried out using three methodological approaches. The black letter approach of research and the international and comparative research methodology were used based on legislative enactments and international legal standards as primary sources and books, journal articles, conference proceedings, theses, and online resources as secondary sources. The international standards are used as the yardsticks or benchmarks against which the efficacy of the Sri Lankan law is ascertained. The empirical research methodology was used to analyze the law in context through the observations made by the researchers.

## III. ANALYSIS

The usual 'Contract of Employment' sometimes is not compatible with the needs of WFH.

According to the common law theories introduced by cases such as Regina vs. Walker (1958) and Ready Mixed Concrete (South East) Ltd v Minister for Pensions and National Insurance (1968) the element of control and other related facts considered to seek the contract of employment is inapplicable in a situation of WFH. However the 'right to control' should be established by the employer in the WFH situation also in order to continue the contract of employment, instead of 'actual control'. Therefore the WFH guidelines should include provide the authority to the employer to maintain the 'right to control' the employee for a certain extent.

Moreover it is required to expressly mention about the The default place of work which can be understood as the place or location where the work would typically be expected to be carried out, taking into account the profession and status in employment (International Labour Organization, 2020). In case of WFH situation the default place of work will be different. However in order to maintain the same contract of employment with the same level of control, it should be mentioned 'home' of the employee as the alternative place of work during the WFH.

Hours of work during WFH is another aspect that requires consideration in this research. In Sri Lanka, for the private sector employees who are covered under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended), the maximum hours of work is stipulated as 08 hours according to Section 3 (1) of the Act. However there is no practical way of calculating the hours of work of an employee in a WFH situation. Therefore the conventional requirement of hours of work should be dispensed with in a WFH situation. Instead it can be adopted a 'dealine system' protecting both the employer and the employee. Assigning a task with all the responsibilities and clear instructions should be the duty of the employer and the employee should achieve it

within the given timeframe. Technology can be used as a tool to communicate in this regard. However the law can prescribe a minimum hours of work to selected employments such as administration, clerical ect, in which the hours of work can be calculated using technology. According to Harvard business review, there can be several challenges in self management under the WFH condition (Carucci, 2020). Therefore the understanding of the situation should be mutual between both the employer and the employee. Otheriwise it may trigger industrial disputes due the unsatisfied workforce in the country.

Moreover, the telework law of Chile, the employer is allowed to operate a mechanism for recording compliance with working hours will be at the employer's expense. However the it is limited to selected types of employments only. Other employees are free to allocate their hours of work and they are entitled to the right to disconnection. The right to disconnection consists of the fact that workers are not obliged to respond to communications, orders or other requests from the employer for a period of at least 12 consecutive hours in any given 24-hour period (Koehier, 2020). On the other hand the ILO's Home Work Recommendation (R184) of 1996, provides that a deadline to complete a work assignment should not deprive a homemaker of the possibility to have daily and weekly rest comparable to that enjoyed by other workers.

Costs of operation, functioning, maintenance and repair of equipment should be borne by the employer in case of WFH. According to the ILO's Home Work Recommendation (R184) of 1996, it is required to keep records of the employees who are working from home, time allocated, rate of remuneration, costs incurred, deductions of remuneration (if any) by the employer. The administration would be effective in such record keeping according to the international standard.s

During WFH situation, there should be a proper mechanism to prevent, settle and investigate

industrial disputes. The State should be vigilant on this regard since both the employer and the employee are under a lot of pressure from challenges in the employment. Industrial Dispute Act No. 43 of 1950, should be amended accordingly to cater such needs of the employer and the employee.

It is prohibited that the application of this modality implies a reduction in the rights of the worker, especially in their remuneration according to the telework law of chile. However when the WFH situation occurred due to a pandemic situation, the employer might also be in trouble in terms of the income. Therefore the employer may also need a relief in terms of payment of wages or salary to the employee.

According the ILO's Home Work Recommendation (R184) of 1996, it can be regularize a mimimum wage to be paid to the employees or if the situation permits the minimum wage must be a result of collective bargaining and mutual understanding.

Types of Employment which cannot be functioned through WFH is also a pertinent discussion in this research. There should be a proper mechanism to manage those industries. Both the employer and the employee are not in a position to perform and to serve or produce, if the situation doesn't support to work at the default place of work. Such industries include but not limited to, hotel, plantation and manufacturing.

Finally the employer's duty of care to check on the worker should be established through a proper legal guideline apart from the above analysed factors.

#### **IV. CONCLUSION AND RECOMMENDATIONS**

In conclusion it is important to address following aspects in a proper legal guideline sponsored by the State; to both employer and employee:

Default place of work and the alternative place of work should be defined within the contract of employment

Parameters of WFH arrangements and performance objectives and expectations should be clear and discussed on a regular basis.

Hours of work and the right to disconnection should be clear.

Facilities provided by the employer should be clearly communicated and the costs should be borne by the employer.

The employer should have the duty of care towards the health and safety, welfare and other related aspect.

Remuneration should be expressly agreed upon by the both parties.

It is suggested to follow the guidelines provided by the ILO's Home Work Recommendation (R184) of 1996, apart from other international standards to create a proper legal mechanism to cover WFH in order to protect the interests of all the parties in the industrial relations.

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