

This article should be indexed under: (1) EMPLOYMENT / LABOR LAW

*In a recent case dealing with the reimbursement of costs incurred by an employee working from home, the Swiss Supreme Court ruled that the room used as office and archive by the employee was subject to reimbursement by the employer in case an adequate workplace is not provided to the employee.*

## "REIMBURSEMENT OF HOME-OFFICE RELATED COSTS BY THE EMPLOYER

By Carol Tissot\*

### Decision

In a decision dated 23 April 2019, the Swiss Supreme Court dealt with a dispute in which an employee claimed that his employer should reimburse his costs for a room in his private home used as an office and archive. The Swiss Supreme Court ruled that such a claim for reimbursement of costs is valid and that said reimbursement by the employer is mandatory in case the latter does not provide the employee with an adequate workplace, even if the employee did not rent a room specifically for his professional needs.

### Compensation of expenses under Swiss law

According to Articles 327ss of the Swiss Code of Obligations (“CO”), unless otherwise agreed, the employer provides the employee with the tools and materials required to perform work. Where the employee himself supplies such tools or materials with the employer’s consent, he is entitled to appropriate compensation unless otherwise agreed (Art. 327 CO).

In addition, as far as work expenses are concerned, the employer must reimburse the employee for all expenses incurred necessarily in the performance of the work, and in the case of work performed outside of the employer’s premises, for his necessary living expenses. An individual agreement, standard employment contract or collective employment contract may provide that such expenses be reimbursed in the form of a fixed sum (such as a per diem, a weekly or monthly allowance) if this covers all necessary expenses. Any agreement whereby the employee must bear all or part of such necessary expenses is void (Art. 327a CO).

Therefore, the question is to determine whether home-office related costs are **work equipment costs** which can be reimbursed or not by the employer or **work-related expenses** which must be reimbursed by the employer in case they are **necessary** to perform work.

In home-office, work equipment encompasses objects which are used or consumed by the employee when performing work, such as the room (or part of it), the furniture (table, chair, computer, printer), and the consumables (paper, electricity, heating etc.). In case the employee provides for such work equipment or material, he is entitled to reimbursement by the employer, unless the contrary is provided in the home-office agreement.

However, in case home-office related costs are **necessary** to perform work, they qualify as **work-related expenses** and the employer is obliged to reimburse said costs to the employee. According to

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the Swiss Federal Court, such necessity exists for example in case the employer does not provide the employee with an adequate workplace. In this respect, the fact that the employee did not especially rent the corresponding room for working at home is irrelevant.

Consequently, it is important for both employer and employee to clearly define whether home-office work is a necessity since the employer does not provide an adequate workplace to the employee or whether, on the contrary, it is granted to meet employees' personal convenience. In this last case, if the employer does not wish to cover home-office costs, he will have to mention it in the home-office agreement.

### **Comments on home-office work**

In the context of home-office, the employment relationship remains subject to the same regulations as if the employee worked within the company's premises. The internal directives of the latter as well as the rules applicable to working time and protection of workers' health remain applicable. For this reason, it is important for the employer to inform employees about said regulations and to monitor working time by implementing, for example, a login system in order to avoid overtime claims from employees working from home.

In addition, attention must be paid to cross-border situations where the employer and employee are not based in the same country. In this case, mandatory laws on working time in force in the country where the employee is working, can potentially apply in case the said employee works most of the time in his country of residence. This situation can also have an impact on social security and tax obligations of both parties. It is therefore imperative, in the context of cross-border home-office, that the employer considers the applicable national legislations.

### **Conclusion**

Home-office work is becoming increasingly widespread and will continue to rise in the future. Since labour legislation does not address in detail home-office work specificities, it does not necessarily provide adequate answers to all the issues raised by this new way of working. It is therefore important that the employer and employee agree on the modalities of home-office in order to avoid any misunderstanding and legal issues.