

Los retos de la seguridad y la salud laboral ante la digitalización de la empresa.

Especial atención a la prevención de riesgos laborales en el trabajo a distancia y teletrabajo

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The aim of this Doctoral Thesis is to analyse occupational health and safety in the face of the digitalisation of the company and, in particular, the prevention of occupational risks in remote work. In other words, the aim is to study the adaptation of the worker's right to health protection in the face of the changes experienced in the new working environments. Thus, it explores the adequacy of the Spanish legal system on the prevention of occupational risks, in order to provide an adequate response to the emerging work situations in which workers may provide services. In this respect, it should be assumed that this law is designed for a traditional employment relationship (carried out in the same place and under the direct control of the employer), which seems to have been superseded by globalisation, decentralisation and the digitalisation of the market. As an example of this, it is worth taking distance work and, in particular, teleworking as a reference, as these clearly demonstrate the mismatch between the content of the aforementioned preventive rule and the reality it is intended to protect.

This Thesis critically analyses, and with proposals of *lege ferenda*, the way in which the regulatory system of occupational risk prevention (the LPRL and its implementing regulations) must adapt to the new situations in which the worker provides services outside the workplace. In this analysis, particular attention is paid to the recent and important Law 10/2021, of 9 July, on remote work (LTD), whose provisions, at least in this preventive area, stand out for their poor legal content and lack of originality. This lack of clear and complete answers to many of the problems that arise regarding the prevention of occupational risks in remote work means that, on occasions, the general provisions of the LPRL must be interpreted in the light of the pro-operator principle. A technique that can lead to an unbalanced balance for the employer, traditionally considered the strong party in the employment relationship, which can be seen in the area of liability.

In terms of its content, this doctoral research begins with a critique of the legal regulation of the right to occupational health in the Spanish legal system and, from there, the different preventive obligations of the employer are analysed, highlighting, with respect to each of them, their inconsistencies with remote work. In this way, the five main chapters of this thesis deal consecutively with: 1) the way in which the prevention plan should be designed in companies with remote workers; 2) the way in which the risk assessment should be carried out, pointing out the risk factors and the most typical risks of this type of work; and 3) the main preventive measures to be adopted. Finally, although already outside the field of occupational risk prevention, it deals with the employee's protection and benefits system in the event that, if the previous preventive actions fail, the occupational harm materialises. This second-order protection is also affected, in its legal configuration, by the particularities of remote work (in particular, by its tendency to make the elements of location and time more flexible), as is the system of responsibilities which, in this area, may be claimed from the employer.