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Employment law in emergency: transparency and trust in the home office.

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Abstract

In 2020, a number of challenges arose as a result of state measures related to the coronavirus pandemic worldwide. Due to the physical absence of the employer and the employee, the home office poses a challenge of a new kind of trust for the workplace, for the employer. By 2021, we see this challenge as continuing. Our aim is to examine the nature of this new kind of connection between employer and employee, using secondary research as well as primary research. We are experiencing a special learning period not only in a new kind of conflict management but also in managing change. Adaptation, following strict rules, flexibility and innovation together appear in the strange and special era in which we live. The aim of this research is to give an overview of how work, employment, working place, office, trust, employment conflicts changed in 2020. With continuity in 2021, people practice and learn a new kind of flexibility, new conflict areas and a new kind of trust through home office and distant work –the paper pays special attention to the Hungarian regulations regarding state of emergency, lockdown of the country and curfew.

Keywords: home office, state of emergency regulation, conflict, trust, primary research

1. Overview of literature

While there are some notable nuances between the different alternative dispute resolution types, conflict management possibilities, they share the common feature: the dispute is mostly decided by the parties involved and less power is given to the third party involved (i.e. mediator, referees).

In mediation, the parties determine the result of the dispute and are in power of the conflict management the whole time while in arbitration, the result is determined in accordance with a rule, the law applicable. In both cases of alternative dispute resolution, when deciding on a result, the parties can take account for a wider range of rules, and in particular, their respective commercial interests. Mediation is a procedure based on interests and rights. The fact of taking employer-employee interests into account also means that the parties can decide the result by reference to their future relationship in the relation of work, rather than solely by reference to his past conduct.

The term conflict (Kelemen-Erdős, Molnár, 2019) has no single clear meaning. Much of the confusion around the definition has been created by scholars in different disciplines who are interested in studying conflict. Reviews of the conflict literature show a conceptual sympathy for, but little consensual

endorsement of, any generally accepted definition of conflict. There is tremendous variance in conflict definitions, which is mainly defined according to two approaches. First, a more specific approach which includes a range of definitions for more particular interests or areas. Second, a broader approach which includes a variety of more wide-ranging definitions that attempt to be more all-inclusive in the subject matter. Definition known as broader approach (Rahim, 2011) conflict can be considered as a breakdown in the standard mechanisms of decision making, so that an individual or group experiences difficulty in selecting an alternative. Conflict is even published by authors on the side of peace. Peace is nothing more than a change in the form of conflict or in the antagonists or in the objects of the conflict, or finally in the chances of selection. (Coser, 1998).

Nowadays the major part of the world have learnt to adapt to social distance. Keeping a distance results in staying away from our usual working place in the majority of the countries. Employers and employees had to adapt to several new rules and continuous work from distance resulted in a new situation with challenges that could be examined and analyzed (Kohlhoffer-Mizser, Molnár, 2020).

In 2020 many changes impacted the whole world. The source of the problem is the COVID-19 world pandemic causing several changes in different areas. The Hungarian Government declared the first state of emergency on the 11th of March, 2020.

The main points of state of emergency:

- Tasks of the Operational Staff
- Emergency measures related to the emergency are provided for in separate government decrees.
- The Government shall continuously review the need for the existence of an emergency situation.
- The Government requests the cooperation of citizens in the implementation of emergency measures related to the emergency. (478/2020. (XI. 3.) Government Decree Regulation on a declaration of state of emergency)

Though not regulated by law, home office has been an existing phenomenon mainly at multinational companies for many years in Hungary. It is not the same as distant work, nevertheless often referred to as distant work. On the contrary distant work is regulated by an act (2012. I. Act on Labour Law).

The extended work from home arrived suddenly in 2020. Most of the companies had no existing procedures for the process, nor any schemes or regulations. Employers decided to introduce home office during the quarantine. In the employment relationship the above mentioned quarantine changes are able to cause disputes and tensions, these often lead to conflicts and some of these conflicts can become legal disputes. (Kohlhoffer-Mizser, 2016) The new situation required adaptation for everyone. During the quarantine period, it was primarily non manual workers who were able and entitled to work from home, who could enjoy the advantages of this situation or even have to bear the disadvantages (Kohlhoffer-M.- Molnár, 2020)

The Hungarian law of protection of Labor is the basis to make a risk assesment (1993. XCIII. Act on Protection of Labor). In case of any organized work –at least one owner and one employee is present in the legal relationship- it is mandatory to prepare a risk assesment. The practice is in general the employees work at home office and in that case the rules concerning the working time, working place, working methods, working process shall be the same like in the company’s office. Concerning the Occupational Health and Safety rules, it is necessary to have a risk assesment concerning the employees home. The task to make the assesments belongs to health and safety expert.

Many employers asks their employees to fill a form for the risk assesment and take some photos about the work environment and conditions. This raises privacy issues, among other legal issues. (Sándor, 2020)

In Hungary, working time is regulated by 2012. I. Act on Labour Law (hereinafter Mt.). In case an employee works more than the regulated work time by the act it results extra working hours, conceptually overtime. Working hours and overtime during the home office can not be as easily controlled as the normal work at

working places where there are employer and employee simultaneously present. With distance in this legal relationship an unconditional trust must be established between the employer and employee, trust without being present in the working place, absence trust.

According to the Hungarian regulation, during distant work employer and employee are not present in the working place and the activity can practically be done from anywhere generally. There can be exceptions in the employment contract.

During distant work the majority of the working hours are spent out of the actual working place (Szabó-Hámori, 2006).

Home office needs permission or confirmation of the employer. The working hours spent in home office should be the same as defined originally in the working place. Home office, working from home, is not the same as teleworking. In fact, the home office is not specifically named in the Labor Code. The difference between a home office, working from home and teleworking, is its regularity. In the case of regular work from home, teleworking can legally take place. That is, in that case, as a general rule, the employment contract must expressly state that the employee works telework. The home office occurs on an ad hoc basis, either by the employer or at the request of the employee herself or himself, with the employer's permission. (Kocsis, 2020)

Distant work and home office are atypical working methods.

Table 1. shows the differences and the similarities between the main points of distant work and home office. Necessary to highlight the 3rd row where is the regulation of these working methods. Until the home office has a normative regulation by the employer, the distant work is regulated by legal regulation (2012. I. Act on Labor Law).

Table 1: Comparing Distant work and Home office

Distant Work	HOME OFFICE
Activity can practically be done from anywhere (except if, it is defined in the employment contract differently)	It may be explained in the employee's home
Regulated by Law (2012. I. Act Labour Code 196. §)	Written, spoken or inner regulation of the employer
Using IT tools, smart phone Limited or no access to company drives	Using IT tools, smart phone Unlimited access to company drives (VPN connection)
The time spent on work is scheduled by the employee with the keeping of the deadlines	Should be the same as defined originally in the working place
Occupational Health and Safety rules	Occupational Health and Safety rules

Source: Authors' own edit, 2021

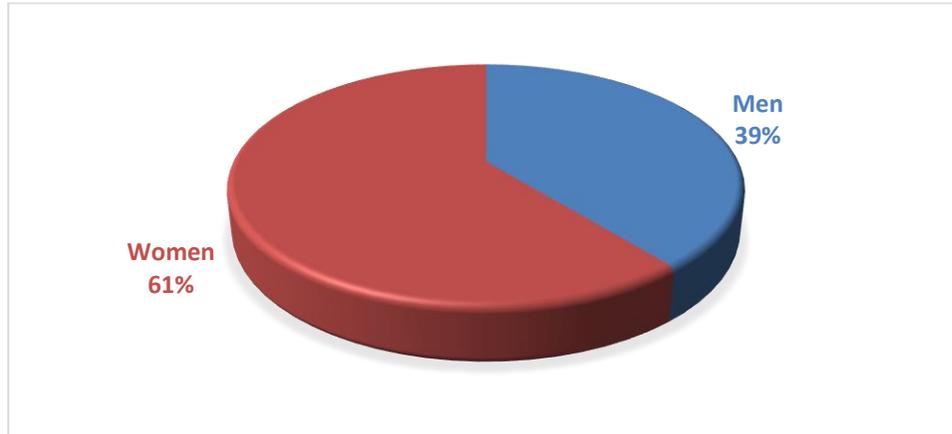
2. Material and method

The aim of the present research is to provide a comprehensive overview of the regulation of home office and distant work with legal background. It emphasizes the importance of trust and has a primary research based on a sample of 110. The sample is not representative, however the analysis is suitable for drawing

conclusions for a clearly identifiable case. The basis of this study was a questionnaire survey. The responses were anonymous. The questionnaire did not contain open questions for statistical assessment purposes. Questions were shared in the social networking sites and via e-mails. 110 persons replied to the questions from several areas of employment, most of those with non manual jobs answered the questions. The questionnaire was shared in summer of 2020, after the first wave of COVID-19. In that time it was uncertain what would happen in the rest of the year regarding employment, working places. Since that we know the second wave –in some countries the third wave of pandemic- has started with restrictions introduced by the Hungarian Government. (478/2020. (XI. 3.) Government Decree Regulation on a declaration of state of emergency)

As Figure 1 presents below that the higher rate of the given answers was coming from female employees. The difference is 22 %.

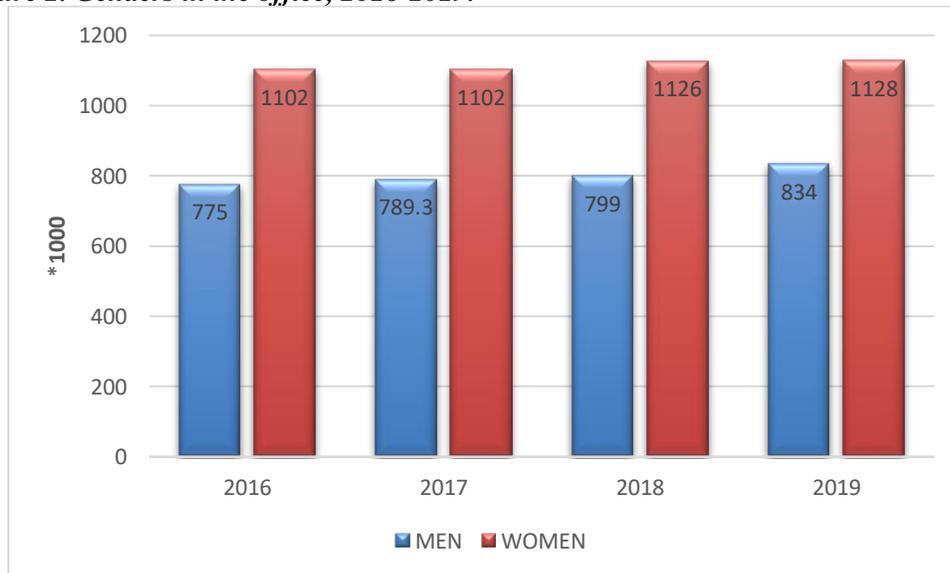
Figure 1: Gender ratio



Source: Authors' own edit, 2021

Based on official statistical data (KSH, Central Statistical Office Hungary) there are more women than men employed in the office work area. According to Figure 2. the Gender ratio statistics from 2016 until 2019 presents the difference for the benefit of female employees.

Figure 2. Genders in the office, 2016-2019.



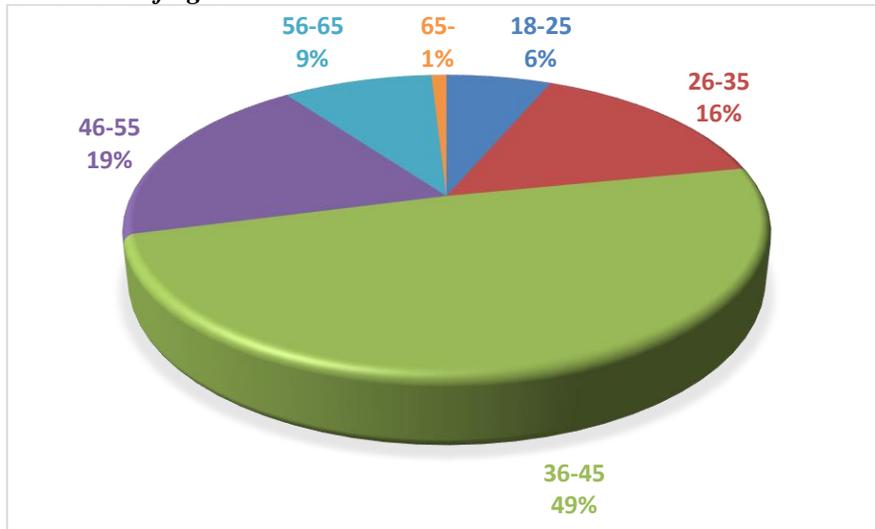
Source: Authors' own edit, 2021

(https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_qlf035a.html)

3. Results

From the 110 responses we wish to introduce the fields that need to be developed the most according to the state of emergency status in Hungary and to the answers. First question is about the age of the persons who submitted answers in the present survey. How old is the respondent at the time of the reply. Figure 3. presents the age distribution of the 110 respondent persons.

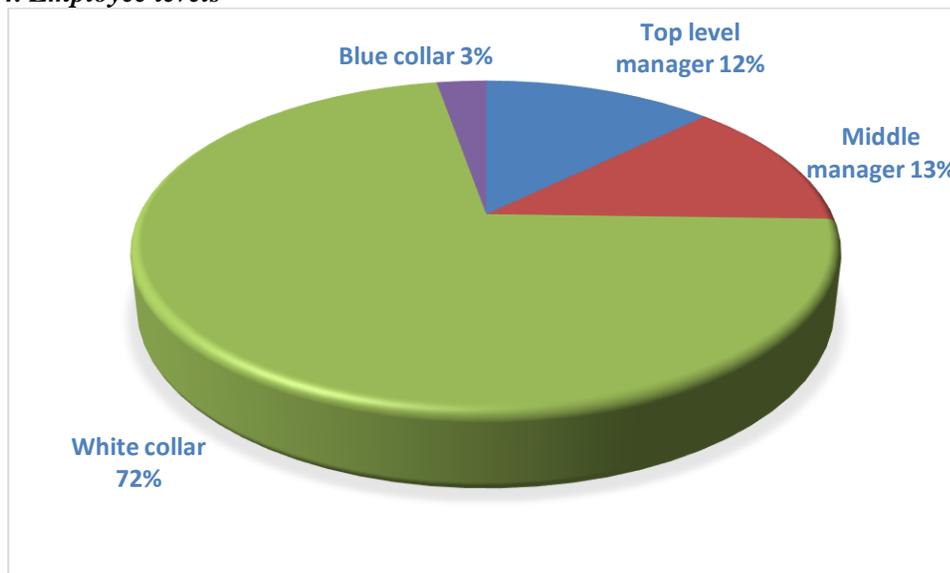
Figure 3. Distribution of ages



Source: Authors' own edit, 2021

Distribution shows according to ages mainly 36 to 45 years old persons replied by the total number of answers 110. The second largest number of responses were received from 46 to 55 years old people, almost 20%. The remaining responses are in different ages, even over 65 years old persons. General retirement age in Hungary is 65 years.

Figure 4. Employee levels



Source: Authors' own edit, 2021

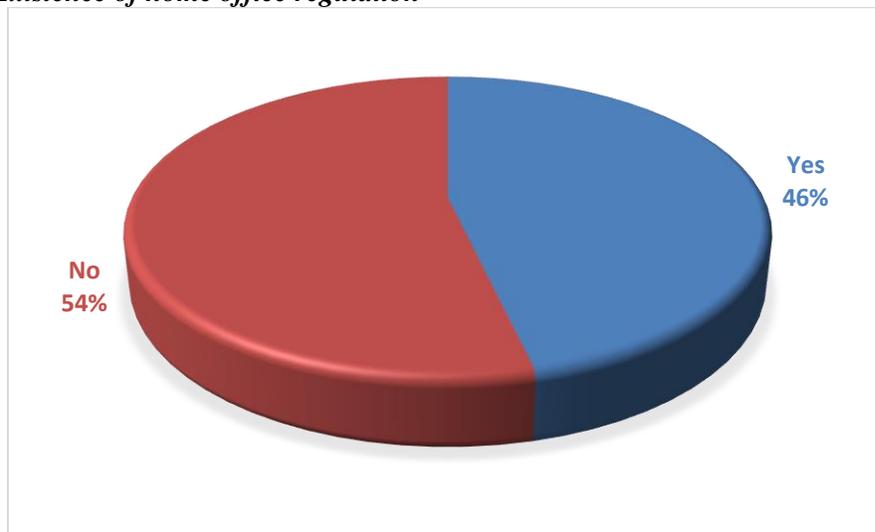
The largest number of answers were given by the white collar employees. This group was split in 3 different level:

- Top level manager (14 persons)
- Middle level manager (14 persons)
- White collar employee (79 persons, who are not leaders)

The basis of the survey are mainly white collar occupations regarding home office as Figure 4. presents.

Figure 5. presents the answer ratio to the question whether the employer has introduced rules for the home office.

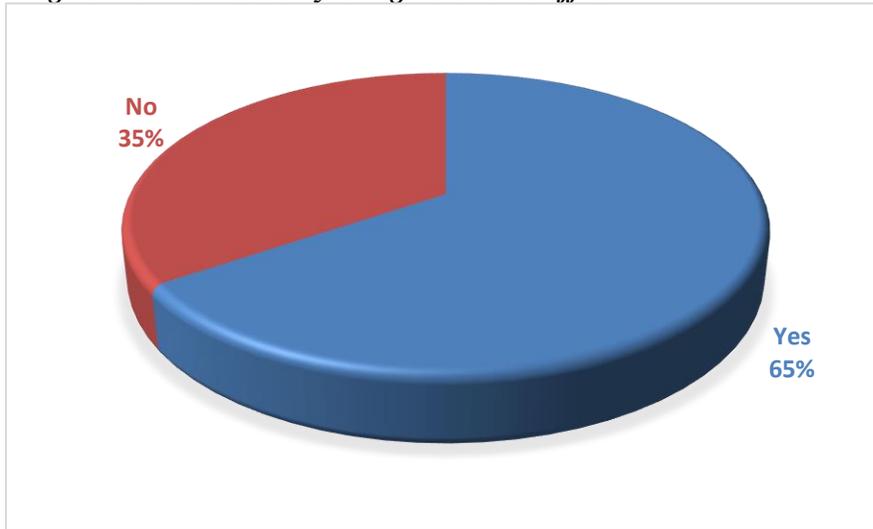
Figure 5. Existence of home office regulation



Source: Authors' own edit, 2021

Most of the employers (54%) did not defined and introduced rules for the work in home office. Probably the main reason was the unexpected pandemic worldwide and it was home office or telework was not a regular practice at the companies.

Figure 6. Do you agree that it is necessary to regulate home office?

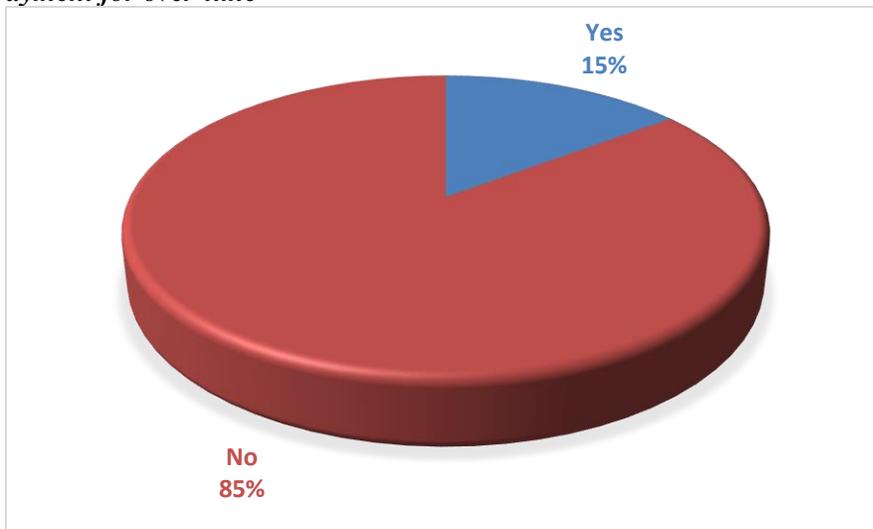


Source: Authors' own edit, 2021

In the survey 65% of the respondents agree, that written regulation is necessary during home office. The remaining part of the respondents (35%) does not miss written rules during home office work.

We examined in our survey the phenomenon of overtime pay by asking the following question: does the employer pay you to work overtime at your company?

Figure 7. Payment for over-time

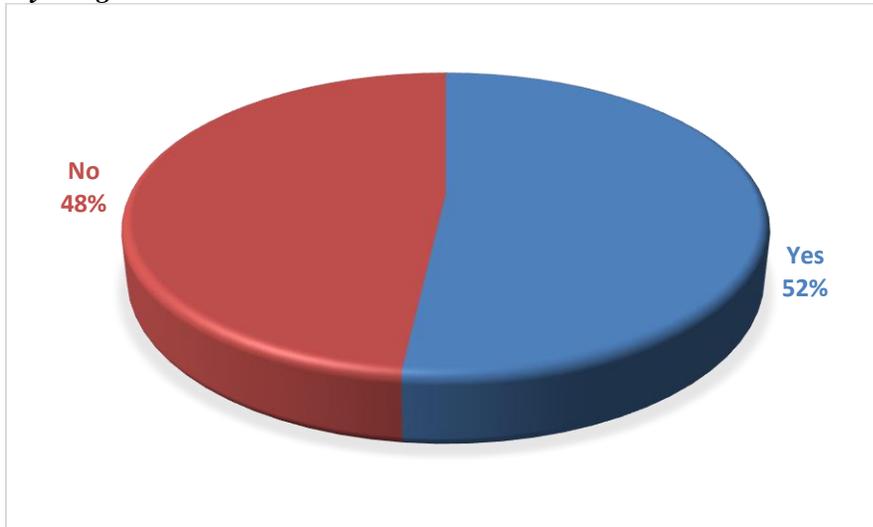


Source: Authors' own edit, 2021

During the home office the 15% of the companies pay the overtime. In addition to the 250 hours of extraordinary working time per year, if the employee chooses, he or she may take up to 150 hours of voluntary overtime per year. An agreement to this effect must be made in writing by the employer and the employee (Mt. Section 109 (2)). Of course, in case of undertaking, the all-or-nothing principle does not apply, the employee can undertake less than 150 hours of overtime. The employee may also decide that he

or she no longer wishes to work overtime voluntarily, in which case he or she is entitled to terminate the agreement unilaterally at the end of the calendar year (Mt. Section 109 (2))

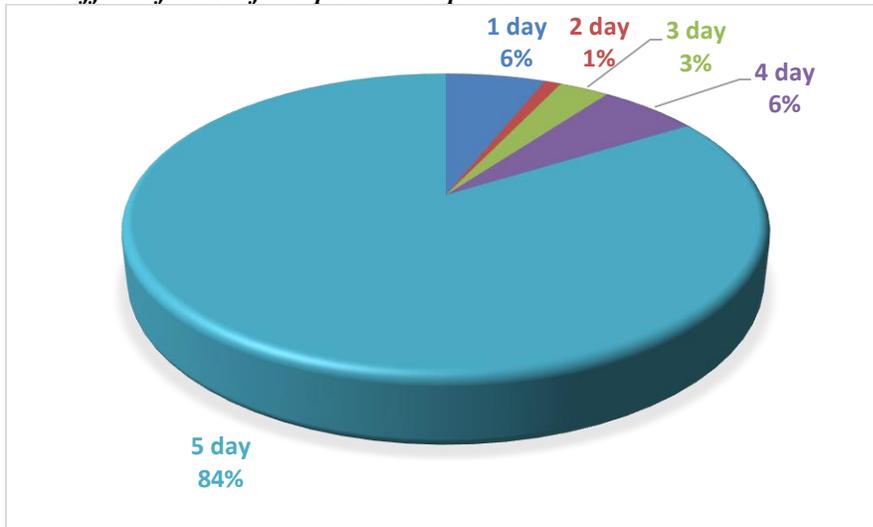
Figure 8. Do you agree with the overtime?



Source: Authors' own edit, 2021

Almost the half of respondents agree with the overtime during home office (52%). Employees perceive that overtime is part of their work and it is not influenced by the fact where they physically practice their job. The 48% respondents do not think that overtime is possible during the home office. Work in home office can cause different kind of conflicts. Conflicts between the family members and also between the employers and employees. Conflict is a collision which needs to be handled in a proper way. In the Hungarian legal regulation, there are several ways for persons how to resolve a conflict, how to resolve a dispute, how to continue with family members, neighbours, colleagues, business partners. (Kohlhoffer-Mizser, 2019).

Figure 9. Home office after the first quarantine period



Source: Authors' own edit, 2021

After the quarantine, the 5-day home office period remained at 84% of the companies. 6%, the second largest number of the respondents continue with four days and one day home office after the quarantine. If employers allow the employees work from home (from 1 to 5 days) it means a sense of trust (Rousseau et al., 1998) toward the employees.

4. Summary

The year 2020 has significantly changed - mainly – the non-manual occupations. Home became the second place of work due to the COVID-19 pandemic in cases where the employer and the employee were able to create the possibility of working remotely. Home office is an expression which is not defined in legal regulations in the Hungarian legislation and it is not equal with distance work.

Employers are trying to keep up with the situation, but there is no uniform guideline on how to treat the home office as a new form of work.

In our opinion, the answers to the questionnaire are significant for the future, they can serve as a starting point for making decisions by employers, managers and even the government. Future restrictions of government taking into consideration the health of people is the most essential question of our time.

Work in home office and overtime cannot be controlled entirely by employers. The new situation creates a new definition of absence trust.

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