**COVID-19 in Germany – General Information and FAQs**

The coronavirus (COVID-19) pandemic continues to present significant concerns globally, both in civilian life, as well as the workplace. In most European countries businesses and life in general have come (almost) to a standstill and employers and employees alike find themselves forced to navigate novel situations with uncertainty and apprehension.

The following information provides insight on the situation in Germany and answers to the most frequently asked questions. Please note that this information is for general guidance and does not constitute or replace legal advice from your employment lawyers. More so considering the changes constantly taking place to keep up with developments.

**What are my obligations towards employees?**

While employers have the right to issue instructions relating to the employee’s duties, the place and time of their discharge and these remain the same, employers equally have a duty of care towards their employees and should not expose them unnecessarily to risk.

**Is there specific action an employer is required to take?**

The duty of care towards employees increases during a pandemic and depending on the specific situation, employers are generally required to carry out a risk assessment and prepare a corresponding plan including preventive measures.

Employers are also required to educate and inform employees about correct hygiene habits, such as the proper washing of hands, sneezing and coughing etiquette, discourage shaking hands and provide hand sanitizer and masks. The government’s current best practice guidelines can be found here: <https://www.baua.de/DE/Angebote/Rechtstexte-und-Technische-Regeln/Regelwerk/AR-CoV-2/pdf/AR-CoV-2-englisch.pdf?__blob=publicationFile&v=2>

**Can employers require employees to be vaccinated?**

The German government does not impose an obligation for citizens to be vaccinated and, in the absence of such obligation, which would infringe on constitutionally prescribed freedom, employers cannot, at present, require their employees to be vaccinated.

**Can the employer offer vaccination?**

Starting April 2021, the state monopoly on vaccinations will be removed and company doctors and GPs will be permitted to vaccinate as well. Employers may thus offer vaccinations; however, employees must do so on a voluntary basis. As with other employment safety measures, the employer is responsible for the cost of the vaccine. As with the flu shot and other measures provided in terms of occupational health and safety, the employer is not responsible for claims resulting from the vaccine.

**Can employers require their employees to be tested?**

According to a recent judgment, it appears employers may, in certain circumstances and in the interests of the safety of the other employees, require employees to be tested and, accordingly, deny employees refusing a reasonable request for such tests, access to the workplace.

**Can employers still instruct an employee to travel on business?**

Employers are required to exercise reason and care; employees should not unnecessarily be exposed to any risk of infection. The employer should not endanger employees, and this includes prohibiting business trips where necessary.

**Can employees refuse to go on business trips?**

Business trips are also considered “work” in terms of the employment contract and the employee is thus required to comply with an employer’s instruction to travel for business purposes. However, although the employee does not have a general right to refuse travel, if the Federal Foreign Office has warned against travel to certain areas, employees may refuse to travel to those areas. The burden is on the employee to show that they would be at risk.

**Can employers ask where employees have travelled to on holiday?**

Such information ordinarily falls within the scope of protected data, however, in order to comply with their duty of care and to enable the employer to take protective and preventive measures, employers may now ask employees where they were on holiday and to report any such trips and to contact the employer by phone or email prior to returning from a high-risk area.

**Can an employer measure an employee’s temperature?**

In individual cases, the employers can check employee’s body temperature and prohibit those with a temperature above 37.5° from entering the premises.

**Can an employee be released from their duties or instructed to stay at home?**

Where the employer has reason to believe that an employee may endanger other employees, the employer may unilaterally release the employee concerned from their duties or deny them access to the premises. In such cases, the employee retains their right to remuneration.

**Can or should employees be made to work from home?**

While employees do not have any general legal entitlement to work from home and employers may not unilaterally impose the obligation to do so on employees if this was never contractually agreed on; working from home/remotely is one of the measures recommended by the government in its SARS-CoV-2 occupational health and safety ordinance, first introduced in April 2020 to fight against COVID-19. Depending on the circumstances, if an employee is unable to work from home, they must either take paid or unpaid time off.

**Extension of the requirement to work from home**

The SARS-CoV-2 occupational health and safety ordinance was amended in January 2021, extending the obligation to offer (for employees in office work or comparable activities) for home office from March 15, 2021 to April 30, 2021. A refusal is only possible if there are compelling operational reasons and employees are not bound to accept this offer.

**Tax rebate for employees working from home**

Many employees were required to work from home for a protracted period during the pandemic. As a result, many incurred high running costs, i.e., heating, water, electricity, etc. Consequently, and in consideration thereof, the government is granting even employees who do not have a separate office at home, a tax rebate of €5 per working day, up to a maximum amount of €600 per year. Usually the tax rebate is available only to employees with a room used specifically for work and virtually no other purpose. However, working from home was one of the governments safety measures and the cause of which many employees worked from their kitchens, living and bedrooms, sometimes in quite challenging circumstances.

**What action should be taken in the case of a suspected infection in the workplace?**

Where there is a strong suspicion of a corona infection, employers should notify the public health department and any cases are to be reported to the competent health authority.

* An employee suspected to be infected should remain separated from other persons until a suitable corona testing site can be reached.
* The employee should be released from work on paid leave until they have been tested. Additionally, the people who were in direct contact with the employee should be determined through appropriate interviews and ideally also be tested.
* Employers must protect all other employees in the event of a specific danger situation. If the employment contract permits, the employer may order work to be performed from a home office and if not, both parties may simply agree that work be done from home during this time.

**COVID-19 General Overview of Leave Scenarios**

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| --- | --- | --- | --- |
|  | **STD** | **State Sick Leave** | **State Disability Programs** |
| **EE Diagnosed with COVID-19**  | Yes, provided the employee is actually ill. Employer required to continue full salary for 6 weeks | After 6 weeks, the employee’s health insurer pays the sickness benefit for a further 72 weeks. | Likely approved if employee does not recover and unable to work for at least 3 hours a day.  |
| **EE Diagnosed with COVID-19**  | No, not if the employee is symptom free and not incapacitated. However, the employer is required to continue full salary for 6 weeks and then claim a refund from the respective health authorities. | After 6 weeks, the respective health authorities pay the sickness benefit for a further 72 weeks. | Likely approved if employee does not recover and unable to work for at least 3 hours a day.  |
| **EE Family Member Diagnosed with COVID-19**  | No.  | Home Care Leave Act allows employees time off to care for sick relatives.  | May apply. |
| **EE quarantined for suspected COVID-19 infection by employer or health authorities** | Yes. Either employer or authorities to continue pay.  | N/A if employee is not sick. | N/A |
| **EE self-quarantine for suspected COVID-19 infection**  | No | No | No |
| **EE refuses to work due to fear of infection**  | No  | No  | No |
| **Employee is well but worksite is closed due to COVID-19**  | Depending on who closes the worksite, either the employer or the state is required to continue full pay for 6 weeks. After that employee receives the sickness benefit amount.  | Likely not approved  | If closure ordered by the state, employer can request a refund of salaries paid by the state. |

**What if an employee decides to stay away from work?**

The presence of the COVID-19 pandemic does not relinquish the employee’s duty to perform their work. In terms of employment law, employees may not unilaterally decide not to go to work due to fear of an infection. The employee must either take paid or unpaid time off. Any time off must be taken with the employer’s approval unless there is a clear and foreseeable risk to the employee’s health.

**Should employees inform their employer if they have been infected with COVID-19?**

Although the employee is normally not required to inform the employer of the details of an illness, employees also have a duty of care towards their employer. Therefore, should an employee become infected with the coronavirus, they have a duty to notify their employer of this fact, especially given its highly contagious nature and the employer’s duty to protect other employees and/or clients.

**What happens if an employee is unable to work due to an infection with COVID-19?**

An employee who is unable to work due to illness arising from a coronavirus infection is entitled to continued remuneration for 6 weeks as with any other illness. That said, while an employer may not prohibit an employee from travelling for private purposes, an employee who, for instance, ignores a travel ban and travels to high risk area (privately) and consequently contracts the virus would not be entitled to a continuation of remuneration as the law requires that the illness is not a result of the employee’s own fault. After 6 weeks, the employee’s health insurance fund takes over and pays the sickness benefit.

**What if an employee does not attend work due to a suspected infection?**

Mere suspicion does not give rise to a claim for continued remuneration as with illness itself, especially if the suspicion is based solely on the employee’s fear. If an employee is under observation, quarantined or not permitted to work by the authorities, a claim for compensation for loss of earnings from the relevant competent authorities may exist. However, the employer is required to continue pay and then request reimbursement from the relevant authorities.

**Sick notes over the phone**

Since October 19, 2020, patients are not required to visit a doctor’s office and can get a sick note over the phone for mild upper respiratory tract illnesses, for up to 7 days. The sick leave can be extended once for up to a further 7 calendar days. The regulation was initially limited to the end of 2020 but was then extended to March 2021 in light of the ongoing pandemic.

**What happens when schools and childcare facilities are closed?**

If schools, kindergartens and nurseries are closed as a precautionary measure, employees are entitled to time off with remuneration according to Section 616 of the Civil Code. However, this entitlement is limited to a few days, usually 1-5 and remuneration is only continued if this has not been excluded in the employment contract. Employees must therefore take paid or unpaid time off, with the employer’s approval to look after their children. If it is possible for employees to work at home, this would also be an alternative in such cases.

* Parents who have to take care of children under the age of 12 or who are disabled themselves due to the officially ordered closure of schools and day care centres are protected against a loss of income if there is no other reasonable option for childcare during the closure.
* The Protection Against Infection Act was amended to enable parents, including foster parents and those in insignificant employment to receive compensation of 67% of their monthly net income (maximum €2,016) for up to ten weeks (20 weeks for single parents). The payment is made by the employer, who can then submit a reimbursement request to the responsible state authority.
* The new right to compensation is linked to the same conditions as the right to child sickness benefit and the conditions for eligibility are as follows:
* The official closure or an official prohibition to enter a day care or school
* The closure is due to an infection or to prevent it
* The applicant is employed
* The applicant must have custody of at least one child who is under the age of twelve or is disabled
* The applicant must now care for the child resulting in a loss of earnings
* There are no other reasonable alternatives for childcare
* The period must be outside school holidays
* Vacation, flex and overtime must have been exhausted

**Extended time off to care for children with child sickness pay**

The number of days publicly insured parents can take off to care for a child who is unwell were increased in January 2021 from 10 to 20 days’pay per parent – up to a maximum of 45 days if there are several children. Single parents received an additional 20 days, giving them 40 days off per child at full pay and up to 90 days for several children.

This time off now also applies where children are not unwell but:

* School or day care centres are closed due to the pandemic.
* Class presence has been suspended or access to childcare is restricted.

The conditions are as follows:

* Parents must themselves be entitled to sick pay
* Child is under 12 years of age and publicly insured
* There is no one else in the household who can look after the child
* The child sickness benefit amounts to about 90% of pay
* Parent are unable to work during this time

**Partnership bonus and part time work**

Couples on parental leave who work part time, between at least 25 and 30 hours per week for 4 consecutive months at the same time, each receive a partnership bonus of 4 additional months of the parental allowance plus (parental allowance plus = half of the parental leave benefit for twice as long). Many parents receiving the partnership bonus were unable to work part-time as planned due to the corona pandemic. However, due to a special COVID-19 regulation, they will not be required to repay the partnership bonus. This special regulation was introduced on March 1, 2020 and will be extended until December 31, 2021.

**What if the public transport stops operating and employees cannot get to work?**

A stoppage of public transport also does not relinquish the employee’s duty to get to work. If the public transport system is also shut down, the employee is still required to get to work and employers are not required to continue remuneration for failure to work as a result. However, both parties can agree that work be done at home, where possible.

**Can employees be forced to go on vacation?**

Generally, and under normal circumstances, vacation or paid time off is based on the employee’s request, which is to be taken into consideration unless there are significant operational reasons require otherwise.

Forced vacation can be ordered:

* for seasonal operations
* closure due to the owner’s absence (e.g. doctor's offices)
* when a company falls into an unforeseen operational crisis that would not normally be considered an operational risk.
* if it is regulated and permitted by an employment contract, collective or a company agreement

Consequently, forced vacation should be preceded by other measures, such as reduced working time, reduction of overtime, etc., where possible.

**What happens if the employer closes the company?**

Should a company be closed by the employer as a precautionary measure and the employees cannot work although they wish to, they are to be released from work with pay during the period of closure. Employers may not require employees to make up for this time later on.

**What if the company is closed on government orders?**

If an official quarantine or ban from work is ordered by the competent authorities, the employer is required to continue pay but may apply for reimbursement of salaries paid to affected employees. The reimbursement is not automatic and must be applied for.

The application period for this is extended considerably from three to 12 months by the Protection of the Population in an Epidemic Situation of National Scope Act.

**Can employers implement short time work due to COVID-19?**

Closure or a reduction in working hours due to a shortage of work, e.g., delivery problems or a reduction in production does not relinquish the employer from their duty to continue pay and fall under the so-called operational risk. However, with short-time work, which is a complete or partial temporary reduction of regular working hours coupled with a corresponding reduction of pay due to a significant but temporary shortage of work, employers may reduce work and apply for short time work compensation from their relevant employment agency.

A loss of productivity due to coronavirus and/or its effects, may thus give rise to a claim for compensation for reduced hours or reduced productivity. Employers must note the following:

* The employer may not declare a unilateral reduction and either a collective or an individual agreement is necessary. Therefore, if there is no works agreement or the employment contract does not permit short time work, the employee’s consent must be obtained prior to its introduction.
* The application is made by the employer and the requirements, all of which must be fulfilled, are that:
* it is due to economic reasons or an inevitable event
* it is temporary and
* unavoidable and
* at least one third of the employees employed in the company are affected by a loss of remuneration of more than 10% of their gross monthly salary in the respective claim period.

The following conditions apply until 31 December 2021, provided that the short-time work is introduced by 31 March 2021.

* Only 10% and not 1/3 of the employees must be affected by the loss of working hours
* Partial or complete waiver of the need to build up a negative balance in working hours
* Reduced hours compensation benefit will also be available to temporary/agency workers
* The regulation that social insurance contributions will be reimbursed in full during short-time work is to be extended until 30 June 2021. From 1 July 2021 to 31 December 2021, 50% of social insurance contributions will be reimbursed, provided short-time work began on or before 30 June 2021.

**How much and for how long is short time work compensation granted?**

Short-time work compensation is granted for a maximum of 12 months and comprises 67% of the net pay difference for employees with at least one child and 60% of the net pay difference for childless employees.

On April 22, 2020, the government agreed to a temporary and graduated increase of the short-time working allowance, which was valid till December 31, 2020 and has now been extended till December 31, 2021. The increase only applies where working hours are reduced by less than 50%. In the case of a reduction of less than 50%, the short-time allowance remains at 60% or 67% of the standard net remuneration.

If the working time is reduced by at least 50%, the allowance will be increased in stages. From the 4th month up to the 6th month, the allowance will increase to 70% or 77% of the standard net remuneration if at least one child lives in the household. From the 7th month of short-time work onwards, the short-time working allowance is increased to 80% or 87% of the standard net remuneration if there is at least one child living in the employee's household.

These measures, which were provisionally intended to last till December 31, 2020, were extended and companies that introduced short-time work on or before 31 December 2020 are eligible for up to 24 months, however, at the latest until 31 December 2021.

**Does short-time work also affect holiday pay?**

No. Holiday pay is based on the average earnings of the employee in the last 13 weeks prior to the vacation. However, reductions in earnings occurring in the previous 13 weeks as a result of short-time work are not taken into account.

**Can employees be requested to work overtime in times of bulk absences?**

Yes. If a majority of the employees are unable to work, employers may require the remaining employees to work overtime for the completion of necessary and/or urgent tasks/projects.

**Do occupational disability and life insurance plans cover COVID-19?**

This depends on the terms and conditions, however, most plans covering pandemics will, under normal circumstances, also cover disability and/or death due to COVID-19.

**Can the Works Council be involved after the fact due to a need to act quickly in the current circumstances?**

No. The current situation does not permit a derogation of the rights of works councils.

In order to enable Works Councils to meet, i.e., reach a quorum during this time of social distancing and when most employees are working from home, the government amendment the Works Council Constitution Act (BetrVG) to enable the passing of resolutions by video or telephone conference. The prerequisite is that third parties must not have access to the contents of the meeting. The temporary provision which was valid until December 31, 2020, has now been extended until June 30, 2021.

Please contact us if you have any questions or require further information.