FAQ: Coronavirus (COVID-19) and Employment Law in Germany

An employee falls ill with coronavirus or is quarantined. Who pays his remuneration?

- Employees who are ill from the coronavirus are generally entitled to continued remuneration from their employer. The employer may be entitled to claim compensation from the state under the Protection against Infection Act (Infektionsschutzgesetz).

- If a quarantine is ordered by the state, the employer must generally also continue to pay remuneration. If the employee actually works from home, the employer is not entitled to compensation from the state.

- If the employee is quarantined and unable to work from home, he or she will in principle receive compensation from the employer in accordance with the Protection against Infection Act. Such compensation corresponds to the amount of the loss of earnings. The employer may then request recovery of
compensation, paid by the government.

- However, the employer will generally not be able to recover compensation paid if the employee is entitled to payment of salary based on other legal grounds. If the quarantine is only for a short period of time, Sec. 616 German Civil Code (BGB) applies in principle; according to this section, the employer remains obliged to pay the remuneration if the loss of earnings is only for a “relatively insignificant period of time”. The duration of such period is somewhat unclear – in the past, courts have even assumed that a period of six weeks may be viewed as insignificant if the employee is under quarantine. This does not apply if the employment contract excludes § 616 BGB.

- If a quarantine lasts longer than six weeks, compensation equivalent to the regular sick pay from the statutory health insurance would generally be paid from the seventh week onward.

Is there any additional state aid for employers?

- A loss of working hours due to coronavirus and/or the associated safety measures may result in a claim for compensation for reduced hours or reduced productivity (Kurzarbeitergeld - KUG) from the government.

- Ultimately, businesses may reduce the working hours of their employees if there is a shortage of work due to the coronavirus (e.g., delivery problems, lack of guests in the hospitality industry) if there is a basis for doing so in collective or individual agreements or if employees agree to this now; in such cases, employers may also be entitled to reduce employees’ pay. The employees may then receive state-paid compensation for such reduced hours.

- To receive such compensation, employers must register directly with their responsible employment agency and report reduced hours if necessary. For information on the requirements for reduced-hours compensation (KUG) and video instructions, see https://www.arbeitsagentur.de/unternehmen/finanziell/kurzarbeitergeld-arbeitgeber-unternehmen

- The German government is reviewing the conditions for reduced-hours compensation to make it easier for business to apply for and receive such benefits.

Must an employee report if he/she falls ill with the coronavirus, or if there is a suspicion of coronavirus infection in an employee’s environment?

- If an employee falls ill, he/she must report immediately to the employer that he/she is unfit for work (cf. Sec. 5 of the German Act on Continued Payment of Remuneration, Entgeltfortzahlungsgesetz – EFZG). The reason for the illness need not be stated. However, it can be argued that, in view of the high risk of infection with the coronavirus, employees may be obliged to report the highly infectious nature of their illness so that the employer can prepare appropriate protective measures.
• If a quarantine is ordered for an employee, the employee should also inform his/her employer immediately.

Are there any other changes to reporting sicknesses?

• Generally, employees need to provide a doctor’s certificate to their employer to justify their absence. The German government has now decreed that patients with a minor illness of the upper respiratory tract need not present themselves to a doctor to receive such a doctor’s certificate. Instead doctors may issue a sick note certificate for up to seven days after taking a medical history by phone and may send it to the patient by post. This temporary exemption is valid with immediate effect as of 9 March 2020, and is initially valid for four weeks. It may be extended if the exceptional situation persists.

• This does not apply to employees who have had contact with a person in whom the new coronavirus has been detected in the last 14 days or have been in an official risk area (as defined by the Robert Koch Institute, (RKI), which is the government’s central scientific institution in the field of biomedicine). It also does not apply to patients where the doctor may suspect a coronavirus infection. These persons should be tested by the designated sites.

• The goal of this temporary measure is to relieve doctors and patients and to mitigate the risk of a further spread of infectious diseases via doctor’s waiting rooms.

Can an employee be prohibited from travelling to a risk area or attending major events? Must he/she report this?

• The employer may generally not prohibit private leisure activities. However, employees who, for example, travel to risk areas and then fall ill may lose their entitlement to payment during their sick leave.

• An employee is not in principle required to report whether he/she has been in a risk area as specified by the RKI. However, if there is a concrete suspicion in the immediate vicinity, it is possible to argue that the employee’s general duty of loyalty also implies a duty to self-report.

What are the financial obligations of the employer if the employee must stay home to care for his/her children due to closed school/daycare?

• If school or daycare is closed as a precautionary measure, it’s the obligation of working parents to find alternate care for their children, as is the case when normal school or daycare concludes, or during strikes. As such, it can be useful to have in place home office agreements with employees.

• Where Sec. 616 BGB is not excluded by the employment contract, the employer will likely need to pay the normal salary to the employees for a “relatively insignificant period of time” in accordance with Sec. 616 BGB, this is generally
assumed to be a period of 5-10 days.

**What are the financial obligations of the employer if the employee must stay home to care for his sick child?**

- If a child falls ill with coronavirus, the employee may stay at home and care for the child. Depending on what is regulated in the employment contract, the employee has a claim to continued remuneration in accordance with Sec. 616 BGB or a corresponding claim against the health insurance fund for child health benefits in accordance with Sec. 45 SGB V, if the applicability of Sec. 616 BGB is excluded.

- According to Sec. 616 BGB, the employee’s claim to continued remuneration remains intact if he/she is only absent for a “relatively insignificant period of time”, provided that Sec. 616 BGB is not excluded. In the case of illness of children, such time is generally considered to be a period of five to ten days but the duration is subject to legal debate.

- The employee should report the incident to the employer (see above for details on the obligation to report).

**What if public transport is restricted or only partially functional, so that the employee has difficulty getting to work?**

- It is generally the employee’s duty to ensure that he/she is able to make it to the workplace. However, it can be useful to agree with employees on working from home if the job allows this.

**Given the expanding travel restrictions due to coronavirus, may an employer send an employee on a business trip?**

- Ordering a business trip to a risk area may be regarded as unfair and therefore not permitted; if so, an employee may refuse to go on the business trip. This scenario should be carefully examined on a case-by-case basis.

**Conversely, is it possible to prohibit business trips?**

- Since business trips are authorized by the employer, the employer can also decide to prohibit business trips. However, if prohibition of a business trip results in loss of income, employers may face future compensation claims.

**May employers order employees to work from home, e.g., after travelling abroad or suspected illness?**

- If there are existing regulations on mobile work in the company, these apply first.

- If such arrangements do not exist, ideally an agreement should be reached with
In principle, the employer’s right to give instructions does not necessarily cover the unilateral order to work from home.

However, the employer has a duty of care to other employees. Therefore, for example, if an employee has cold symptoms or returns from a risk area, the employer’s unilateral order to work from home may be lawful by way of exception. For work at home, the normal legal regulations should be observed, in particular regulations on occupational safety and data protection.

**What are employer obligations if the employee refuses to work from home?**

- If the employee does not wish to work from home, he or she may be released from work on a paid basis. This applies if both sides agree. However, as an exemption, such release could also be ordered unilaterally if there are good reasons why the employee should not come to the office, e.g., a concrete suspicion of infection in his/her immediate vicinity or the return from a risk area after a private or business trip.

- If there are rules on the reduction of overtime, it may be possible to use them under these circumstances.

**Conversely, is the employee entitled to work from home?**

- An employee is generally not entitled to work from home unless the employer agrees.

- However, if there is suspicion that an employee has become infected with the virus, there is a strong case for allowing employees to work from home, if possible in their job.

- The employee may only refuse to work in the office if it is unreasonable for him/her. Whether an employee may claim that working in the office is unreasonable depends on the potential of a significant risk to the employee’s health. There are strong arguments that there would have to be concrete suspicion of a considerable risk of infection.

**Is it possible to order overtime or shift work to accomplish the work?**

- In principle, yes, if the employment contract or an agreement with the employee representation (works council - Betriebsrat) if such a body exists in the company, allows the employer to order overtime or shift work, and normal regulations are observed, in particular the Working Hours Act and the co-determination rights of the works council.

**Can holidays/annual leave be taken or ordered to avoid infection during operation?**
Employees who are worried about infection may request leave at short notice. The employer may refuse such requests if there are operational reasons for not granting leave, such as a high level of sick leave or if other employees wish to take leave.

Conversely, an employer may not order leave without observing certain restrictions. Ideally, however, an agreement would be reached with employees on the taking of leave and the corresponding salary payment.

**What rights does the works council have?**

- The works council (*Betriebsrat*) has a mandatory right of co-determination when it comes to the protection of employee health. Therefore, no health protection measures may be ordered without the consent of the works council, if a works council exists. A possible exemption applies in a situation where the employer only follows specific legal obligations that leave no discretion on the specific implementation. For example, if the government orders a quarantine, then the employer must abide by that.

- The works council can itself propose health protection measures, such as the provision of disinfectants in toilets, a home office regulation, or information on precautionary measures.

- Ideally, a works agreement can be concluded without delay to provide legal certainty to all parties.

**What obligations does the employer have towards his employees in light of coronavirus?**

- As soon as employees show symptoms such as cough, cold, sore throat, etc., employers should send them home.

- The employer may also encourage employees to wash or disinfect their hands regularly, among other common-sense health safety measures. It is legally uncertain whether the employer may require employees to take these measures.

- The employer has a corresponding duty of care, which includes purchasing sufficient soap, disinfectants (if available somewhere!) and, if necessary, disposable paper towels and gloves for employees, if necessary. A no-handshake policy can also be useful. The co-determination rights of the works council with respect to health protection measures (as set forth above) should be respected.

- If illness is suspected, employees should be asked to undergo a medical examination. Until the results of this examination are available, employees may be released from work or work in the home office, if possible.

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