

Effects of Corona for employers and employees

The corona virus is also spreading in Germany. We will briefly answer the questions regarding labour law that arose with the spread of the virus as follows:

I. Rights and duties of the employee

1. May the employee refuse to work out of fear of infection?

In principle, employees have no right to refuse to work out of fear of infection. If, in exceptional cases, work can be refused because of a particular risk of infection, the employer does not have to pay compensation for this. However, the employee may refuse to work if the employer fails to take the necessary protective measures. In case of quarantine, the employee is generally not obliged to work in the home office. Since the employee has no general right to work in the home office, the employer cannot demand work in the home office either. This would have to be agreed upon beforehand.

2. May the employee stay at home for the care of children?

Under certain conditions employees may stay at home. If, when the day care centre or school is closed, the care of a child who has to be looked after because of his or her age cannot be ensured in any other way, the parents as employees generally have a right to refuse performance because it is unreasonable for them to perform their obligation under the employment contract (§ 275 Abs. 3 BGB). In such a case, the employee is released from his or her obligation to perform; in this respect, it would not be absolutely necessary to take vacation.

However, in the case of such a right to refuse performance by the employee for personal reasons, a claim to continued payment of remuneration exists only under very restrictive conditions. The legal regulation in this regard is found in § 616 BGB: There it is stated that the claim to remuneration remains valid if the prevention only lasts for a relatively insignificant period of time. However, the school and day care closures now create a need for care that can last for several weeks. One can hardly assume that several weeks is still "a relatively insignificant period of time" and thus, according to § 616 BGB, a claim to remuneration will continue to exist for several weeks. However, if the time spent looking after the children is a considerable period of prevention, the entitlement to continued payment of wages under § 616 BGB is completely void.

In addition, the claim under § 616 BGB may be restricted or even completely excluded by employment or collective bargaining agreements. Employees may then remain at

home to look after their children, but would not be entitled to continued payment of wages during this time.

Overall, an individual case examination is recommended here.

3. What is the situation with sick leave?

A new rule for reporting sick at work is intended to ease the tense situation in many primary care physician practices in Germany. Anyone who is currently suffering from mild cold symptoms such as coughing or a cold may, under certain conditions, be allowed to stay home after just one phone call and does not even need an appointment with a doctor.

This was agreed by the National Association of Statutory Health Insurance Physicians and the Central Association of Statutory Pension Insurance in Berlin on 11.03.2020. The new special rule has already been in force since 12.03.2020 - for all patients with mild respiratory tract complaints. They can already obtain a certificate of incapacity to work from their doctor by telephone without having to undergo an on-site examination. In this way, up to seven sick days are possible, depending on the physician's assessment.

The so-called "yellow slip" ("*Gelber Schein*") can then be sent to the employer by fax. Many companies also offer the option of simply submitting the sick note later in this case.

II. Rights and duties of the employer

1. What are my obligations as an employer in connection with the spread of the corona virus?

The employer is obliged to take protective measures towards his employees. These obligations derive from the Labour Protection Act and from the duty of care towards his employees. If he violates his obligations, he is obliged to pay damages. The employer can require his employees to wash their hands regularly and to refrain from physical contact (e.g. shaking hands). He may give further hygiene instructions (no sneezing or coughing in the hand). The employer should base his protective measures on the current recommendations of the Robert Koch Institute. The issuing of such principles of action is subject to co-determination if a works council exists.

2. As an employer, may I have my employees tested for infection and may I as an employer ask my employees about existing signs of illness?

The employee will not have to comply with an order to undergo a medical examination, as this is not covered by the right to issue instructions. In return, however, the employee must notify the employer of an illness.

3. As an employer, may I forbid my employees to participate in business trips, meetings and further training events?

Of course, business trips as well as participation in meetings and further training events may be prohibited.

4. May I as an employer order my employees to travel to risk areas?

As soon as a travel warning has been issued for a certain region, the ordering of business trips is not permitted.

5. As an employer, may I forbid my employees to travel privately, for example to risk areas?

You may not prohibit your employees from taking private trips that already have been booked. However, you have the right to ask whether they are travelling to a risk area. It is possible that the right to continued payment of remuneration will not apply if you travel against the travel warning of the Federal Foreign Office without good reason and an infection occurs.

6. What options do I have as an employer if parts of my staff are infected?

Employees may be released from work if there are signs of illness, provided that they continue to receive their remuneration. If a working time account is kept, time off can also be compensated. There is also a possibility of compensation in accordance with the Infection Protection Act if quarantine has been officially ordered for an employee.

Employers also have the option of ordering short-time work. However, this is subject to an agreement with the employees or a works agreement to be concluded with any existing workers council. However, the employer can only apply for short-time work compensation if the prerequisites are met and the short-time work has been previously reported to the responsible employment agency. Further information can be obtained from the Federal Employment Agency at arbeitsagentur.de.

The employer is also free - in compliance with the right of co-determination of the possibly existing workers council - to order company holidays.

7. May I as an employer, for the protection of my staff, release an employee from his working duties if her/his whose family members are infected?

An exemption is possible with continued payment of the remuneration.

8. How do I behave as an employer if the competent authority takes measures against my company?

It is possible that the responsible authority will take measures according to the Infection Protection Act (IfSG), for example ordering quarantine or ordering professional activity bans.

In such case, employees are not entitled to continued remuneration because they are not incapacitated. However, a claim to remuneration according to § 616 BGB is conceivable, but its application may be excluded by the employment contract. The IfSG provides for a compensation payment. The employer has to pay the compensation in the amount of the net remuneration to the affected employees for a maximum of six weeks and is itself entitled to reimbursement from the competent authority in the amount of the compensation paid. We recommend that employers keep themselves informed of current developments and align their processes accordingly.

SNB will be happy to assist you with any questions you may have on this topic and any other issues relating to employment law.

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