

As of January 27, 2021, initially being limited until March 15, 2021, the following change applies to work that can be performed from home (work at the home office): Employers are obligated to offer employees the option of working from home, if possible. For employees who cannot perform their work from home, stricter occupational health and safety rules apply within the company.

Employers should urgently familiarize themselves with the new rules. There may be serious consequences if the protective regulations are not observed, in particular, the prohibition of work affected by an order issued by the competent authority (Section 22 ArbSchG). Furthermore, the penalty regulations of the Occupational Health and Safety Regulation also apply, so that violations may be punished with fines up to €30,000.00.

We outline the most important regulations below:

1. Which companies are affected?

Basically, all companies – The obligation to offer employees the option to work from home does exist, regardless of the size of the company.

2. Which employees must be offered the option of working from home?

First, the employer must check whether office work or comparable activities can be performed at the home office. If this is possible, the employer must offer the option of working from home to the respective employees. An offer is only dispensable if there are compelling operational reasons against it. According to the Federal Ministry of Labor and Social Affairs, compelling operational reasons may also exist, for example, if the tasks in question are fundamentally suitable for being carried out in a home office, but cannot be relocated there for operational reasons, such as the processing of incoming mail, repair and maintenance tasks (e.g., IT service).

Best practice – The examination of compelling operational reasons should be carried out in detail, comprehensibly and in writing based on supporting documents in order to meet the obligation to provide evidence to the competent authorities.

3. What should be considered when making an offer for working from home?

It is best to document the offer of working from home in writing. We also recommend asking employees whether they accept the offer of working from home. There is no obligation to do so.

4. Are changes to the employment contracts necessary?

If the employment contracts do not contain any provisions on working from home, an addendum to the employment agreement should be concluded. In this context, consideration should be given to granting the employer – at least for the duration of the pandemic – the right to order working from home.

5. Are changes in the works agreements necessary?

If a works council exists, and no company agreement has yet been reached on the subject of working from home, this should be done as soon as possible. If existing works agreements on the subject of working from home provide for other regulations on working from home (e.g., restriction to certain groups of employees and time limits), these cannot be effectively enforced – at least for a limited period of time – as works agreements may not contradict the higher-ranking new Corona Occupational Health and Safety Regulation. We recommend that existing works agreements on the subject of working from home be reviewed to determine whether they are in agreement with the new Corona Occupational Health and Safety Regulation and, if necessary, that consultations be initiated with the works council at short notice and that employees be informed of the new regulations, even if they are only applicable on a temporary basis.

6. What new regulations apply to employees who cannot work from home?

Company-related gatherings, such as meetings, are to be limited to what is absolutely necessary for the operation and are to be held in strict compliance with hygiene rules (distance, FFP2 mask, regular ventilation). In detail:

- The employer shall provide medical face masks or respirators at his/her own expense if more than one person per 10 square meters is present in a room for a longer period of time, if the distance of 1.5 meters cannot be maintained, or in the case of activities involving a risk of increased aerosol emission.

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