## Special information

The outbreak of the so-called coronavirus has far-reaching consequences for companies. In the following, we provide an overview of the resulting rights and obligations under German labor law

## I. Rights and obligations of the employer

### 1. Obligation to take protective measures

Pursuant to § 618 BGB (German Civil Code), among other things, the employer must take sufficient protective measures to protect the employees from imminent dangers in connection with the work. For this purpose, preventive education about the existing risk of infection and illness with COVID-19 is to be provided. In addition, preventive measures and adapted behavior must be specifically pointed out.

If an employee falls ill because the employer has violated the duty of protection, corresponding claims for damages may arise. In order to avoid this, the employer is required to point out in connection with the coronavirus that the hygiene rules must be observed, which according to the recommendations of the professional associations must also be observed for protection against influenza:

- Avoid direct contact (e.g. shaking hands, keeping distance in case of illness)
- Wash hands regularly and keep them away from the face
- cough and sneeze into a handkerchief or the crook of one's arm
- regular ventilation of rooms.

Possible further measures to be taken if there is a risk of infection are

- Display of hygiene information (if necessary, obtainable from the employers' liability insurance association)
- Provision of disinfectants
- use of electronic means of communication where possible (e.g. telephone/video-conferencing, home office).

### 2. Closure of the plant

If there is a health risk for the entire company or for a defined part of the company due to an official order or due to a company risk assessment, the company must be restricted accordingly and in the worst case even closed down completely. Such restrictions fall within the operational risk to be borne by the employer. This means that employees do not in principle lose their entitlement to remuneration during the period of unemployment.

### 3. Leave of absence

If an employee falls ill from the coronavirus or if there is a suspicion of infection or illness, the employer has the right and duty to keep the affected employee out of the plant. In order to assess the risk, the employer can ask the employee to provide information on whether he or she has been in a risk area, has had contact with the sick and/or (possibly) infected person and whether he or she may also be infected or ill.

If there are no symptoms of incapacity for work, it must be examined on a case-by-case basis whether there are possibilities of employing the employee concerned in other work or at another place (e.g. home office) so that there is no risk of infection. If alternative employment is not possible, the employer can temporarily relieve the affected employee from work for a few days as a precautionary measure.

However, the employer generally bears the operational risk, so that the employee does not lose his or her entitlement to remuneration during the period of leave of absence.

**4. Home office**

A one-sided work instruction by the employer to work from home in the home office is basically only possible with a corresponding agreement (in particular individual contract, company agreement). In companies with a works council, the co-determination rights of the works council must be observed in the case of collective bargaining.

**5. Introduction of short-time working**

In order to limit the risk of continued remuneration in the event of major operational restrictions due to the effects of the coronavirus (for example, in the event of non-delivery or possibly also in the event of government protective measures), the employment agencies tend to consider the granting of short-time work compensation possible. Whether the necessary prerequisites for this are met in each individual case is examined by the Employment Agency on the basis of the specific circumstances. However, short-time work cannot simply be ordered unilaterally by the employer. The introduction of short-time work requires a works agreement in companies with a works council. In companies without a works council, individual agreements (for example, in the employment contract or supplementary agreement) are required. It is usually agreed that working hours and remuneration will be temporarily reduced and that cyclical short-time work compensation will be applied for at the Federal Employment Agency in accordance with §§ 95 ff. SGB III (German Social Code III).

It must not be possible to avoid the loss of work. Therefore, it is to be examined primarily whether other reasonable precautions are possible (e.g. alternative employment of the employees, reduction of overtime/working time accounts).

Contributions to health, nursing and pension insurance arising from the short-time working allowance are borne by the employer. The employer also bears the risk that the Employment Agency will not approve short-time work compensation even though the employer has agreed to short-time work.

**6. Leave**

In principle, employees can avoid short-time working by taking leave in the planned period. However, because leave is primarily based on the employee's wishes, the employer cannot unilaterally order leave or determine short-term company leave. This is all the more true if, as is often the case, vacation planning is already done at the beginning of the year. It is doubtful whether the general business risk entitles the employer exceptionally to unilaterally order vacation in crisis situations. Apart from this, problems can also arise if there is not enough leave to cover the operational restrictions.

**7. Reduction of working time credits**

If a working time account is kept for the employees concerned in order to make them more flexible, the reduction of time credits can be ordered within the framework of this account. The possibilities for this depend on the respective rules in the individual or collective agreements on working time accounts.

When ordering the reduction of time credits, however, the interests of the employees must be taken into account appropriately, in particular an appropriate period of notice must be observed.

### 8. Reimbursement of wage costs

If the employee is incapacitated for work, there is a claim to continued remuneration for a maximum period of 6 weeks in accordance with § 3 EFZG (German Continued Remuneration Law).

If an employee is banned from work by the authorities or quarantined in accordance with Sections 30, 31 of the Protection against Infection Act (IfSG), he or she is entitled to compensation for loss of earnings in accordance with Section 56 of the IfSG. The loss of earnings is to be paid by the employer for a maximum period of 6 weeks and will be reimbursed by the competent public health department upon request. If the official measure lasts longer than 6 weeks, the employee will receive payments for the following period equal to the sickness benefit from the public health department on request.

It is doubtful whether a company can claim reimbursement of compensation costs under Section 56 IfSG even if the restriction of operations is not based on an official order but was decided by the company itself. Depending on the possibility, short-time working should be introduced in such cases.

## II. workers' rights

### 1. Right to refuse performance

The general situation of a pandemic does not entitle workers to refuse to work and stay at home on their own. Something else may apply if the employee is exposed to an increased risk of infection through intensive contact with other people (work colleagues, public transport), so that work is unacceptable for him/her (e.g. business trip to an area with an official travel warning). If the employee stays away from work without prior permission, he/she is in breach of his/her duty to perform work. He/she may not demand any remuneration for the corresponding time. Whether a warning or dismissal is effective if the employee does not show up for work for fear of contagion must be assessed on a case-by-case basis.

### 2. Childcare

If an employee's child is ill and has to be looked after, the employee is entitled to stay away from work temporarily without losing the right to his or her remuneration (§ 616 BGB). However, it must be examined whether the right to continued remuneration was excluded by the employment contract. In this case, the employee may still have a claim against the statutory health insurance fund (§ 45 SGB V).

If the kindergarten or school is closed and an employee's child must therefore be looked after at home, the employee can only be absent from work for a few days. The employee must seek alternative care options for the child. If the kindergarten or school remains closed for a longer period of time, the employee must either take leave, take unpaid leave or reduce working time credits.

## III. Conclusion

If there is a risk of infection, the risks must be assessed and preventive protective measures taken. If disruptions occur, opportunities for alternative employment time reduction and short-time work can be used. The information provided is of a general nature and cannot take into account special features of individual cases. In the event of actual impairment, an individual analysis and advice is required in any case.

The above statements are only a non-binding compilation according to the current status. No liability is assumed for the correctness and completeness. We would be pleased to support you in checking and, if necessary, implementing the above measures in your company.

The contact persons of our law firm who are known to you are also available here.
In addition, you will find the contact persons who have been particularly involved in the above-mentioned topics.


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**Concluding remarks**

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