



## Special Information | Employment Law Summer Holidays in Corona Times - What Employers must observe now (As of 31 July 2020)

The summer holidays have also begun in the last federal state of Germany. Many employees are therefore drawn abroad. However, many holiday destinations have been classified as corona risk areas by the Robert Koch Institute. Due to the currently valid entry quarantine regulations of the federal states, returnees from risk areas - at least in Bavaria - must report to the responsible health authority and generally enter a 14-day self-isolation ("quarantine") if they cannot show a negative test.

Against this background, the following questions arise: Are employees entitled to remuneration if they return from a risk area after a holiday trip and have to be quarantined afterwards under the applicable entry regulations? In order to protect the rest of the workforce, should employers ask their employees whether they have been in a risk area, have symptoms of illness, etc.?

### **Travel to a risk area:**

The general principle in labor law is: **"No work, no pay"**. This means that, in principle, there is a right to remuneration only if the employee appears for work and performs his work after the approved holiday period. If an employee is in quarantine, he or she cannot at least visit his or her workplace.

If there is an agreement on home office, the employee can perform his work from home despite quarantine if necessary - but only where this is possible and agreed. In this case the employee is entitled to his or her remuneration.

If it is not possible and agreed to perform the work during a quarantine from the home office, he is not entitled to remuneration.

This is only different if an exception applies. The best-known exceptions here are continued remuneration in the event of illness, continued payment of wages in the event of temporary prevention (§ 616 para 1 BGB (German Civil Code) and compensation in accordance with the Protection against Infection Act (§ 56 IfSG).



Employees who deliberately spend their holidays in a risk area, however, accept being prevented from carrying out their work "with their eyes open". Thus, if you knowingly travel to a country that is considered a risk area, you have culpably caused the reason for the hindrance, so that a claim to remuneration is likely to be excluded under all three exceptions.

With regard to the claim for compensation under the Infection Protection Act, the following should be added: Whether quarantine also justifies such a claim on the basis of a generally applicable ordinance, or whether an (additional) individual order is required for this, has not been conclusively clarified. Predominantly - in particular by the competent authorities - it is assumed that without an individual order of quarantine no claim for compensation exists anyway.

In this case, the employer only has to pay remuneration if the employee spontaneously takes additional leave or reduces overtime to cover the absence.

#### **Recommendation for action for employers:**

Employers are advised to check with the employees before the start of the holiday whether they intend to travel to a risk area. This is because the employer has a duty to take protective measures to ensure that employees are protected as far as possible against danger to life and health (so-called duty of protection of the employer). Therefore, the employer must take all reasonable precautions to ensure that no employee returns to the company after travelling to a risk area as long as there is still a risk of infection for the rest of the workforce.

This could include personal letters to all employees or a notice on a notice board or by circular mail, asking employees to inform the employer before departure if they are travelling to a risk area and when they will return. Employees should already be expressly informed of the possible consequences of not performing their work - "no work, no pay" and possibly even a warning. In addition, a return form can also be provided, in which the employee must declare whether and in which risk area he/she has been on holiday and whether he/she has any symptoms of illness.

All measures must respect the participation rights of any existing works council. It may also be possible to agree on a binding reporting procedure with the works council by means of a works agreement.



### **Travel to a non-risk area:**

A basic quarantine obligation exists only for journeys to a risk area. However, constellations are also conceivable for trips to non-risk areas in which the employee cannot appear at work after his return, for example because he himself has fallen ill or an individual ban on work or an individual quarantine has been imposed on him by the authorities on the basis of the Infection Protection Act (and not only on the basis of a generally applicable entry quarantine regulation). With regard to claims for remuneration in these constellations, we refer to our special information dated 1 April 2020.

Please note that 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 the examination and implementation of the above mentioned measures in your company.

Your familiar contact persons are at your disposal regarding these matters. In addition, you will find the contact persons who have dealt with the above topics in particular.

### **Employment law.**



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## **Concluding remarks**

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