



## Special Information | Labour Law Occupational Health and Safety in Times of COVID-19 (as of 20 August 2020)

The COVID 19 pandemic has dominated the last few months and it is currently not possible to predict how long it will continue to have an impact.

For employers, the question arises as to what needs to be observed in everyday working life to ensure that they are not exposed to risks under civil or criminal law. In particular, reporting in connection with major outbreaks in large meat processing companies has shown that a wide range of questions can arise on which there is as yet no established case law. Employers should therefore do everything in their power, in the interests of the safest way, to prevent infection in the workplace as far as possible.

They are also legally obliged to do so. § Section 3 (1) of the Occupational Safety and Health Act (ArbSchG) reads as follows:

*"The employer is obliged to take the necessary measures of occupational health and safety, taking into account the circumstances affecting the safety and health of employees at work. He shall review the effectiveness of the measures and, if necessary, adapt them to changing circumstances. In doing so, he shall strive to improve the safety and health protection of employees".*

If the employer violates these obligations, he and/or those responsible for the employer are exposed to civil, administrative and criminal law risks. As was explained in more detail in the media in the "Tönnies case", it is in any case not excluded that company managers can be personally liable to prosecution for bodily injury (by failing to take the necessary protective measures) if an infection occurs in their company.

The general requirements of § 3 Para. 1 ArbSchG are specified in more detail in the subordinate legislation.

Of particular importance are the so-called Occupational Safety and Health Regulations (ASR), which can be accessed on the homepage of the Federal Institute for Occupational Safety and Health (BAuA). If and to the extent that employers comply with the specifications of an ASR, the requirements of industrial hygiene and safety law are considered to be fulfilled. This is because the ASRs contain the current state of the art and science at the time of publication. Should an infection with SARS-2 nevertheless occur in the company, liability of the employer and its responsible persons should therefore be excluded.



The new SARS-CoV-2-ASR is about to be formally published in the Joint Ministerial Gazette and thus to enter into force. It updates and deepens the SARS-CoV-2 occupational health and safety standard published on 16 April 2020 and applies as long as an epidemic situation of national significance continues to be identified on the basis of the Infection Protection Act.

Employers are well advised to check the occupational health and safety rules on the BAuA website carefully and, if necessary, to adapt their operational measures. You can find them [here](#).

Of course, we will be happy to help you check whether your current operational measures are sufficient or whether and to what extent they should be adapted and/or supplemented.

### **contact persons.**



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## **Concluding remarks**

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