

Employers have to enable working from home in Germany

Arbeitsrecht

Due to the current pandemic situation, employers will be obliged to offer their employees the possibility of working from home.

The decision of the Conference of Ministers-Presidents of 19th January 2021 states that, in view of the current pandemic situation in Germany, a further reduction of face-to-face contacts in the professional environment is necessary. For this purpose, the Federal Ministry of Labour has issued an ordinance obliging employers to allow working from home where possible.

The German Ministry of Labour has published a decree about occupational health and safety (SARS-CoV-2). This decree includes - besides current legislative efforts to create a law about working from home - **a general obligation for employers to allow employees the work at home**, if the working place is in an office or done under comparable circumstances. **This obligation will be valid until 15th March 2021. Employers are, from now on, obliged to allow their employees to work from home.** This obligation affects all companies, independently of their size.

Exceptions only for inevitable operational reasons

Employers will only be able to deviate from this obligation if they can disclose that “inevitable operational reasons” prevent them from offering working from home.

These inevitable operational reasons can only be justified by the fact that companies do not have the necessary working equipment or if the existing IT infrastructure is insufficient for this purpose. Other organizational difficulties will not suffice.

Obligation for employees to work from home?

This induces the question if employees are now obliged to accept the employer’s offer to work from home for this period of time.

The ordinance simply requires employees to accept the offer but it does not force them to work from home.

Therefore, the ordinance creates only an obligation for the employers to permit working from home even though it does not obligate the employees to accept this possibility.

This avoids that employees will be sent away from the office to work from home if they do not really have the facilities to do so. Nonetheless, the employees have to accept the offer if they do have these facilities.

Other provisions on the ordinance for safety at work

Furthermore, the ordinance provides other arrangements to reduce face-to-face contacts while working in the office.

For example, **the simultaneous use of a room** by several people must be reduced to a minimum. If there is no other possibility, **ten square meters** must be made available **per person**.

In companies with ten or more employees, it is necessary to create fixed working groups which are as small as possible.

In case the operational conditions allow to have shifted working hours, that should be made possible.

The ordinance also involves more restrictive health and safety rules regarding mouth and nose covering. If it is not possible to achieve the mentioned exigencies or a distance of 1.5 meters, or if increasing aerosol emissions are to be expected in connection with the working place, **employers must supply medical masks or FFP2 masks**, which have to be worn by the employees.

2021-01-22