La Kanzlei

Instructions for working from home in France

Arbeitsrecht



A new national and cross-sector trade agreement concerning work from home, called "accord national interprofessionnel",has been concluded between management and labor on the 26th of November 2020.

This trade agreement does not result in any new obligations for the employer but lists all important topics that must not be forgotten when defining internal regulations about working from home. It shall be used as a guideline for introducing working from home, not only in unusual situations (such as the occurrence of a pandemic) but also under common circumstances. Further, it should be considered a tool for negotiations between the employer and the negotiating parties.

In our article "Employers have to enable working from home in Germany" we described the main regulations for working from home. The trade agreement enacted on 26th November 2020 contributes the following amendments and therefore greater clarity:

Introducing the work from home under extraordinary circumstances (pandemic and force majeure)

- **Anticipating by establishing a plan to be able to continue the company's activity**: The employer is responsible to identify which activities can be fulfilled while working from home and how the work from home can be organized. This preliminary identification should enable a fast implementation if actions for the employees' safety have to be taken due to extraordinary circumstances. The works council ("comité social et économique = CSE") has to be heard. If there is no employee council, it is recommended that the employer coordinates with the employees before defining the plan of continuing the occupation unilaterally himself. In the FAQ of the ministry of labor[1], a suggestion for an easy way of determining the results of working from home within three steps can be found.
- **No previous obtaining of permission by the employee**: In case of extraordinary circumstances the employer can unilaterally determine the work from home and without permission of the

employees if the measures are necessary to enable the ongoing occupation and to guarantee the employees' safety. In principle, the employer is free to decide whether to send the employees to work from home or not[2]. The government recommends working from home 100 % of the working time during this current pandemic for all activities that allow it. Since January 2021, employees who wish to work from their company's workspace once a week, are allowed to do so if the employer agrees with this.

- **Adjustment of information and hearing of the CSE**: The quickest possible informing and hearing of the CSE should be guaranteed. If no CSE has been elected, it is recommended that the employer **organizes a coordination with the employees** before taking measures unilaterally and informs them in writing maintaining a reasonable period of notice. Thiscoordination - officially only serving the exchange of information - should also be realized in writing and maintain a reasonable period of notice.

- **The employee's personal devices** may be used for professional reasons, as long as the employee agrees with this and the employer cannot provide any mobile devices himself. In this case, the employer has to take care of the necessary adjustments and the maintenance of the employee's devices.

Implementation of working from home under normal circumstances

- The regulation stating that **the employer as well as the employee have to agree** on working from home stays valid.

- Working from home can be introduced at employment or during the employment relationship. The parties' **agreement should be recorded, whereas a supplement to the job contract is not mandatory anymore**.

- The employee who works from home on a regular basis has to be informed about the implementation conditions in writing, especially:
  - Existing collective regulations (chart, works agreement)
  - Practical conditions (supervisor, the type of reporting and of the connection to the company, the way of evaluating the workload…)
  - Distribution between working at home and working in the office
  - Equipment and allowance

Revocation of working from home:

- With implementing working from home, a **probationary period** can be agreed, which allows the employee as well as the employer to end the work from home unilaterally within a period of notice. This period of notice is defined in a works agreement, in a chart or in an agreement between the employee and the employer. If one of them executes the right of notice, the employee returns to

his workplace in the office.

- The parties can agree to **end working from home** at any time and organize the return of the employee to the company as long as working from home was no requirement for his employment.
- At last, the employer can organize an occasional return of the employee to the company in case of a special need on his own initiative or at the employee's request.

General information about structuring the working conditions at home:

- **Equal treatment of the employees working from home**: Employees who are working from home have the same legal and collectively agreed rights as employees working in the office. The employer has to bear that in mind, especially concerning topics such as conditions of authority execution, control of the working hours, the right of disconnection ("droit à la déconnexion"), protection of the private life and protection of personal data.
- **Control of the working hours**: If the employer plans on introducing a device to control the working hours (which is recommended), it is important to keep in mind that he has to hear the CSE and inform the employee before doing so. The device should be justified and appropriate.
- **The employees' right of disconnection** should be subject of a works agreement or a chart, to ensure the adherence to the off-time and holiday period as well as the protection of private and family life.
- The employer has to conduct an **annual appraisal** with the employee about the working conditions and the workload when working from home.
- The employer has to bear **the necessary expenses** of the employee. The concrete requirements can be subject to a works agreement or a chart.
- The **workload when working from home and the required presence** in the office are defined by the parties.
- The protection regulations concerning safety and health also apply to employees working from home, with the only difference being **the employer's incomplete control of the workspace and the working environment which belong to the employee's private life**.
- A **separate risk assessment** has to be undertaken when implementing working from home. The employee's physical distance from the colleagueshas to be considered as a supplementary danger [3]. Isolation and a lack of contact are risks that have to be defined and taken into consideration by the employer. The employer bears the risk of guaranteeing and maintaining social interaction.
- Accidents occurring during working hours when working from home are considered to be **work-related accidents** as long as there is no proof of them being accidents of the personal life.
- **Adjustments to management practices**: A problem brought to light by the corona crisis is the necessity of adjusting the management practices to working from home and to therefore train the managers as well as their employees. Especially new employees, disabled or chronically ill

employees as well as employees that find themselves in a particularly fragile situation should be looked after.

- It is recommended to adapt the conditions of **the social dialogue with the employees' representatives** by converting to - for example - digital means of conversation or by providing a digital room. The terms of use of these digital communication media should be defined in a chart. Under extraordinary circumstances an abridgement of the consultation period can be agreed upon. It is also recommended to include **working from home in the topics of discussion** with the employee and trade union representatives.

Helpful suggestions:

- Given the gain in the importance of working from home, your company should approach this topic, especially in the context of a works agreement or a chart. While doing so, the new trade agreements' instructions have to be considered.
- You could engage service providers to carry out risk assessments of the work from home and to supplement the „Document unique d'évaluation des risques".

[1] See the question „Mon employer peut-il me refuser le télétravail?"

[2] As the employer is responsible for the protection of safety and health of his employees (article L.4121-1 of the French Labour Code), the introduction of working from home in many cases really is a duty.

[3] In France, the employer has to assess and to summarize the risks that result from the type and occupation of his company in a so-called „Document unique d´évaluation des risques".

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