

COVID-19: Germany Update — Employment Law Issues During the Coronavirus Crisis

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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorney or call your regular Skadden contact.

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This article focuses on employment law issues that German companies may face during the pandemic, specifically in respect of short-time work benefits, home office work, salary payments during work absences, vacation time and medical information regarding COVID-19.

Short-Time Work

The German government has modified the requirements under which companies can apply for short-time work benefits. Under the new requirements, an employer can order a reduction in the work time of its employees provided that 10% of its workforce (rather than 33% under the previous requirements) suffers a decrease in work volume of at least 10% and the employer has a legal basis for the reduction (through an individual agreement, works agreement with the works council or collective bargaining agreement with the union). Employers can order a reduction of the work time by up to 100% for individual or even all employees (for complete closures), in which case each employee receives 60-67% of the previous net income as “short-time work allowance.” In addition, the unemployment agency covers 100% of the social security contributions to be paid during short-time work (this benefit is limited until December 31, 2020; under the previous regulations, social security contributions were to be borne by the employer). Maximum term for short-time work is 12 months.

On April 2, 2020, European Commission President Ursula von der Leyen proposed the implementation of a short-time work system similar to Germany’s for all EU states.

Home Office Work

Employees cannot decide unilaterally to work from home because they are afraid of being infected with COVID-19, even if working from home is possible, nor can employers order employees to work from home. As such, home office work arrangements require employers and employees to arrive at a mutual agreement, which should be documented in an amendment to the employment agreement that also covers appropriate confidentiality, work safety and data protection regulations.

Statutory accident insurance covers only accidents that are directly related to the actual work performed at home. All private activities at home are excluded, e.g., walking from the work desk to the kitchen or bathroom.

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Salary Payments During Work Absences

An employee who does not attend work without a valid reason is not entitled to salary payments and can be sanctioned with a formal warning and, in the case of continued absence, dismissal for cause.

If an employee has direct contact with a person infected by the COVID-19 virus, the employee MUST stay at home in quarantine for 14 days. The employee should continue receiving salary payments from the employer, who can be reimbursed by social security insurance. An employee infected by the virus is regarded as sick and should receive regular sick pay from the employer for a maximum term of six weeks without reimbursement.

An employee who must care for a child due to a school or nursery closure is excused from the duty to attend work and cannot be sanctioned for such an absence. However the employer is not obliged to continue paying the salary for such an absence. Rather, according to a new law (Section 56(1)(a) of the Infection Protection Act) the employee is entitled to be compensated from social security in an amount equal to the short-time allowance

for a time period of up to six weeks, provided the child is not older than 12 years and no other caretaking is available.

Vacation Time

The employer cannot order vacation for all employees during a business' shutdown, except if allowed in a collective bargaining agreement or agreement with the works council.

Employees cannot unilaterally cancel vacation that has been granted by the employer already; rather, they need the employer's consent.

Medical Information Regarding COVID-19

In general, an employer cannot request medical information from an employee or require medical tests, such as temperature-taking, without the employee's consent. However, an exception applies in the case of a COVID-19 infection due to the employee's general loyalty obligation toward the employer. In this case, the employee must notify the employer about the sickness to enable the employer to take appropriate steps to protect the employee's coworkers.