

EMPLOYMENT LAW-RELEVANT MEASURES IN CONNECTION WITH THE COVID-19 PANDEMIC

At the outbreak of the pandemic, employment law-relevant regulations were communicated in Circular No. 19/2020 and others, some of which are now outdated while others have been outlined in more detail as developments have unfolded.

A summary of the regulations currently applicable is provided below. Please contact the responsible Human Resources departments for any questions you may have.

Working from home

The University management has decided that members of staff should work from home as a matter of preference, unless the nature of their work makes their on-site presence a clear necessity.

If the members of staff are unable to do a reasonable amount of work either from home or on site (or in combination) without risk due to the pandemic, they must be released from their obligations to perform the work in question. In such case, existing time account credit balances (accrued overtime and other extra hours or positive flextime blocks) are to be used up accordingly.

Once the existing time account credit balances have been used up, these members of staff are not legally deemed to be on leave. Instead, they have to be prepared to resume work immediately when required. Those affected are to notify the responsible Human Resources department accordingly; no form is required.

Members of staff who perform their regular day-to-day work from home, either wholly or in part, will have their contractually agreed standard work hours applied as minimum for time accounting purposes. Members of staff can be required to perform additional working hours within the statutory limits of employment law in order to complete their tasks. These hours are to be documented correctly. Time spent commuting between home and the workplace is not considered as working time.

International home working (inside or outside the EU): approval from Human Resources is required. Situations involving international home working have to be clarified in advance on a case-by-case basis, as this may not be permissible due to social security and tax laws. High costs could otherwise result due to the institute commissioning external support.

Officially ordered quarantine

If the public health authority orders home quarantine, affected employees receive pay in accordance with the Infection Prevention Act. The responsible Human Resources department must be notified.

Continuing pay benefit in quarantine

- Vaccinated individuals and those who are not supposed to receive vaccination receive a continuing pay benefit in the full amount of their missed pay for up to six (6) weeks in total per year. The employer advances this benefit but the funds are reimbursed upon filing with the LVR. For week seven (7) and thereafter the benefit is calculated as 67% of missed pay (capped at € 2,016/month)
- Unvaccinated individuals for whom the Standing Committee on Vaccination (STIKO) recommends vaccination are ineligible to receive the employer benefit.
- Proof of vaccination must be presented to HR in order to receive the continuing pay benefit.
- These regulations do not apply to civil servants, who continue to be paid their salary (under special civil service rules).

Ordered quarantine during approved vacation leave

If a member of staff is ordered into quarantine by the public health authorities whilst on vacation leave, no further leave will be granted in lieu. If the member of staff affected in this way is able to present a medical certificate documenting illness at the time of the quarantine order, replacement leave may be granted. This is contingent upon the employee providing timely notification of illness. These regulations apply irrespective of lockdown periods.

Apprentices

As a rule, apprentices should not work from home.

Pursuant to § 14 of the Vocational Education Act, the University has responsibility for training its apprentices. Individuals responsible for apprentice training usually have to be present at the apprenticeship location to conduct proper training, monitoring work performance.

That will generally not be possible in a situation where apprentices are working from home.

In view of the present circumstances, it is deemed reasonable for apprentices to work **partially** from home when it is ensured that the learning content to be acquired is in line with the organizational apprenticeship policy framework and is reasonably acquirable in a remote-work arrangement. Apprentices should be given opportunity to use textbooks, worksheets, learning platforms, cloud solutions and other media as aids in acquiring learning content. **This requires without exception the necessary technical setup for these.**

During such times, apprentices still have to be actively supervised and receive proper professional instruction. Apprenticeship instructors/trainers have to be available for apprentices to interact with for instruction/training purposes. Instructors/trainers are thus expected to remain in contact with apprentices, assign specific work tasks and communicate with each other regarding apprenticeship training, particularly the progress being made and how the apprentices are doing on a personal level.

Section 3.4 is responsible for and must be notified of apprentices working from home.

Childcare

Where the closure of schools and other facilities present you with unavoidable childcare responsibilities, members of staff can consult with their supervisors to obtain their agreement to working from home or to establish flexible low-risk working hours (e.g. working in the early evening). Should it prove impossible to reach such arrangements, work time obligations can be compensated for through scheduling flexible working time / flex time or by using up accrued overtime or leave.

§ 45 para. 2a of Book V of German Social Code (SGB V) has been amended to allow parents—for the years 2021 and 2022 only—to apply with their statutory health insurer for child-related sick pay (*Kinderkrankengeld*) to cover childcare following the closure of schools and other facilities and/or the suspension of compulsory attendance at school. Parents with statutory health insurance can apply for 30 days of child-related sick pay per child in 2021 and 2022, capped at 65 days total for parents with more than one child. Single parents are entitled to 60 days of sick pay per child capped at 130 days total if they have more than one child. The benefit amount is

approximately 90% of net pay, which is more than the compensation available under the Infection Prevention Act.

To be entitled to child-related sick pay, parents must **hold statutory health insurance** covering their child/children, which must be below age twelve. The legislation stipulates that these payments will only be granted if no other person lives in the applicant's household who is able to perform childcare in the place of the parent/s.

The specific requirements are:

- - The maximum child age is eleven (i.e. eligible up to the child's twelfth birthday); no age cap for disabled children dependent on help
 - The child must be supervised, looked after or cared for at home by the employee or self-employed applicant personally during the period of closure, because
 - other reasonably proper care is unobtainable,
 - and both the child and the worker must hold statutory health insurance.

Workers must apply for child-related sick pay with their health insurer (such as TK in this example):

■ <https://www.tk.de/resource/blob/2099244/a85ef601081335b89e76b95509c272a2/antrag-auf-corona-kinderkrankengeld-data.pdf>

Without exception, employees must notify their responsible HR department in writing of their applying for child-related sick pay either by official University communication channels or email—no form required—stating the dates concerned.

HR then sends out a written confirmation of placement on unpaid leave.

If one parent is unable to claim child-related sick pay for personal or employment/work reasons, the entitlement of the child's other parent may be transferable if the following conditions are met:

- - both parents hold statutory health insurance
 - both parents are entitled to sick pay
 - one of the parents is unable to look after the sick child for employment/work reasons **and**
 - the other parent has already received the full benefits available.

Please contact the responsible HR department in such case via official University communication channels; employer approval is required for a second leave of absence.

For information and assistance regarding such applications, please contact the Office of Family Services.

Parents are not entitled to receive **compensation** under the Infection Prevention Act during the period of receiving child-related sick pay.

For detailed information, please refer to:

<https://www.bmfsfj.de/bmfsfj/themen/corona-pandemie/kinderbetreuung-bei-schul-und-kitaschliessungen/fag-kinderkrankentage-kinderkrankengeld/fragen-und-antworten-zu-kinderkrankentagen-und-zum-kinderkrankengeld-164976?view=>

After having received the full entitlement to child-related sick pay, employees may apply for compensation under special rules introduced under **§ 56 para. 1a of the Infection Prevention Act (IfSG)**: https://www.gesetze-im-internet.de/ifsg/_56.html In passing the Act for Protection of the Population in Case of an Epidemic of Nationwide Impact lawmakers enacted a special compensation entitlement for “working parents”. This law entitles employees to be absent from work under specific circumstances and receive compensation. Parents and single parents receive compensation in the amount of 67 percent of their lost pay (capped at EUR 2,016 per month) for up to ten weeks per working parent, or 20 weeks for a single parent. **The five (5) work days previously granted to non-union staff (personnel not covered by collective bargaining agreement) thus now no longer apply.** Submission of an essential worker’s certificate may be required, regarding which further information can be found here: <https://www.mkffi.nrw/vordruck-fuer-schluesselpersonen-bescheinigung-des-arbeitgebers-zur-unabkoemlichkeit>. The employee’s managers and Human Resources must be informed of the above in advance.

Please be advised of the possibilities of applying for special leave or a work release without pay. Please submit applications for the above to the responsible Human Resources departments in electronic form.

Employees holding private health insurance:

The childcare benefit (*Betreuungsentschädigung*) made available to privately insured employees by the state government of North Rhine-Westphalia expired on December 31, 2021, whose only option now is to apply for compensation pursuant to § 56 para. 1a of the Infection Prevention Act (IfSG; see above).

Civil servants:

The Work Exemption and Vacation Ordinance of the state of North Rhine-Westphalia (FrUrlV NRW) for civil servants has been amended. All civil servants, regardless of pay grade, will be granted an increased number of sick days for children under provisions similar to § 45 para. 2a

SGB V. The new number of days is also based on § 45 para. 2a SGB V (see above). The regulation applies retrospectively from January 5, 2021 and expires December 31, 2022.

Persons with pre-existing health conditions

The Robert Koch Institute confirms that persons with pre-existing health conditions are at greater risk of serious illness due to SARS-CoV-2 infection. This includes:

- - Heart conditions (e.g. coronary heart disease)
 - Lung conditions (e.g. asthma, chronic bronchitis)
 - Liver conditions (chronic liver diseases)
 - Diabetes mellitus
 - cancer
 - kidney disease
 - Disorders of the immune system (related to a weakened immune system or the taking of immunosuppressants such as such as cortisone).

▪ **Classification as vulnerable requires the submission of a medical certificate, which in some cases must be supplemented by an occupational health examination.**

As an employer responsibility, the managers of individuals classified as vulnerable, i.e. who cannot receive vaccination for medical reasons (pre-existing conditions, risk factors), must pro-actively offer them the option of working from home where such is possible. Corresponding requests filed by such employees should be approved if accompanied by the corresponding certificates.

If working from home is not an option, the possibilities for safe on-site working must be studied in consultation with Occupational Safety and the organizational physician and documented accordingly in a risk assessment report. If assessment reveals that there is no such option, the employees in question must be released from work obligation, using up available flextime/flexible working hours and/or accrued overtime.

Once the existing time account credit balances have been used up, these members of staff are not legally deemed to be on leave. Instead, they have to be prepared to resume work immediately when required.

If safe on-site working is possible but due to the pandemic the commute to work poses a significant, objective health risk (despite wearing of face mask), or could pose such on the basis of a serious and objectively justified suspicion, because the employee has no usable car or car sharing opportunity (leaving only public transport available), the employee may refuse work performance

as per § 275 para. 3 of German Civil Code (BGB), stating the corresponding reasons in writing. **The employee forfeits entitlement to pay in such case.**

Individuals for whom the above applies must notify Human Resources accordingly via official University communication channels.

Business travel

- Seeking to contain the spread of the coronavirus, virologists and the government have issued emphatic warnings against unnecessary travel. This includes any business travel.

The University management has ruled that members of staff should avoid business travel wherever possible and recommends the use of online videoconferencing as a substitute.

Should it be decided that business travel is unavoidable, it is necessary to determine whether the proposed destination is located in an area designated as 'high-risk' or as a 'virus mutation region'.

- Employees have the **right to refuse** to travel to a place/country designated by the German Federal Foreign Office as a high-risk area or **virus mutation region** for which an official travel warning has been pronounced. The University cannot expect employees to work under circumstances that pose a substantial health risk, and such circumstances are given when traveling to a high-risk area or virus mutation region.

An overview of virus variant areas can currently be found on the RKI website: https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Risikogebiete_neu.html

Travel to high-risk areas should only be approved in justified exceptional cases, as previously, and a statement via the responsible dean's office must be attached to such requests.

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Returning to NRW from a virus mutation region or high-risk area

Please be advised of the applicable re-entry regulations

<https://www.bundesgesundheitsministerium.de/service/gesetze-und-verordnungen/guv-19-lp/coronaeinreisev.html#c21386>

A re-entry filing is mandatory at [http://www.einreiseanmeldung.de/!](http://www.einreiseanmeldung.de/)

Individuals re-entering the country from a **virus mutation region** must have a negative PCR test

result obtained with the last 48 hours as of the time of re-entry (start time of travel applies if utilizing a transportation provider). Important note—rapid antigen test results are no longer recognized! This applies to vaccinated and recovered individuals as well!

When re-entering the country from a **high-risk area**, valid proof of immunization or a negative PCR or antigen test must be presented (see above regarding validity).

Upon arrival, re-entering travelers immediately go to their residence or other accommodations and isolate there for a period of ...

- ... ten (10) days of re-entry from a high-risk area (see information on ending quarantine!)

- ... 14 days of re-entry from a virus mutation region

Ending quarantine early after returning from a ...

- ... high-risk area: Quarantining may be ended upon submitting a negative test result or a certificate of immunization. **Proof of immunization may be submitted prior to re-entering the country. In such case the individual does not have to quarantine.** Test results of unvaccinated individuals can only be considered five days after their re-entry, at the earliest. The quarantine requirement ends upon submitting a negative result.

- ... virus mutation region: The quarantine period is 14 days with no early ending.

Returning from personal travel

- **Persons returning from a region or country defined by the authorities as a virus mutation region for SARS-CoV-2 or any of its mutations as of the time they commenced travel are ineligible for release from work duties if they are unable to work from home during the period of isolation. Pay entitlement for the work days missed will be forfeited unless the work days are made up for otherwise.**

It is incumbent upon members of staff to keep abreast of the latest travel regulations.