

Employment law-related measures due to the current lockdown

At the outbreak of the pandemic, employment law-relevant regulations were communicated in the 19/2020 Circular and others, some of which are now outdated while others have been outlined in more detail as developments have unfolded.

This summary of the upcoming applicable regulations is being provided in view of the lockdown. Please contact the responsible Human Resources departments for any questions you may have.

Working from home

Working from home should be the preferred option for University employees who are not required to work on-site due to operational exigencies as long as their day-to-day work can be performed remotely.

In the event infection numbers worsen, it is possible that a stay-home order could be imposed. In such case, only **essential workers** will be permitted to enter University buildings or campus areas. Such workers must keep the corresponding documents which have to be presented to the authorities readily available and hand these over promptly as required for verification. A sample document can be downloaded here: https://www.dvsi.de/images/Bescheinigung_zur_Vorlage_bei_Ausgangssperre.pdf

If because of the pandemic situation employees are unable to suitably work from home or on University premises without risk, those employees must be released from the corresponding work obligations. However, employees are not thereby placed on vacation leave, thus they must be prepared to resume work immediately if needed. The names of the individuals in question are to be noted and communicated to Human Resources.

Regular working hours are to be observed as a rule when working from home unless longer hours are required for operational reasons. Hours worked are to be recorded daily.

There is no problem with allowing employees to work from home as long as they reside within the EU, as this has no problematic social security or tax implications. Otherwise however there are problematic issues requiring decision-making on a case-by-case basis.

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.

Under the present circumstances however it can be justified to have apprentices work from home if such is practically feasible from an operational standpoint. In such case, apprentices working from home must receive active training and 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.

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

Childcare

If unavoidable childcare responsibilities result from closures of schools or other facilities, remote working and flexible, low-risk working hours (e.g. early evenings) may be permitted in coordination with the relevant work-supervising managers. When such arrangements are not possible, work time obligations may be made up for through flexible work hours/flex time scheduling or by using up accrued overtime or accrued vacation. Please be advised of the possibilities of applying for special leave or a work release without pay. Please submit applications to the responsible Human Resources departments in electronic form.

Please be advised of the standard option of applying for a work release with pay for childcare reasons via your statutory health insurer pursuant to § 45 para. 2 German Social Security Code V (SGB V), which requires submission of a doctor's certificate.

Under those provisions, employees are entitled to sick pay if a doctor's certificate is presented confirming that a work absence is necessary in order to supervise, assist or care for a sick insured child who is age 12 or below or is disabled and dependent on help, there being no other person in the household available to perform such supervision, assistance or care. The maximum entitlement for insured parents is 10 working days per calendar year per child; the maximum entitlement for insured single parents is 20 working days.

The above regulations apply to civil servants (Beamt*innen) accordingly.

Please be advised of the temporary **special rule per § 56 para. 1a of the Infection Prevention Act** (IfSG): https://www.gesetze-im-internet.de/ifsg/_56.html

Legislators created a special right to compensation for "working parents" under the "Act for Protection of the Population in Case of an Epidemic of Nationwide Impact". This law entitles employees to be absent from work under specific circumstances and receive compensation. **The five (5) working days previously granted beyond the 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-unabkoemmlichkeit>. The employee's managers and Human Resources must be informed of the above in advance.

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. Such health conditions include:

- heart conditions (e.g. coronary heart disease)
- lung conditions (e.g. asthma, chronic bronchitis)
- liver conditions (chronic liver diseases)
- diabetes mellitus
- cancer
- immune system disorders (connected with a weakened immune system or medicines like cortisone that cause weakening of the immune system).

To be assigned to this risk category, individuals must submit a corresponding medical certificate, to be forwarded to Human Resources.

The managers of individuals falling within this risk category should proactively suggest working from home as an option. Corresponding requests filed by such employees should be approved, as a rule.

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 flexible/flextime work hours and/or accrued overtime and accrued vacation.

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 mouth and nose cover), 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.**

Business travel

Virologists and the government are urgently warning against unnecessary travel in order to contain the spread of the coronavirus. This includes business travel in general. **Business travel therefore must be avoided to the extent possible, utilizing online videoconferencing instead.**

It must be determined for any absolutely necessary business trip whether the employee is traveling to a high-risk destination.

Employees have the **right to refuse** to travel to an area/country designated by the German Federal Foreign Office as a **high-risk area** 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 this principle applies regarding travel to a high-risk area. Please refer to the information provided in Circular No. 92/2020 as well.

Entry into the state of North Rhine-Westphalia (NRW)

The state Corona Entry Ordinance was repealed on November 20, 2020 under a decision by the Superior Administrative Court of Münster.

In view of the unclear situation regarding travel and conditions at the place of stay in potential risk areas, the University has adopted the policy, following consultations with occupational health and safety officials, that individuals returning to NRW from a **business trip** are to work from home on the first five (5) work days back. If such a working arrangement is not possible, the employee is released from work obligations. The employee cannot be permitted to work on-site out of consideration for the health and welfare of other staff. If at the end of that period the employee still does not exhibit any symptoms, he/she may return to work at the University.

The above applies as well to individuals returning from **personal travel** to a destination/country which was designated as a high-risk area by the Federal Foreign Office at the time of departure. **In such case the employee is not however released from work obligation. Pay entitlement for the corresponding five work-day period is forfeited unless made up for otherwise. If the individual is infected with the coronavirus upon return, the employee may furthermore forfeit entitlement to sick pay on grounds of being at fault for falling ill.**

Please note that it may be required to file a digital notification of entry upon entering Germany.

https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/Infoblatt/CDR_DEA - Info Sheet.pdf

Employees are responsible themselves for becoming informed regarding the latest updated travel regulations.

Special rules apply regarding entry from **Great Britain or South Africa**. The Corona Entry Ordinance (CoronaEinrVK-VO) of December 20, 2020 provides that travelers arriving from those countries, due to the coronavirus mutation identified there, must quarantine for a period of ten (10) days and notify the public health authority of their entry (unless they have filed the aforementioned entry notification). Such individuals furthermore are required to be tested either within 24 hours of entry or immediately thereupon. Repeat testing is required after five (5) days, upon which they are no longer required to quarantine at home given a negative result.

Officially ordered quarantine

If the public health authority orders home quarantine, employees receive pay in accordance with the Infection Prevention Act. The responsible Human Resources department must be notified. For further information please refer to Circular 19/2020.