Employment Law-Related Measures due to the Current Lockdown

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employment law-relevant regulations were communicated in Circular No. 19/2020 and others, some of which are now outdated while others have been outlined in more detail as developments have unfolded.

This summary of the currently applicable regulations is being provided in view of the ongoing 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.

If because of the pandemic situation employees are unable to suitably work from home or on University premises (full or part-time), those employees must be released from the corresponding work obligations. In such case, existing time account credit balances (accrued overtime and other extra hours, allocable flex time blocks) are to be used up accordingly.

However, when accrued work times have been used up, such employees are not legally deemed to be on vacation leave. Instead, they have to be prepared to resume work immediately when required. Please notify the responsible Human Resources department accordingly; no form is required.

For employees who perform their regular day-to-day work from home, wholly or in part, the individual’s contractually agreed standard work hours are applied as minimum for time accounting purposes. As required for the performance of work responsibilities, additional work hours may be necessary within the statutory labor law limits. Such hours worked must be properly documented.

Time spent commuting between home and work is not considered working time.

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.

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
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.

Ordered quarantine during approved vacation leave
If an employee becomes subject to quarantine per order of the public health authority while on vacation leave, the vacation leave time in question is used up. If however an individual holds a doctor’s certificate documenting illness at the time such quarantining is ordered, the affected vacation days may be rescheduled. This is contingent upon the employee providing timely notification of illness (see Holiday Leave Policy Guide). 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 general responsibility for training its apprentices. Individuals responsible for apprentice training usually have to be present at the apprenticeship location to conduct proper training and monitor work performance.

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

In view of the current situation, 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 closing of schools and other facilities results in unavoidable childcare responsibilities, work can, following agreement with relevant supervisors, be carried out from home or with flexible low-risk
working hours (e.g. working early evenings). 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.

For the year 2021 the possibility was created under § 45 para. 2a of Book V of German Social Code (SGB V) for parents to receive sick pay for children (Kinderkrankengeld) in case of closures of schools and other facilities and/or the suspension of compulsory attendance by filing with their statutory health insurer. The rules are that any parent holding statutory health insurance can apply for 20 days of sick pay per child in 2021, capped at 45 days total. Single parents are entitled to 40 days per child capped at 90 days total. The sick pay amount is approximately 90% of net salary, which is more favorable than the compensation available under the Infection Prevention Act.

To be entitled to sick pay for children, parents must hold statutory health insurance covering their child/children, which must be below age twelve. The rule further applies that there must be no other individual in the applicant household able to look after the child instead 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. Additionally:
  • 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 sick pay for children 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 sick pay for children 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 sick pay for children 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 for Family Services.
Parents are not entitled to receive compensation under the Infection Prevention Act during the period of receiving sick pay for children.

For detailed information, please refer to: https://www.bundesgesundheitsministerium.de/presse/pressemitteilungen/2021/1-quartal/anspruch-auf-kinderkrankengeld/faqs-kinderkrankengeld.html?fbclid=IwAR3WHg1nN021Dt4gCOuBlnE23zSC5ACYH1U6iyH8isbButHgAjpFaGvX9-Pc

After having received the full entitlement to sick pay for children, 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-unabkoemmlichkeit. 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:

A special caregiver compensation program has been created for individuals not entitled to sick pay for children under § 45 SGB V or comparable benefits. To qualify applicants must have a home caregiving need for a child younger than age 12, irrespective of whether the applicant is able to work from home. Per-day compensation for lost pay may be applied for up to 10 days per child (20 days for single parents). The per-day benefit is a flat EUR 92, in line with compensation available under the Infection Prevention Act. Applications may be filed with the administrative district authorities starting in February 2021.


Civil servants:

The Work Exemption and Vacation Ordinance of the state of North Rhine-Westphalia (FrUrlV NRW) is being amended for the benefit of civil servants. 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 amendment is temporary, applying retrospectively from January 5, 2021 for the duration of 2021.
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
- Immune system disorders (connected with a weakened immune system or medicines like cortisone that cause weakening of the immune system).

To qualify as a high-risk individual falling within this category a corresponding medical certificate must be presented, which in some cases must be supplemented by an occupational health exam.

The managers of individuals falling within this risk category under the applicable criteria should proactively suggest working from home as an option. Corresponding requests filed by such employees should be approved.

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.

However, when accrued work times have been used up, such employees are not legally deemed to be on vacation 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 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.

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

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. In response to the virus mutations observed, ‘virus variant areas’ are now recognized for further differentiation.

Employees have the right to refuse to travel to an area/country designated by the authorities (German Federal Foreign Office, RKI) 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 NRW from virus variant areas
Under the latest amended Corona Entry Ordinance of the State of North Rhine-Westphalia of January 15, 2021, individuals entering the state of NRW from a recognized virus variant area are required to isolate in self-quarantine for a period of ten days.

After a minimum waiting period of five (5) days from the date of entry, such individuals may undergo Covid-19 testing and only then exit quarantine early in case of a negative result. Such individuals must present a medical certificate with the test result to the public health authority as documentation. This certificate must be retained for a period of ten days.

Testing is furthermore required when an individual entering the state has symptoms typical of corona within ten days of the entry date.

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,

Entry from other high-risk areas
When entering the state from a high-risk area not recognized as a virus variant area, isolation in self-quarantine is mandated for a ten-day period unless a negative test result is obtained within 48 hours prior to or immediately upon entry. This self-isolation period may be ended upon testing and receiving a negative result. In this case however, the test may be done at any time during the period of self-isolation, in contrast to the above situation; this differing procedure is referred to as ‘early release testing’ (Freitestung).

The RKI defines what areas are designated as high-risk: https://www.rki.de/DE/Content/InfAZ/N/Neuar-tiges_Coronavirus/Risikogebiete_neu.html

Exceptions to these regulations apply, such as for commuters. For further information please refer to the text of the Ordinance. https://www.land.nrw/sites/default/files/asset/document/2021-01-28_coronaeinrvo_nrw_ab_30.01.2021_lesefassung.pdf
Please note that only results from approved diagnostic tests are recognized. The RKI has issued information on this:

https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Tests.html

Returning from personal travel
For individuals returning from an area/country which was defined by the competent authorities as a high-risk area for SARS-CoV-2 or any mutation thereof as of the time of initial commencement of the travel in question, early release from isolation in self-quarantine is not an available possibility regardless of whether the individual is able to work from home. Pay entitlement for the work days missed is forfeited unless made up for otherwise.

Employees returning from such travel who are positive with SARS-CoV-2 or a mutation thereof 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.


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