

25 February 2021

Coronavirus (SARS-CoV-2): Questions relating to labour law and safety and health at work

Can I stay at home? Do I have to go into the office if my colleagues have a cough? We provide answers to these and other questions in our coronavirus FAQ.

Continued payment of wages

Am I entitled to continue to be paid if my workplace experiences temporary disruption or is temporarily closed?

As far as the continued payment of wages is concerned, employers are required, in principle, to continue to pay their workforce if the employees are able and willing to work but the employer is unable to employ them for reasons falling within the employer's operational sphere (the "operating risk" principle, Section 615, third sentence, of the German Civil Code (*Bürgerliches Gesetzbuch*)). For example, this would include cases where employers temporarily halt operations because of significant staff absences or supply bottlenecks caused by COVID-19. In other words, employees are still entitled to be paid in these cases, even if they cannot work.

Please note: individual contracts or collective agreements may contain different rules for circumstances where neither the employer nor the employee is responsible for the lack of work.

Am I entitled to be paid if I am the subject of a measure taken by the authorities to prevent infection?

If an employee is personally the subject of a measure taken by the authorities, for example if the individual is banned from working or placed in quarantine, the employee can be entitled to be paid by his or her employer. A situation of this kind can constitute a temporary, personal reason for absence from work, in which case the employer must continue to pay the employee's wages even though the individual is not required to work (Section 616 of the Civil Code). The duration of the continued payment of wages depends on the circumstances of the individual case.

In cases where Section 616 of the Civil Code is restricted or does not apply because of the provisions of an individual contract or a collective agreement, or does not apply for other reasons, people are entitled to compensation from the state in many circumstances. People who are suspected of being contagious and are isolated by order of the local public health office (*Gesundheitsamt*), and suffer a loss of earnings as a result, receive compensation under Section 56 of the Protection Against Infection Act

(*Infektionsschutzgesetz*). The level of compensation is based on the loss of earnings. For the first six weeks, the compensation is equivalent to the full amount of the lost earnings. From the start of the seventh week, the compensation is the same amount as sickness benefit (Krankengeld). Employees receive compensation equivalent to their net wages from their employer for the duration of their isolation, up to a maximum of six weeks. The employer can apply for reimbursement of these payments. After six weeks, the state pays compensation at a level equivalent to sickness benefit. This compensation rule does not apply to people who are ill, as they are already entitled to continued payment of wages in the event of sickness and to sickness benefit.

Am I entitled to continued payment of wages if I fall ill with the coronavirus myself?

If an employee falls ill due to a coronavirus infection, and is therefore unable to work, he or she is entitled to continued payment of wages in the event of sickness for a period of six weeks (Section 3 of the Continued Payment of Wages Act (*Entgeltfortzahlungsgesetz*)). After this period, people insured under Germany's statutory health insurance scheme are entitled to receive sickness benefit (Krankengeld). If the employee has the capacity to work, for example due to a symptom-free infection, the employer is not obliged to continue paying the employee under the Continued Payment of Wages Act as there is no illness-related incapacity for work.

Short-time work allowance (*Kurzarbeitergeld*)

Can a company receive the short-time work allowance (*Kurzarbeitergeld*) if it cuts working hours as a result of the coronavirus?

If the coronavirus causes supply bottlenecks or if the authorities order closures, forcing companies to limit or stop production, this can lead to an entitlement to the short-time work allowance for the employees affected.

Companies which want to apply for the short-time work allowance must first notify the local Employment Agency (*Agentur für Arbeit*) about the short-time work. The local Employment Agency examines whether the conditions for granting the short-time work allowance are met on a case-by-case basis.

The short-time work allowance can be granted for up to twelve months. It is paid at the same level as unemployment benefit and compensates for 67 or 60 per cent of the net pay lost as a result of the short-time work.

More information about simplified access to the short-time work allowance is available in German at the following link: <https://www.bmas.de/DE/Corona/erleichtertes-kurzarbeitergeld.htm>

Questions and answers on the short-time work allowance and skills development: https://www.bmas.de/SharedDocs/Downloads/DE/Arbeitsmarkt/kug-faq-kurzarbeit-und-qualifizierung-englisch.pdf?__blob=publicationFile&v=2

Information on the short-time work allowance from the Federal Employment Agency (in German):

- [Information for employees](#)
- [Information for companies](#)

What happens if my employer has introduced short-time work (*Kurzarbeit*)?

If an employer has justifiably introduced short-time work, the situation is somewhat different from that discussed for the question “Am I entitled to continue to be paid if my workplace experiences temporary disruption or is temporarily closed?”. If short-time work results in a loss of working time and pay – for example, because the coronavirus causes supply bottlenecks which mean the company is unable to operate at full capacity or at all, or because the business is ordered by the authorities to stop operating – the employees affected may be entitled to receive the short-time work allowance (*Kurzarbeitergeld*).

The short-time work allowance can be granted for up to twelve months. It is paid at the same level as unemployment benefit and compensates for 67 or 60 per cent of the net pay lost as a result of the short-time work. The local Employment Agency examines whether the conditions for granting the short-time work allowance are met on a case-by-case basis.

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Rights and responsibilities in relation to work

Do I have a right to work from home?

There is no statutory entitlement to work from home. However, employees can do so if their employer agrees. Working from home might also be available as an option on the basis of a firm-level agreement or a collective agreement.

What happens if my child isn't ill, but his or her day care centre or school is closed (for a longer period) and I've no other childcare available? Do I have to take holiday leave?

If children are too young to be left on their own when a child day care centre or school is closed, the parents must initially make all reasonable efforts to find an alternative (for example, it may be possible for one parent to look after the children). If the necessary childcare cannot be arranged, an employee normally has the right to refuse to work as he or she can probably not reasonably be required to work (Section 275 (3) of the Civil Code). This means that in these circumstances the employee is released from his or her obligation to work; it is not strictly necessary to take holiday leave.

It is important to keep in mind, however, that when an employee has the right to refuse to work on personal grounds, he or she is only entitled to continue to be paid in very specific circumstances. Such an entitlement can exist, under Section 616 of the Civil Code, if the absence is for a relatively trivial period of time. It should also be noted that this entitlement under Section 616 of the Civil Code can be limited or completely ruled out by the provisions of an employment contract or a collective agreement.

If the employee takes holiday leave, he or she receives holiday pay. In this situation, it will probably be helpful to begin by discussing the options with your employer.

You can find [information on the subject of compensation for parents](https://ifsg-online.de/index.html) (in German) in the event of child day care centre or school closures under Section 56 (1a) of the Protection Against Infection Act (*Infektionsschutzgesetz*) at: <https://ifsg-online.de/index.html> (in German)

What happens if I can't get to work, for example because public transport is not running?

If an employee's workplace is open, but he or she is unable to get there because of generally ordered measures and cannot perform his or her work as a result, the employee has no statutory entitlement to receive his or her agreed wages, in principle. This is because employees bear the risk concerning their ability to get to work.

Do I have to go into the office if my colleagues have a cough?

Employees do not have a general right to stay away from work during an outbreak of illness such as COVID-19. Employees would only be entitled to refuse to work if they cannot reasonably be required to perform their work (Section 275 (3) of the Civil Code). The condition of unreasonableness is met if, for example, the work poses a significant objective risk to the employee's health, or if there are at least objective grounds for a serious suspicion that such a risk exists. The mere fact that colleagues have a cough, without further objective grounds for suspicion or indications that a risk exists, will probably not be sufficient to meet this condition.

Are employers allowed to require employees to work overtime if many members of staff are absent due to illness?

Overtime is when an employee works more than the agreed normal working hours. In principle, employees only have to work overtime if a collective agreement, a firm-level agreement or their employment contract requires them to do so. However, a secondary obligation to work overtime can also exist if the overtime will prevent the employer from suffering damage which cannot be averted in any other way. This could be the case if, for example, large numbers of staff are absent because of COVID-19.

If overtime pay is not regulated in the employment contract or a collective agreement, employees can, in principle, demand to be paid for the overtime at their basic rate, in

accordance with Section 612 of the Civil Code. An employee is only entitled to be paid for overtime if the overtime has been ordered, approved or tolerated by the employer or is, in any case, necessary for the employee to perform his or her contractual work.

What information do I have to give my employer about my health (proactively or if asked by my employer)?

In principle, employers may only ask questions about an employee's health if there is a special justification for doing so, as such questions constitute a considerable interference in the employee's general right to privacy and to informational privacy. This is why a doctor's certificate of incapacity for work for submission to an employer does not state any diagnosis, for example.

However, if employees are diagnosed with the new coronavirus, SARS-CoV-2, employers can require employees to inform them of this to enable employers to fulfil their duty of care and protection and to allow them to protect the health of other employees.

When do I have to produce a certificate of incapacity for work (*Arbeitsunfähigkeitsbescheinigung*)?

All employees who are unfit for work are required to notify their employer of this without undue delay, and to state how long they expect this to be the case (Section 5 (1), first sentence, of the [Continued Payment of Wages Act \(*Entgeltfortzahlungsgesetz*\) \(in German\)](#)). They can do this by telephone, for example. If the employee is unfit for work for longer than three calendar days, the employee is required to submit to the employer, no later than the following working day, a doctor's certificate of incapacity for work which states that the employee is unfit for work and indicates how long this is expected to be the case (Section 5 (1), second sentence, of the Continued Payment of Wages Act). Employers are entitled to require employees to submit a certificate earlier. However, employers can also set a later date for submission of the certificate or temporarily waive this requirement. In the current circumstances, it is recommended that employees contact their employer to discuss exactly how to proceed.

If employees who are ill are unable to submit a certificate to their employer immediately (e.g. because doctors' surgeries are overwhelmed), the certificate may also be submitted to the employer at a later date. If this has resulted in the employer initially not continuing to pay the employee's wages, the employer must then pay the wages retrospectively.

Do I have to go on business trips and attend work-related events?

In principle, employees are obliged to perform the work required by their employment contract, which includes business trips and work-related events. However, employees can be entitled to refuse to work if they cannot reasonably be required to perform their work (Section 275 (3) of the Civil Code). The condition of unreasonableness is met if, for example, the work poses a significant objective risk to the employee's health, or if there are at least objective grounds for a serious suspicion that such a risk exists. This must be decided on a case-by-case basis. Concerns about the coronavirus will probably not be

sufficient on their own to allow employees to refuse to go on a business trip or to attend other work-related events, without further objective indications that a risk exists.

What obligations do employers have to protect their employees? Do risk assessments also have to cover protecting staff from infectious diseases?

Under the Safety and Health at Work Act (*Arbeitsschutzgesetz*), employers have a fundamental obligation to assess the risks to the safety and health of their employees in the workplace (risk assessment) and take measures based on this assessment. In the framework of pandemic preparedness (civil protection), employers have to identify and take additional measures where necessary. Specific information on this can be found, for example, in the National Pandemic Preparedness Plan (*Nationaler Pandemieplan*) on the Robert Koch Institute's website.

As far as occupational safety and health is concerned, the Biological Agents Ordinance (*Biostoffverordnung*) applies when employees deal with biological agents as part of their work (Section 4 of the Ordinance). Biological agents such as viruses, bacteria, etc. have to be included in the risk assessment. Employers are required to identify and implement measures to protect their employees in view of these risks. These can be technical and organisational measures, such as separation of work areas or limits on the number of staff. Where a risk exists, employers must also make personal protective equipment available, such as protective gloves or respiratory protective equipment. Employees must be advised about the risks, both generally, via instruction, and on an individual basis, via preventive occupational health care. Further details are contained in, for example, the Technical Rules on "Biological Agents in Health Care and Welfare Facilities" (TRBA 250) or Resolution 609, "Safety and health at work in the context of a human influenza which is not sufficiently vaccine-preventable", which is currently being applied, with suitable modifications, in the efforts to prevent COVID-19.

Helpful websites:

- Influenza pandemic plan, Robert Koch Institute (in German): https://www.rki.de/DE/Content/InfAZ/I/Influenza/Pandemieplanung/Pandemieplanung_Node.html
- Travel warnings, Federal Foreign Office (in German): <https://www.auswaertiges-amt.de/de/ReiseUndSicherheit/-/2296762>
- Federal Institute for Occupational Safety and Health (in English and German): https://www.baua.de/EN/Home/Home_node.html
- Protection against infection, Federal Centre for Health Education (in German): <https://www.infektionsschutz.de>

What happens if employers send employees home, for example because they have a cough?

Employers have a duty of care towards their employees, and are therefore required to keep employees who are ill and objectively unfit for work away from the workplace. If employers send employees who are unfit for work home, the employees are entitled to continued payment of wages in the event of sickness. The provisions of the [Continued Payment of Wages Act \(*Entgeltfortzahlungsgesetz*\) \(in German\)](#) apply.

Employers who send home employees who are able and willing to work, purely as a precaution, remain obliged to pay these employees (the principle of “default in acceptance” – Section 615, first sentence, of the Civil Code). In such cases, employees are not required to make up the time.

Is information available for non-hospital doctors and for hospitals and clinics about resource-efficient use of protective equipment?

The ad hoc COVID-19 Working Group set up by the Committee on Biological Agents (ABAS) has issued advice on this subject at the request of the Federal Ministry of Labour and Social Affairs. It can be accessed in German at the following link:

<https://www.baua.de/DE/Themen/Arbeitsgestaltung-im-Betrieb/Biostoffe/FAQ/pdf/Empfehlungen-organisatorische-Massnahmen.pdf>

It is also recommended that you should contact the relevant occupational safety and health authority (*Arbeitsschutzbehörde*) or your occupational accident insurance fund (*Unfallversicherungsträger*) to discuss any specific questions or problems.

A list setting out the contact details of the occupational safety and health authorities is available at the following link (in German):

<https://www.baua.de/DE/Themen/Arbeitsgestaltung-im-Betrieb/Branchen/Bauwirtschaft/Baustellenverordnung/pdf/Arbeitsschutzbehoerden.pdf>

The contact details of the occupational accident insurance funds (*Berufsgenossenschaften*) and public-sector accident insurers (*Unfallkassen*) are available at the following link (in German): <https://www.dguv.de/de/bg-uk-lv/index.jsp>

I am a cross-border worker who lives in Germany while working abroad, or who works in Germany while living abroad – what rules apply to me?

In terms of labour law, there are no special rules which apply to cross-border workers who work in Germany. The information provided in response to the other questions generally applies. In the case of cross-border workers from Germany who work in a neighbouring country, the labour law of that country usually applies.

Under German law, employees bear the risk associated with their ability to get to work. If employees cannot get to their workplace, they are unable to perform their work and do not receive any pay, unless otherwise agreed. However, employees may only be reprimanded or dismissed on grounds of conduct if they are at fault; this is not the case in an emergency.

In terms of social security law, your entitlement to benefits such as daily sickness benefits (*Krankentagegeld*) and the short-time work allowance (*Kurzarbeitergeld*) is based on the law of the competent Member State, i.e. the country by whose social security system you are currently covered. That is normally the country where you are employed. Cross-border workers who work in Germany can therefore receive the short-time work allowance in the event of a cut in working hours at the German company where they work. In the case of cross-border workers who live in Germany, the law of the country where they are employed applies.

Working from home temporarily because of the coronavirus does not change which country's law applies to you in terms of social security. You remain covered by the social security system in the same country as before.

Effects on the functioning of works councils

Can a works council (*Betriebsrat*) meeting be held as a video conference or conference call?

Yes, this is permitted by Section 129 of the Works Constitution Act (*Betriebsverfassungsgesetz*) until 30 June 2021 inclusive:

Section 129 – Special arrangements as a result of the COVID-19 pandemic

1. Meetings of the works council, the central works council (*Gesamtbetriebsrat*), the group works council (*Konzernbetriebsrat*), the youth and trainees' delegation (*Jugend- und Auszubildendenvertretung*), the central youth and trainees' delegation and the group youth and trainees' delegation may be attended and decisions may be taken by means of video conferences and conference calls if it is ensured that third parties cannot gain access to information about the substance of the meeting. It shall be unlawful for a recording to be made. Section 34 (1), third sentence, shall apply subject to the condition that the participants confirm their attendance to the chairperson in text form. The same shall apply to committees established by the bodies listed in the first sentence.
2. Subsection (1), first and second sentences, shall apply mutatis mutandis to the conciliation committee (*Einigungsstelle*) and the finance committee (*Wirtschaftsausschuss*).
3. Meetings under Sections 42, 53 and 71 may be held using audiovisual equipment if it is ensured that only authorised attendees can gain access to information about the substance of the meeting. It shall be unlawful for a recording to be made.

What requirements have to be met when holding a works council meeting as a video conference or conference call?

Section 129 of the Works Constitution Act allows the works council to hold meetings and take decisions by means of video conferences and conference calls, including internet-based applications such as WebEx Meetings or Skype.

It is possible either for individual authorised attendees to participate via a video or audio link or for the meeting to be held solely as a video conference or conference call among the authorised attendees.

It is necessary to ensure that third parties cannot gain access to information about the substance of the meeting. This involves technical measures, such as an encrypted connection, and organisational measures, such as use of a private room for the duration of the meeting. Remote attendees can, for example, state for the record that only authorised

attendees are present in the room they are using. If unauthorised persons enter the room at any time, attendees must indicate this without delay.

Meetings may not be recorded, both to protect attendees' privacy and to preserve the confidential nature of the works council's meetings.

Participants must confirm their attendance to the chairperson in text form (e.g. by email). The chairperson adds these confirmations (attendance list) to the written record of the meeting.

If employees with disabilities attend a meeting, it is necessary to ensure that the communication options are also accessible and usable for them.

Where is the new provision published?

The provision is published in Federal Law Gazette Part I 2020 No. 24 of 28 May 2020 on page 1051. You can access the relevant edition of the Federal Law Gazette at the following link (in German):

http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&jumpTo=bgbl120s1044.pdf

Section 129 of the Works Constitution Act (*Betriebsverfassungsgesetz*) was published in the Federal Law Gazette on 28 May 2020. Are decisions that were taken by works council meetings held as video conferences prior to that date valid?

The arrangements set out in Section 129 of the Works Constitution Act apply retroactively with effect from 1 March 2020. If decisions from that date onwards were taken in compliance with the requirements contained in Section 129 of the Act, they are valid.

Can works council meetings still be held as in-person meetings?

Yes. In this case, compliance must be ensured with the SARS-CoV-2 occupational safety and health standards, and the current recommendations from the Robert Koch Institute must be taken into account.

Do employers have a say in the decision as to whether a works council meeting is held as an in-person meeting or as a video conference or conference call?

No, the works council alone decides how its meetings are held.

Do the provisions on attending a works council meeting via video conferencing or a conference call also apply to the representatives of employees with severe disabilities (*Schwerbehindertenvertretung*) and representatives of the youth and trainees' delegation (*Jugend- und Auszubildendenvertretung*)?

Yes, the representatives of employees with severe disabilities and representatives of the youth and trainees' delegation can also attend works council meetings via video conferencing or a conference call.

To what other bodies, besides the works council, do the arrangements set out in Section 129 of the Works Constitution Act apply?

Under Section 129 of the Works Constitution Act, meetings of the following bodies can also be attended by means of video conferences or conference calls:

- the central works council (*Gesamtbetriebsrat*),
- the group works council (*Konzernbetriebsrat*),
- the youth and trainees' delegation (*Jugend- und Auszubildendenvertretung*),
- the central youth and trainees' delegation (*Gesamt-Jugend- und Auszubildendenvertretung*), and
- the group youth and trainees' delegation (*Konzern-Jugend- und Auszubildendenvertretung*).

The same also applies to committees set up by any of these bodies.

What rules apply to meetings of the conciliation committee (*Einigungsstelle*) and the finance committee (*Wirtschaftsausschuss*)?

Meetings of the conciliation committee and the finance committee can also be attended by means of a video conference or conference call. Unlike in the case of the other bodies, participants do not need to confirm their attendance to the chairperson in text form (e.g. by email).

In the current situation, are works councils permitted to take decisions using a written procedure, e.g. decision-making by email?

No. Discussion and the possibility of direct dialogue are a key element of works council meetings and the decision-making process. Please use the option of holding a works council meeting as a video conference or conference call, if possible.

In view of Covid-19, is it possible to hold a staff meeting (*Betriebsversammlung*) as a video conference?

Yes, Section 129 (3) of the Works Constitution Act allows staff meetings, i.e. meetings between the works council and employees, to be held using audiovisual equipment if it is ensured that only authorised attendees can gain access to information about the substance of the meeting. The meeting may not be recorded.

The staff meeting may be held entirely or partly virtually. If an in-person meeting is held, compliance must be ensured with the SARS-CoV-2 occupational safety and health standards and the current recommendations from the Robert Koch Institute must be taken into account.

I am an entrepreneur and need to act quickly in the current circumstances. Can I involve my works council (*Betriebsrat*) after the fact?

No. The rights of works councils are to be upheld even against the background of the Covid-19 pandemic. But now more than ever, finding rapid and pragmatic solutions is of the highest priority for employers and works councils. Only by working together can we cope with the current challenge. As an exception in the current crisis to ensure that works councils can function, works councils can also take decisions using video conferencing or conference calls if specific conditions are met.

Supply of temporary workers

What conditions must be met for me to assign my employees to work temporarily at another company?

If you are not a temporary work agency but, given the current coronavirus crisis, you wish to assign your own employees to work at other companies which are suffering from an acute labour shortage (e.g. in the agricultural production and processing sector, the food logistics sector or the health sector), you can do so without requiring a permit under the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*), as an exception in the current crisis. The following requirements must be met:

- the employees concerned must have agreed to the assignment,
- you must not intend to act as a supplier of temporary employees in the long term, and
- the individual assignment must only be for the duration of the current crisis.

The legal provision relating to this is Section 1 (3) number 2a of the Act on Temporary Agency Work. Given the special importance of these assignments, it is appropriate for the employees temporarily assigned to an organisation to be given the same status as the organisation's permanent employees. This also reflects the principle of equal treatment enshrined in EU law.

Workers may not be assigned to companies in the construction industry to perform activities which are normally carried out by manual workers. What constitutes a construction company is defined by the Construction Companies Ordinance (*Baubetriebe-Verordnung*).

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Last updated: 26 November 2020 / Any changes to the German version of this page are only reflected up to this date. The English language page will be updated.