COVID-19: NEW COVID-19 WORKPLACE REGULATION FOR EMPLOYERS IN GERMANY BRINGS HOME OFFICE AND FURTHER HEALTH AND SAFETY OBLIGATIONS

Date: 22 January 2021

German Labor, Employment, and Workplace Safety Alert

By: Nils Neumann, LL.M., Lara Wengenmayr

Last year, the German Federal Ministry of Labor and Social Affairs (the Ministry) introduced specific health and safety regulations in the light of the pandemic. Today, the Ministry issued the new SARS-CoV-2 Occupational Health and Safety Regulation (COVID-19 Workplace Regulation), which will come into force on 27 January 2021. It refers to the regulations already in place, but it also clarifies that additional measures are necessary to limit the further spread of COVID-19.

Until now, distancing rules, hygiene measures, and masks had been the most important government-regulated workplace health and safety instruments in Germany. With the COVID-19 Workplace Regulation, additional temporary measures will be put in place—including extended employer obligations for offering employees the ability to work from home.

More specifically, the COVID-19 Workplace Regulation provides for the following additional measures:

- Employers must review and update their *workplace risk assessment* in regard to any required additional infection control measures. As a central element of occupational health and safety, risk assessment involves an employer's systematic and formal evaluation of hazards and stresses associated with the workplace.
- Employers must take all appropriate technical and organizational measures to reduce personal contact in the workplace.
- Gatherings of several people (e.g., meetings) must be reduced to an operationally required minimum. Where possible, they should be replaced by the use of information technology (IT). Where not possible, employers must ensure equivalent protection of employees through other suitable protective measures (e.g., through regular ventilation or installation of suitable dividing panels).
- For office work and comparable activities, employers must allow employees to work from home, unless there are “compelling operational reasons.”
    - The COVID-19 Workplace Regulation does not specify what constitutes a “*compelling operational reason.*” The Ministry seems to be taking the view that such reason may exist where business continuity would be materially affected (e.g., IT services, processing of incoming mail). The lack of proper IT equipment or similar organizational matters can only constitute a temporary reason, in the

©2005-2026 K&L Gates LLP. All Rights Reserved.

Ministry's view, that the employer will need to overcome. However, ultimately, the Ministry's views will not be legally decisive, and the employer will bear the burden of proof to demonstrate that a sufficient reason existed in each specific case.

  - *There is no obligation for employees to accept an instruction to work from home*. Rather, home office work will still require an agreement (e.g., in the employment agreement or a works agreement). Thus, the COVID-19 Workplace Regulation does not constitute a comprehensive work-at-home obligation.

- Where simultaneous use of rooms by several persons is necessary (e.g., in production facilities), a minimum area of 10m² (approx. 107 sq. ft.) per employee must be available if the activities to be carried out permit this. Where not possible, employers must ensure the equivalent protection of employees through other suitable protective measures.
- Operations with *more than 10 employees* must establish working groups (being as small as possible). Contacts between the individual working groups, as well as changes in the composition of the working groups, must be reduced to an operationally required minimum. Flexibility in working hours must be offered as far as operational conditions permit.
- Employers must generally provide their employees with surgical masks or FFP2 masks if (i) room occupancy requirements cannot be met, (ii) the minimum distance of 1.5 meters cannot be maintained, or (iii) the activities performed are likely to involve hazards due to increased aerosol emissions. *Employees are required to wear the provided masks*. Employees must be instructed by their employer on how to properly put on and take off the masks.

The COVID-19 Workplace Regulation itself does not include potential sanctions for noncompliance (contrary to an initial draft). However, workplace safety authorities can request information and documents from employers to monitor compliance. This can include requests for employers to provide alleged compelling operational reasons that supposedly prevent them from offering employees the ability to work from home. If employers do not comply with such requests, they may ultimately be subject to sanctions under the German Occupational Health and Safety Act, including administrative fines of up to €30,000 or even a prohibition of business activities.

Thus, employers should verify whether their existing risk assessments require updating and whether pandemic-related measures already taken need to be adapted or extended in the light of the COVID-19 Workplace Regulation. In this context, mandatory co-determination rights of German works councils may also need to be observed.

KEY CONTACTS



NILS NEUMANN, LL.M.
PARTNER

BERLIN
+49.30.220.029.309
NILS.NEUMANN@KLGATES.COM



LARA WENGENMAYR
SENIOR ASSOCIATE

BERLIN
+49.30.220.029.308
LARA.WENGENMAYR@KLGATES.COM

©2005-2026 K&L Gates LLP. All Rights Reserved.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.