

Corona and labour-law – Important questions for employers and employees

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What are the obligations of employers in the event of a suspicion that an employee in the company is infected with the corona virus?

It needs to be clarified whether this suspicion is actually and factually justified. In the event that the suspicion is justified, it is advisable to call the health-advice-hotline 1450 to discuss further steps. It is important to know that the health authorities usually only carry out tests if the person has been travelling to a high risk country (e.g. countries with travel warnings) and is showing typical symptoms of the disease (fever, cough, breathing difficulties, shortness of breath). The employer's duty to care for its employees requires the instruction of the employee to perform his work from home for a certain observation period to avoid any risk of infecting other employees. The employee himself is also obliged to a certain level of protection and care.

Are employees allowed to reject the collaboration with people who returned from a high risk country?

Such right of refusal does not exist should there be no concrete symptoms of illness of the person concerned and no existing risk situation. Only activities that have not been agreed in the employment contract may be refused. An unsubstantiated refusal to collaborate is a refusal to work, with far-reaching consequences according to applicable labour law.

May the employer instruct the employee on one-sided terms to work from home?

Under usual circumstances teleworking must be agreed between employee and employer. A request of teleworking by the employer is only possible if a corresponding agreement is already in place as part of the employment contract, in particular if a so-called relocation clause has been agreed. The employer is responsible to ensure that the required technical equipment is available.

Does the private behaviour of an employee have any impact on the claims arising from the employment-relationship?

In general, private activities are to be separated from the professional relationships. But the employees are obliged to apply certain duties of care, which may also affect the private sphere and behaviour. In case of an illness due to private travel to regions for which a travel warning exists, the employee may lose his right to receive remuneration during the sick leave period.

What rights does an employee have if he has been isolated (quarantined) under the Epidemics Act?

In case of quarantine and the loss of work performance, the employee is still entitled to receive remuneration. The employer may apply for reimbursement of the continuous remuneration payments with the Federal Government, that the same applies should the entire company be quarantined and closed. Quarantine is a precautionary measure and may therefore be qualified as a substantial reason and not as illness as defined by labour law. Only if the employee has a confirmed medical condition be (with confirmed inability to perform his work), it may deem as sick leave.

Is the employer permitted to question the employee about his stay in high risk countries?

Besides the employer's duty of care, the employee is also obliged to his duty of protection and care towards the employer. The employee has to truthfully answer the employer's questions on specific risks resulting from a stay in a high risk country (resulting from the employee's duty of loyalty). The employer should assess, whether appropriate measures are to be taken to protect other employees. There are no strict regulations on this issue.

Is the employee obliged to inform its employer about an actual Corona-Virus infection?

The employee must inform the employer immediately on any specific infection resulting from his duty of loyalty to the employer. He should also inform the employer if he has been put into quarantine (isolation according to the Epidemic Law). The employer shall have the possibility to take appropriate precautions at the workplace to protect other employees.

Which options does an employee have if the kindergarten or the school of his child is closed?

Should the childcare be necessary due to the age of the child and there is no other option of childcare, the employee is generally prevented from performing his work for important personal reasons. This is usually a justified reason of being absent from work for a period of time, whereas the employee is entitled to continued remuneration for an appropriate period. The respective duration needs to be assessed individually but shall not exceed a few days. The legal evaluation of these cases is currently yet unclear, hence, an unanimous agreement with the employer should therefore be concluded.

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We point out that the legal situation changes constantly, we are giving our best effort to keep the contents up to date.



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