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Coronavirus - the most important answers to labour law questions

1. IS THE EMPLOYER OBLIGED TO TAKE PRECAUTIONARY MEASURES TO PREVENT INFECTION IN HIS/HER BUSINESS?

In establishments with customer traffic in areas with an actual risk of infection, the employer is obliged to take appropriate and suitable measures to minimise the risk of infection in order to protect employees from infection. Such measures may include hygiene measures (hand hygiene) and the provision of disinfectants. The necessary protective and preventive measures are determined by the risk of infection. In the case of direct contact with patients (e.g. health care professionals), personal protective equipment must be provided (disposable gloves, suitable protective clothing, breathing mask, eye and face protection) and employees must be instructed.

2. IS THE EMPLOYEE OBLIGED TO NOTIFY THE EMPLOYER OF AN INFECTION WITH THE CORONAVIRUS?

Yes, this results from the employee's duty of loyalty and is intended to enable the employer to take preventive measures for the benefit of the workforce.

3. MAY THE EMPLOYER SEND THE EMPLOYEES HOME FROM WORK IRRESPECTIVE OF OFFICIAL ORDERS (QUARANTINE)?

Yes, the employer can waive the work, but must continue to pay the employees' compensation as long as he releases the employees from work.

4. MAY THE EMPLOYEE BE ABSENT FROM WORK IF HE/SHE IS AFRAID OF INFECTION?

No. Unilateral absence from work for no reason constitutes a breach of official duties and usually a reason for dismissal. A refusal to perform work could only be justified if there was an objectively comprehensible risk of contracting the virus at work. This could be the case if the immediate work environment had already been infected with the virus. However, this does not apply to those employees who regularly deal with illnesses on a professional basis, such as those working in hospitals or pharmacies.

5. MAY THE EMPLOYEE REMAIN ABSENT IF HIS/HER DOMICILE, THE COMMUTE TO WORK OR THE ESTABLISHMENT IS LOCATED IN AN AREA FOR WICH AN AUTHORITY MEASURE (QUARANTINE) HAS BEEN ORDERED?

Yes, if the authority measure prevents the employee from going to work without violating this order. This is a justified absence from the workplace with continued payment of compensation for the duration of the official order by the employer. The Federal Government must reimburse

the employer for the compensation paid. The employee must notify the employer immediately of his/her inability to work.

6. IS THE EMPLOYEE ENTITLED TO COMPESANTION IF HE/SHE CAN NOT REACH HIS/HER PLACE OF WORK AS A RESULT OF A MEASUTE ORDERED BY THE AUTHORITIES (e.g. QUARANTINE)? IS THE EMPLOYER ENTITELD TO REIMBURSEMENT OF CONTINUED PAYMENT?

According to the Austrian Salaried Employees Act (Angestelltengesetz "AngG") and the Austrian Civil Code (Allgemeines bürgerliches Gesetzbuch "ABGB"), employees are entitled to continued compensation if they are prevented from performing their work for a short-term period through no fault of their own for important reasons affecting their person. This also includes public duties such as quarantine and the resulting actual prevention of work performance. According to the Epidemics Law, employees who are unable to perform their work due to the quarantine ordered by the authorities in individual cases are entitled to compensation from the Federal Government for the duration of the quarantine. Although the employer must continue to pay the salary to the employee in advance, the Federal Government must reimburse the employer for the salary paid in accordance with the provisions of the law in retrospect: Within six weeks from the day the quarantine was lifted, the employer may apply to the district administrative authority in whose area the quarantine was declared, to reclaim from the Federal Government, by means of a separate application, the salary paid by the employer and the employer's share of the legal social security contributions.

7. THE KINDERGARTEN OR SCHOOL OF A CHILD OF AN EMPLOYEE IS CLOSED. MAY THE EMPLOYEE STAY AT HOME? DOES THE SALARY HAVE TO BE CONTINUED TO BE PAID?

Yes, if there is a personal reason for being prevented from working. In addition, the child must be under supervision due to his/her age (currently for children up to 14 years). The employee may be absent from work and is entitled to continued compensation for a short period. The duration depends on the individual case (e.g. the age or maturity of the child) and is limited to a maximum of one week.

If the kindergarten or school offers childcare facilities, the employer must expressly agree to the absence of the employee.

On 12 March 2020, the Federal Government announced that employees with childcare obligations for children under 14 years of age would be able to take paid "special care time" for up to three weeks. Such a measure requires an agreement between employer and employee.

8. IN WHICH CASES IS HOME OFFICE POSSIBLE?

If the employment contract already contains a corresponding agreement on home office or an arrangement allowing the employee to be transferred to a different location without his/her consent, the employer may order home office. If these conditions are not met, home office can also be arranged between the employee and the employer.

9. MAY THE EMPLOYER UNILATERALLY ORDER HOME OFFICE?

No, in principle, home office must be expressly agreed between employee and employer. An order by the employer is possible, however, if an agreement to this effect is already contained in the employment contract or a so-called relocation agreement can be found therein, according to which one can be relocated unilaterally to a different place of work than that originally agreed. The employer must then bear any costs incurred (e.g. for internet, mobile phone).

10. CAN SHORT-TIME WORK BE AGREED?

Short-time work is the temporary reduction of normal working hours and, as a consequence, of compensation for economic difficulties. The purpose of short-time work is to temporarily reduce labour costs and at the same time to retain employees who will be needed again once the crisis is overcome. Short-time work is mostly practiced by larger production companies. For smaller companies or service industries short-time work is less practicable due to the complex procedure.

The Austrian Public Employment Service (Arbeitsmarktservice “AMS”) must be contacted in good time - unless otherwise agreed - 6 weeks before the planned start of short-time work. Before short-time work can be ordered, a consulting between the AMS and the employer must take place with the involvement of the works council and the relevant employer and employee associations that are capable of entering into collective agreements. In the course of these consultations, it is to be concluded that no other possibilities have been found to solve the employment difficulties (e.g. by reducing time credits or old leave or by using alternative working time models).

Under certain conditions, the AMS provides the employer with the short-time work allowance. Prerequisites are, among others, that the employer, in addition to the compensation for the reduced working time, also partially compensates the employee for the lost working time (= short-time work support); a social partner agreement (short-time work support, maintenance of the number of employees, other detailed conditions); a company agreement, in companies without a works committee individual agreements; the approval of the AMS. Furthermore, it must be noted that the employer may not terminate an employment contract during an AMS -side support of short-time work, unless the responsible AMS grants an exception in special cases.

11. MAY THE EMPLOYEE REJECT THE REQUEST TO GO ON A BUSINESS TRIP IF IT WOULD LEAD TO DANGEROUS AREAS?

The employer's responsibility to provide for the welfare of employees also includes providing for the protection of their lives and health. This protection includes all measures aimed at preventing occupational accidents and illnesses of employees. For example, if there is a travel warning for a certain area because there is a high risk of infection there, the employee may rightly refuse to go on a business trip, since making this trip may result in a certain and objectively justifiable risk to health or life, as evidenced by the travel warning. If there is no travel warning or an otherwise verifiable high risk of infection (e.g. by declaration of a state of emergency or imposition of quarantine) at the destination or on the route, a rejection will not be legally valid.

12. MAY THE EMPLOYER PROHIBIT THE EMPLOYEE FROM SPENDING A HOLIDAY IN HIGH-RISK AREAS?

The employer cannot prohibit the employee from doing so. If the employee falls ill during his/her holiday in an endangered area, the employer could refuse to continue to pay the salary because the employee has caused his/her incapacity for work through gross negligence.

13. MAY THE EMPLOYER ASK THE EMPLOYEE WHETHER HE/SHE HAS SPENT HIS/HER HOLIDAY IN AN AREA WITH A HIGH RISK OF INFECTION?

Yes, as the employer, due to his obligation of care, must take appropriate precautionary measures to protect other employees.

14. WHAT IF THE EMPLOYEE CAN NOT RETURN HOME ON THE BASIS OF CERTAIN PRECAUTIONS (STATE OF EMERGENCY, QUARANTINE, AND RESTRICTION OF TRANSPORT MEANS)? IS THIS A REASON FOR TERMINATION? IS HE/SHE ENTITLED TO CONTINUED COMPESATION?

Preventing the return journey in fact or in law constitutes a justified reason for absence from work and the employee can not be terminated. The employee is entitled to continued compensation from the employer for a short period (up to one week).