

Luther.

CORONAVIRUS

Action plan

Luther Rechtsanwaltsgesellschaft mbH

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I. Emergency measures in case quarantine is ordered for the entire business (1)

1. Establishment of a central organisation:

- Establishment of a Crisis Task Force and determination of the team members (if possible with members from the areas of Security, IT, Risk Management, Human Resources, Communication, and works council, if necessary)
- Equipping the Crisis Task Force with appropriate means of communication, where this has not already been done
- Establishment of a suitable communication platform in order to be able to inform all employees on an ongoing basis
- General updates on recommendations for action and measures are provided by the Crisis Task Force / management (crisis communication)
- Harmonisation / development of communication strategy with hospitals involved / Robert Koch Institute

I. Emergency measures in case quarantine is ordered for the entire business (2)

2. Prevention / preparation in the respective business

- Identification of the persons who are decisive for the maintenance / safeguarding of the operational process
- Preparation of all further necessary measures in case of site closure, e.g.
 - Equipment for mobile office activities
 - Negotiation of a company agreement on mobile working, if necessary
 - Early installation of video / telephone conferencing systems to avoid personal contacts
 - Setting up further IT tools (e.g. Microsoft Teams)
 - Forming IT Task Force
 - Ensuring remote access to sensitive functions / data / information
 - Identification of relevant system applications
 - Securing confidential objects / documents

II. Emergency measures to reduce the risk in case of infections and suspected cases (1)

1. Employee found to be infected

Situation	Measures	
An employee was found to be infected	<p><u>Measures taken by the health authorities:</u></p> <ul style="list-style-type: none"> ▪ Tests for COVID-19 are always carried out with the involvement of the public health department ▪ In case of a positive test, the laboratory informs the public health department ▪ The local health authority orders quarantine of the person concerned ▪ Infected person must compile a list of persons with whom there has been risk-relevant* contact (*Employees must have been in a room with the infected person for at least 15 minutes and at a distance of less than 1.5 m) ▪ The local health authority requests people on the contact list to be tested and orders quarantine of these persons 	<ul style="list-style-type: none"> ▪ Continued payment of remuneration as in the case of illness according to the German Act on Continued Remuneration During Illness (Entgeltfortzahlungsg) ▪ The employer is entitled to reimbursement for employees who are under official quarantine in accordance with Section 56 of the German Protection against Infection Act (<i>Infektionsschutzgesetz, IfSG</i>) (application required), provided that the employee is not entitled to continued payment of remuneration under Section 616 of the German Civil Code (<i>Bürgerliches Gesetzbuch, BGB</i>)
	<p><u>Measures taken by the employer:</u></p> <ul style="list-style-type: none"> ▪ Information of the employees in the company about infection ▪ Recommendation to all employees with risk factors (e.g. respiratory diseases, weakened immune system) to leave the office and work from home for the next 5 days if possible ▪ Clearance of the premises is <u>not</u> necessary according to the current recommendation of the health authorities 	<ul style="list-style-type: none"> ▪ Work from home, if possible

II. Emergency measures to reduce the risk in case of infections and suspected cases (2)

2. Employee had simple contact with a person with proven infection

Situation	Measures	
<p>First-degree suspicion:</p> <p>Employee had simple contact (i.e. without being classified as a contact person by the health authorities) with a person with a proven infection (regardless of whether there are symptoms typical of the infection)</p>	<p><u>Measures taken by the health authorities:</u></p> <ul style="list-style-type: none"> ▪ None, especially no test for viral infection 	
	<p><u>Measures taken by the employer:</u></p> <ul style="list-style-type: none"> ▪ Order to the affected employee not to enter the workplace for the next 14 calendar days (calculated from last contact with the infected person) and to work from home, if possible ▪ Request the affected employee to create a list of persons with whom he or she had contact during the last 14 days ▪ Recommendation to all employees with risk factors (e.g. respiratory diseases, weakened immune system) to leave the workplace and work from home for the next 5 days if possible ▪ Clearance of the premises is <u>not</u> necessary according to the current recommendation of the health authorities 	<ul style="list-style-type: none"> ▪ Work from home, if possible ▪ If working from home is not possible, continued payment of remuneration for the time the employee is not able to work, within the timeframe set by Section 616 BGB

II. Emergency measures to reduce the risk in case of infections and suspected cases (3)

3. Employee was in the room with an infected person or a person suspected to be infected and does not feel well

Situation	Measures	
<p>Second-degree suspicion:</p> <p>Employee was in the room with one / several infected (contact) persons or (contact) persons suspected to be infected (e.g. office, vocational school) and feels unwell</p>	<p><u>Measures taken by the health authorities:</u></p> <ul style="list-style-type: none"> ▪ Test for viral infection 	
	<p><u>Measures taken by the employer:</u></p> <ul style="list-style-type: none"> ▪ Order to affected employee not to enter the workplace for the next 5 calendar days (calculated from infection-critical situation) and to work from home, if possible ▪ Ask to see a doctor and follow the doctor's instructions. As soon as there is evidence that the suspected (contact) person is not infected, the person should return to work, provided that the employee concerned is fit for work ▪ Request the affected employee to create a list of persons with whom he or she had contact during the last 5 days ▪ Recommendation to all employees with risk factors (e.g. respiratory diseases, weakened immune system) to leave the workplace and work from home for the next 5 days if possible ▪ Clearance of the premises is <u>not</u> necessary according to the current recommendation of the health authorities 	<p>If the doctor determines that the employee is unfit for work, the general rules apply.</p> <p>Otherwise</p> <ul style="list-style-type: none"> ▪ Work from home, if possible ▪ If working from home is not possible, continued payment of remuneration for the time the employee is not able to work, within the timeframe set by Section 616 BGB

II. Emergency measures to reduce the risk in case of infections and suspected cases (4)

4. Employee was in the room with infected person or a person suspected to be infected and is free of symptoms typical of infection

Situation	Measures	
<p>Third-degree suspicion:</p> <p>Employee was in the room with one / several infected (contact) persons or (contact) persons suspected to be infected (e.g. office, vocational school) and feels free from symptoms typical of infection</p>	<p><u>Measures taken by the health authorities:</u></p> <ul style="list-style-type: none"> ▪ None, especially no test for viral infection 	
	<p><u>Measures taken by the employer:</u></p> <ul style="list-style-type: none"> ▪ Order to affected employee not to enter the workplace for the next 5 calendar days (calculated from infection-critical situation) and to work from home, if possible ▪ As soon as there is evidence that the suspected (contact) person is not infected, the person should return to work, provided that the employee concerned is fit for work ▪ Request to consult a doctor as soon as the health situation changes negatively 	<p>If the doctor determines that the employee is unfit for work, the general rules apply.</p> <p>Otherwise</p> <ul style="list-style-type: none"> ▪ Work from home, if possible ▪ if working from home is not possible, continued payment of remuneration for the time the employee is not able to work, within the timeframe set by Section 616 BGB

III. Further precautions (1)

1. Mobile working / home office (1)

Employers, in principle, are not entitled to unilaterally order mobile working. A contractual or collective bargaining legal basis (company agreement/collective bargaining agreement) is required.

In individual cases, with regard to the requirement of special consideration and the duty of loyalty, the order may nevertheless be possible, provided that its implementation is possible and reasonable for the employee.

If an employee nevertheless refuses to work from home, there is generally no obligation to pay remuneration. The payment of wages then shall be stopped.

III. Further precautions (2)

1. Mobile working / home office (2)

In order to ensure the maintenance of operational procedures, the organisation of work from home must be communicated to the employees within the respective departments / teams at an early stage; if necessary in consultation with the works council insofar as co-determination rights are affected.

Checklist: Mobile working / home office

- Definition of the organisation of working time
- Definition of the feedback frequency
- Definition of the communication channels
- Setting up video / telephone conferences
- Determination of rolling activities of teams (alternately from home and work)

III. Further precautions (3)

1. Mobile working / home office (3)

In order to ensure the health protection of employees, health protection measures should be communicated and updated at an early stage - in consultation with hospitals / the Robert Koch Institute; if necessary, in consultation with the works council where co-determination rights are affected.

Checklist: Mobile working / home office

- Information about the risk of infection and minimisation of the risk
- Transfer of particularly vulnerable employees to more suitable jobs / workspaces
- Organisation of the work in smaller working groups
- Organisation of telephone and video conferences
- Transfer of employees from open-plan to individual offices
- Increase of hygiene standards
- Carrying out health checks

III. Further precautions (4)

2. Childcare - school or kindergarten closed (1)

The **employee may stay at home** if this is necessary for the care of his/her child or in order to comply with the duty of supervision.

- This is usually the case for children up to the age of 12.
- There must be no other care facilities available.
- If necessary, the employee must work from home.

However, the employer must be informed immediately / in due time!

III. Further precautions (5)

2. Childcare - school or kindergarten closed (2)

In principle, the employee retains his or her entitlement to compensation for the period of care if the absence lasts for only a "relatively insignificant period of time", i.e. usually no longer than five days.

- **Exception:** Application of Section 616 BGB was excluded by employment contract, company agreement or collective bargaining agreement.

Recommendation: In principle, it is advisable to seek an amicable solution with the employee. Possible options are:

- mobile working;
- agreement on changed working hours;
- overtime reduction;
- paid leave;
- provision of childcare by the employer (note, however, that the number of children that may be looked after may be limited).

III. Further precautions (6)

2. Childcare - child falls ill (3)

If an employee's child is ill with COVID-19 (or other disease), the employee is not obliged to take up work in the company in this case if he/she has (unsuccessfully) tried to find another way of caring for the child.

The employee is generally entitled to unpaid leave of absence / child sickness benefit, see Section 45 of the German Social Code (SGB V).

Rule of thumb: 10 days per parent for married employees or 20 days for single parents.

The child must have statutory health insurance and be younger than 12 years old. Otherwise, the employee may stay at home only if it is unreasonable to expect him/her to carry out the work owing to the illness of the child.

In individual cases, a claim may also exist under Section 616 BGB.

III. Further precautions (7)

3. Payment claims of employees (1)

If an employee is unable to work due to illness (regardless of the reason), the generally known rules on continued payment of wages in the event of illness apply.

If an employee is not unfit for work but cannot resume work for other reasons (e.g. quarantine), there is no entitlement to continued payment of wages. An exception can be made if the prevention is only for a "relatively insignificant period of time", i.e. usually no longer than five days. However, this does not apply if the application of Section 616 of the German Civil Code is precluded by the employment contract, company agreement or collective bargaining agreement.

In the case of quarantine, there may also be an entitlement to loss of earnings in accordance with Section 56 of the German Act for Protection against Infection (IfSG):

- **up to week six:** compensation amounting to the loss of earnings (net remuneration);
- **from week seven:** compensation at the level of the daily sickness allowance.

The employer regularly pays the compensation to the employee for a period of six weeks. The employer will be reimbursed for the amounts paid out by the competent authority upon request (in most cases this is the local health authority), insofar as the employee is not entitled to continued payment of the remuneration under Section 616 BGB. However, such a request shall be made within a period of three months after the end of quarantine. The employer may also request an advance payment in the anticipated amount of the reimbursement.

III. Further precautions (8)

3. Payment entitlements of employees (2)

Checklist: Loss of earnings according to IfSG

- If an employee does not turn up for work since he or she is in quarantine, payment of salary must be suspended.
- The employer must then ask the employee to provide the order from the competent authority that prohibits the employee to carry out his/her professional activity.
- As soon as this document is available, loss of earnings (= net remuneration) is to be paid for six weeks, provided that the employee is not entitled to continued payment of remuneration under Section 616 BGB.
- Application to the competent authority for an advance payment.

Contact

Please contact your direct contact person for all legal questions concerning the effects of COVID-19 that you may have.

You are also welcome to contact our central e-mail address corona-support@luther-lawfirm.com.

We will then immediately forward your request internally and the responsible contact person will get in touch with you directly.

You will find further up-to-date information on our website under the following link:

<https://www.luther-lawfirm.com/en/competences/consulting-fields/detail/corona-virus-covid-19>

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