

## Corona: Important information for employees

This brief information summarizes important labor law advice for employees. For more information, contact us: [bema@aul-lsa.de](mailto:bema@aul-lsa.de)

### Which people are currently considered to be fully vaccinated/recovered?

Persons are considered to be fully vaccinated if they have not yet demonstrably contracted COVID-19 and have received at least two vaccinations. This must include at least 14 days since the last single vaccination. Proof of vaccination can be provided on paper or electronically. People who have had COVID-19 and have received at least one vaccination dose are also considered fully vaccinated. In addition to vaccination documentation, they must be able to prove that they have recovered from infection with SARS-CoV-2 coronavirus. Note: The validity period of the Corona vaccination certificate will be shortened starting February 1, 2022, for all individuals who have not yet received booster vaccination. They will then be considered fully vaccinated for only nine months

Persons are considered recovered if they have tested positive for SARS-CoV-2 coronavirus by a proven PCR test. The convalescent status is valid for unvaccinated persons from the 28th day until the 90th day from the date of collection of the positive test, i.e. only until the expiry of three months after infection.

### Do I have to tell my employer if I have been vaccinated?

Employers are now required to collect data to monitor the 3G rule. However, the employer is still not allowed to ask about vaccination status, but only about one of the three proofs (recovered, vaccinated, tested).

### Do I have a right to be tested for Corona on a regular basis?

Employers are still required to offer rapid antigen testing or self-testing twice a week to employees who are required to work in presence.

### Can my employer ask me why I am sick?

There is no obligation to disclose the medical diagnosis to the employer or colleagues. The employee is only obligated to notify the employer of his/her own incapacity to work and to prove its expected duration by means of a medical certificate. Of course, you are free to inform your employer and colleagues for the reason for your inability to work, for example, to warn them.

### If I am in quarantine, am I entitled to a wage?

In the event of an officially ordered quarantine, the employee is entitled to compensation. However, this does not apply if quarantine or a ban on activities could have been avoided by taking advantage of a publicly recommended vaccination. As of November 2021, unvaccinated workers will no longer receive compensation for lost earnings, because by that date at the latest, everyone could have taken advantage of a vaccination offer. Employees who have been vaccinated but not yet refreshed will also face the cancellation of their continued pay in the event of a quarantine.

Sick pay will not be affected. Those who become ill with Covid-19 and have not been vaccinated are still eligible for continued wage and sick pay. Whether a quarantine is officially ordered in addition to the illness is irrelevant.

### **My employer sends me home because he suspects that I have become infected. Am I entitled to continued payment of wages?**

Yes. The employer can release the employee from work and send him for testing, for example. Until an infection or illness is detected, the employer remains obligated to pay wages. If an illness is diagnosed and the employee is unable to work, he or she is entitled to continued payment of wages for six weeks.

### **What happens if I get sick with COVID-19?**

Every employee who is unable to work as a result of an illness must immediately report the inability to work to the employer and submit a medical certificate after three days at the latest (note: in some companies even earlier, check your employment contract!).

In the case of an infection with the SARS-CoV-2 virus, as in any other case of illness, you are generally entitled to continued payment of wages for up to six weeks.

Under certain circumstances, employees may lose their entitlement to continued payment of wages in the event of illness if it is their fault for the illness. It is the employee's fault if he/she has voluntarily traveled to a Corona risk area and has thus accepted an infection.

### **Can my employer refuse to pay my wages if I spent my vacation in the risk area and then have to go into quarantine?**

In principle, employees do not lose their right for compensation for loss of earnings if they are temporarily prevented from performing their work throughout no fault of their own. However, it is disputed whether and, if so, for how long this regulation applies to those who have to go into quarantine after returning from a risk area.

Employees who have made an agreement with their employer that allows them to work in home office can also make use of this option during the quarantine. Those who continue to work despite quarantine will also receive pay as normal.

When entering the country from a highly infected area, there is a difference between the vaccinated/genetically tested on the one hand and the unvaccinated on the other: vaccinated/genetically tested persons may, upon submission of proof of

- of a valid negative corona test

- and the complete vaccination or recovery

quarantine already at the time of registration of entry. Unvaccinated persons cannot. Accordingly, unvaccinated persons bear the risk of not receiving compensation in the case described. This distinction does not exist for entries from virus variant areas; a 14-day quarantine applies to everyone.

### **Can the employer take labor law measures against me because I was in the high-risk area or virus variant area and subsequently have to go into quarantine?**

A warning or dismissal only comes into question if you have violated an obligation arising from the employment contract. Whether a contractual secondary obligation to show consideration for the interests of the employer can be breached by going on a vacation trip, after the end of which a quarantine may be imminent, is disputed. This is because, in principle, employees are free in their private lives, and travel to risk areas is not prohibited. They fulfill their duty of consideration towards the interests of the employer by observing the recommended rules of conduct on vacation to minimize the risk of infectio

### **What happens if I have to go into quarantine during my vacation?**

This question has not yet been conclusively clarified. Some courts have ruled that, unlike in the case of illness, vacation days are not credited again despite the quarantine. Ultimately, however, the final assessment depends on the individual case. If this question arises for you personally, we recommend contacting one of our advisors.

### **Can my employer terminate me because of the Pandemic?**

Normal employment protection regulations also apply during the pandemic. Many companies experience losses, but this does not necessarily justify termination of the employment contract. Therefore, please do not sign any termination or amendment agreements presented to you by the employer without consulting an advisor or a legally qualified person.

### **When do I have the option of working in a home office?**

Currently, home office is mandatory: the regulations apply nationwide until March 19, 2022, with a three-month extension possible.

In principle, employers must offer their employees the opportunity to work in a home office for office work or comparable activities. This only does not apply if so-called "compelling operational reasons" militate against it. The burden of proof that a workplace is not suitable for home office work lies with the employer.

In addition, employers must make their employees who cannot work from home a test offer at least twice a week, and the mask requirement remains in place wherever technical or organizational measures do not provide sufficient protection.

### **What happens if I need to care for my children because of school or daycare closures?**

Parents are obliged to secure the necessary childcare. If there is no other option, you can refuse to work in order to secure childcare, but you may be entitled to compensation for the loss of earnings incurred. Since the beginning of 2021, there are two regulations that take effect when parents have lost earnings because they have to care for their children "corona-related" even though they otherwise go to daycare or school: Corona Child Sick Pay and Compensation for Child Care (IfSG). Certain criteria must be met for this. More information can be found here:

<https://www.dgb.de/themen/++co++18c1da2a-69d0-11ea-ad58-52540088cada>

If this option is not available, the employer must give you time off, but you will not be paid.

### **What is short-time work (Kurzarbeit)?**

The employer bears the risk that there is enough work in the company. If there is not enough work, the employer must still pay the employees their full wages. Short-time work is an exception to this rule.

Short-time work means that the employer orders the employee to work fewer hours than contractually agreed for economic reasons. It can also happen that no more work is to be done at all. The affected employees then receive less pay, but as compensation for this they receive short-time allowance. Short-time allowance can be between 60 and 87 percent of the normal wage, depending on the employee's personal circumstances and the duration of the payment.

Mini-jobbers are exempt from this.

Special regulations apply to foreign employees. More information:  
<https://www.dgb.de/themen/++co++b8f3388e-6f45-11ea-8f86-52540088cada>

Attention: The regulations on short-time work are temporarily only valid until 31.03.2022!

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### **Impressum**

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