

COVID-19: FAQs for Employers Doing Business in Germany

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In response to the COVID-19 pandemic, all federal states in Germany have implemented containment measures, contact restrictions, and curfews. All shops, cultural institutions, and certain services (e.g., hairdressers and gyms) not serving the universal supply are currently closed and events have been prohibited.

In some states (e.g., Bavaria and Baden-Wuerttemberg) strict curfews apply. Despite the curfew, anyone is currently allowed to go to work.

Some manufacturers have stopped production until April 19, 2020. Most companies allow work from home (if possible), and working from home has been encouraged by the government.

Question 1. In implementing a COVID-19 workplace response, what general employment law principles apply in Germany?

Answer 1. In Germany, a statutory paid sick leave of six weeks applies. This has not changed because of the COVID-19 outbreak. To qualify for paid sick leave requires, the employee must be sick. Generally, paid sick leave is not available if an employee is in good health and is staying home because his or her business has been shut down.

Local and state authorities can order quarantine for an individual who is sick or was in contact with infected persons. Authorities may order such a quarantine even for individuals who are not sick. Nevertheless, if they cannot work because of the quarantine imposed by the authorities, they shall be indemnified by the authorities.

As a consequence of the impact of the COVID-19 crisis, Germany's government has facilitated access to so-called "short-time working allowance." In the case of a significant and temporary reduction of work, an employer can implement a working time reduction (so-called "short-term work") and apply for short-time working allowance in order to reduce labor costs and avoid redundancies. A reduction to zero working hours is possible. The employee receives a short-time working allowance from the Federal Employment Agency amounting to 60 percent (67 percent for employees with children) of the lost flat-rate net salary to compensate partially the loss of salary due to the working time reduction. The short-term working allowance can be paid for a maximum of 12 months.

Currently, the federal states are discussing packages to support self-employed persons and small

employers (up to 100 employees) by paying non-refundable grants.

Q2. What should employers know about government-imposed closure, shutdown, quarantine, or shelter-in-place orders?

A2. As noted previously, all federal states have implemented containment measures, contact restrictions, and curfews. All shops, cultural institutions and certain services not serving the universal supply are closed. Events are prohibited.

In some states, strict curfews apply. These curfews do not prohibit employees from going to work.

Q3. What should employers know about border restrictions?

A3. The German government has imposed entry bans on the following countries: Switzerland, France, Austria, Denmark and Luxembourg. This means that travelers from these countries may face restrictions at Germany's borders and need valid reasons for entering the country. Anyone who does not have such a valid reason will be refused entry. Commuters who must pass the border to work, are still allowed to enter the country.

The external borders of the European Union are also closed. The entry ban for non-EU citizens was adopted on March 17, 2020, by the European Council. It was implemented immediately and applies for at least 30 days. This decision should also help to keep Germany's borders more open. According to the Federal Ministry of the Interior, the ban will affect all flights and boat trips that have their starting points outside the EU. There are exceptions for citizens of Norway, Switzerland, Liechtenstein, Iceland, and Great Britain.

Q4. May an employer send home an employee involuntarily who has or is exhibiting symptoms of COVID-19?

A4. Yes, an employer can release the employee immediately from his or her work duties. He or she must be asked to report immediately to a doctor and to the responsible health office. If the employee is showing symptoms, he or she is considered sick and unable to work. In this case, the statutory paid sick leave applies.

Q5. May an employer send home or require to work from home an asymptomatic employee who has been in close contact with someone with COVID-19 (e.g., a family member, close friend, etc.)?

A5. Yes, this is possible. The employee can be released from his or her work duties and should be asked to spend 14 days in domestic isolation. If the employee does not show any symptoms, he or she may not be considered sick and unable to work by a doctor. In this case, the statutory paid sick leave does not apply. Generally, if the employee is released, the employer must pay the full salary. Therefore, the employee can be ordered to work from home (if possible). If working from home is not an option, the employer can reduce working time accounts.

Q6. May an employer require an asymptomatic individual with no known exposure to COVID-19 to telework from home for a certain period of time as a preventive or precautionary measure?

A6. Yes. Please see the answer to Question 5.

Q7. When may an employee who was sent home for exhibiting symptoms (subjective or measured fever, cough, difficulty breathing) return to work?

A7. The [World Health Organization's \(WHO\) workplace guidance](#) specifies that in general business settings employees should self-isolate for 14 days if they experience COVID-19 symptoms and should consult healthcare professionals before returning to work. This period of time is also recommended by the Robert Koch Institute (RKI), Germany's public health agency responsible for disease control and prevention.

Q8. If an employee does not feel well enough to return to work at least 24 hours after no longer having a fever or exhibiting signs of a fever (without the aid of fever-reducing medications) or other symptoms, may he or she remain out of work?

A8. Yes, the employee may remain out of work. In most cases, the employee will be on sick leave for a certain period of time. If this is not the case, the employee should be released from work or work from home.

Q9. May an employer require a return-to-work doctor's note for an employee to return to work after exhibiting COVID-19 symptoms?

A9. Such a doctor's note does not exist in Germany, as employees are sent on sick leave by doctor's prescription for a limited period of time. If the time is up, a doctor can extend the sick leave; if such an extension is not granted, the employee is supposed to come back to work.

Q10. If an employee says he or she is ready to return to work and has a doctor's return-to-work note, but the employer is concerned the employee will not be able to safely perform his or her duties, may an employer refuse to allow the employee to return to work?

A10. Please see the answers to Questions 5 and 9.

Q11. May an employer require an employee with COVID-19 to use his or her vacation time and/or other paid time off for the absence?

A11. No, that is not possible. In case the employee is infected, he or she is considered to be sick. The time off will be paid in full for six weeks, as paid sick leave for this time is statutory. This requires a certificate of incapacity for work issued by a doctor.

Q12. May an employer require an employee who is not exhibiting COVID-19 symptoms but who has been in contact with an individual with COVID-19 or is in a potential incubation period (e.g., after returning from travel to an area of risk, as noted by the WHO) to use his or her vacation time and/or other paid time off for the absence?

A12. In case the employee is not sick, the employer may require that the time off be deducted from the working time account. The employer can also instruct that the working time account be allowed to go below zero (into a negative balance) to a certain fixed maximum limit in order to compensate the time off.

It is difficult for the employer to use vacation time without the employee's consent. The employer can request that the vacation entitlement for 2019 be taken until March 31, 2020, as the employee would otherwise forfeit it. Currently, many employers are requesting that employees take some of their

vacation time.

Q13. May an employer advance any vacation time and/or paid time off to an employee to cover COVID-19 absences?

A13. Only if a working time account exists for the employee that can be managed in the minus. In that case, the employer may require the working time account to run into the minus up to the ceiling set. (Please also see the answer to Question 12.)

Q14. May an employer set up a plan to excuse or otherwise not count absences related to COVID-19, whether for an actual illness or a quarantine period?

A14. Yes. The WHO and RKI suggest working from home whenever possible. In any event, public health authorities recommend that the number of employees present at the worksite should be reduced to the utmost extent.

Q15. May an employer opt to pay an asymptomatic employee who has been quarantined, even if the employer's policy does not provide for paid leave?

A15. Yes. The WHO and RKI suggest that employers instruct employees who are infection risks to self-isolate for 14 days. Employers can consider using holidays or credits from working time accounts, but that is not mandatory. Employees may decide to pay the time off as well. If vacation cannot be used and a working time account does not exist, it may make sense to pay an employee during his or her absence in order to prevent him or her from working at the workplace.

Q16. Are COVID-19 absences covered by local paid sick leave laws?

A16. Yes, if the employee is unable to work due to sickness. Please see the answer to Question 1.

Q17. May an employer count an employee's time away from work due to COVID-19 against the employee in terms of the employer's attendance policy?

A17. Please see the answer to Question 5.

Q18. May an employer discipline an employee who misses work because of COVID-19 for violating the employer's attendance policy?

A18. Generally not. If an employee stays away from work due to a risk of infection and stays in self-isolation at home, this behavior is desirable.

If the employee is absent from work without risk contact or other risk of infection (e.g., lives in a risk area), it depends. If the employee is unable to work because he or she must care for children, statutory law requires the employer to pay the employee for a very limited time (generally five days) unless agreed otherwise.

In other absences (e.g., an employee cannot reach the workplace due to a disruption in public transit system service), the employer can consider not paying the time off.

Q19. Does an employer's waiver of strict compliance with its attendance policy regarding COVID-19 set a negative precedent, opening the door to employees with other serious

illnesses to argue that their absences should not be counted against them in terms of the attendance policy?

A19. Probably not, as the current situation is particularly different from other health-related situations. It is a worldwide emergency situation and all institutions have taken very specific measures to avoid a spread of infection.

Q20. Is an employer's knowledge that an employee has COVID-19 subject to privacy restrictions?

A20. Yes. This knowledge is health-related personal data that is protected by the [General Data Protection Regulation \(GDPR\)](#). It is also data related to the employment relationship. Under the GDPR, such data should not be disclosed without valid reasons to do so. The interest of the employee in protecting the privacy of the data must be balanced against the interest of the employer to disclose the data (e.g., in order to protect other employees). If the employer acts to protect the work environment, it may be entitled to disclose its knowledge to other employees to find the right measures to protect them (e.g., self-isolation). The employer may also be able to involve public health service to seek assistance in connection to the COVID-19 case.

Q21. May an employee refuse to come to work due to a fear of becoming infected with COVID-19?

A21. Generally, no. The employee is still obliged to work. The general fear of an infection does not entitle the employee to refuse to come to work.

The situation may be different when there is a higher risk of infection (e.g., within the health sector or on local public transit). Here, the employee can request from the employer protective measures. If the employer complies with this request, work must also be done by the employee.

Q22. May an employer refuse an employee's request to wear self-provided respiratory protection and/or gloves?

A22. No. It appears that this is currently not possible.

On March 5, 2020, the Labor Court of Berlin adjudicated a dispute between an employer and a works council. The employer wanted to prohibit employees in the duty-free shop at a Berlin airport from wearing face masks for respiratory protection. A decision was not reached in the case because the employer ultimately consented to the request. However, according to various media reports, the court would likely have sided with the works council.

Q23. May an employer send home or require to work from home an asymptomatic employee returning from travel to an area of local transmission?

A23. Yes. On March 19, 2020, the German Federal Foreign Office issued a travel warning for all tourist travel worldwide. Anyone who undertakes a journey now acts at his or her own risk. This means that the employer can request self-isolation for 14 days without salary payment.

Q24. What can be required of employees in connection with cross-border business travel?

A24. As with most public health authorities across the world, Germany's health authorities have

asked employers to cancel nonessential business travel. Apart from the challenges posed by actual transportation issues (many flights and train routes have been cancelled), health authorities recommend avoiding any business travel.

Q25. How does the COVID-19 crisis affect my expatriate workforce?

A25. Employers may want to be aware of countries' border restrictions, proof-of-work authorization requirements, and requirements for employers sponsoring expatriates.

Q26. What unique issues might arise in connection with remote work/telework in Germany?

A26. In Germany, telework/working from home is strongly encouraged to minimize the risk of workplace transmission. Even if a work-from-home arrangement is not provided for in the employment contract or in a firm policy, an agreement can be reached with employees because of the COVID-19 situation. With an employee who is payrolled in one country and teleworks in another, employers may want to be aware of tax, employment law, and payroll implications, though authorities may take into consideration the issues and mitigating factors if the employee's reason for working remotely relates to COVID-19.

Q27. May an employer operating in Germany furlough an employee without pay?

A27. No, under German law this is not possible unless the employee explicitly agrees to it.

Q28. Short of a reduction-in-force, what options does an employer have to reduce costs as a result of COVID-19–related work shortage?

A28. German law provides so-called short-time work and the payout of a so-called short-time working allowance.

As a consequence of the impact of the COVID-19 crisis Germany's government has facilitated the access to the so-called short-time working allowance. In case of a significant and temporary reduction of work, the employer can implement a working time reduction (so-called short-term work) and apply for short-time working allowance in order to reduce labor costs and to avoid redundancies. A reduction up to 0 hours is possible. The employee receives a short-time working allowance from the Federal Employment Agency amounting to 60 percent (67 percent for employees with children) of the so-called lost flat-rate net salary to compensate the loss of salary due to the working time reduction. The short-term working allowance can be paid for a maximum of 12 months.

Q29. If an employer operating outside the United States needs to reduce headcount on a global or regional basis, which German requirements might the employer need to be aware of?

A29. Under German law there is no at-will employment. In business operations requiring more than 10 employees, dismissals for operational reasons are subject to strict conditions. The employer must demonstrate that the employee's position has become permanently redundant, that vacant jobs are not available, and that the workforce reduction was properly done. In addition, the agreed and statutory minimum notice periods must be observed.

In cases in which it is unclear whether a position has become redundant on a permanent basis, short-working time with short-time working allowances paid by the state could be an option.

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