

Corona Update – Expansion and Extension of the Corona Occupational Health and Safety Regulation

INTRODUCTION

Following the consultations during the German Federal and State Government Conference on August 10, 2021 there will be a change in the SARS-CoV-2 Occupational Health and Safety Regulation (the so-called Corona Occupational Health and Safety Regulation) over the course of this week. In light of rising infections, the change provides, on the one hand, an extension of the application of the Corona Occupational Health and Safety Regulation until November 24, 2021, while using the extension to provide for new provisions regarding individual issues:

TIME OFF FOR VACCINATION APPOINTMENTS/ SUPPORT FOR COMPANY DOCTORS

The new regulation now explicitly provides for what has already been normal practice in many businesses. Employers are now obliged to allow employees to receive vaccinations during work hours. Additionally, employers must support company doctors and the inter-company services of company doctors who provide vaccinations in businesses. This includes the provision of both personnel and organizational support.

DISCLOSURE OF VACCINATION STATUS

The amended regulation does not contain any provisions on the question of whether or not employees must disclose their vaccination status to employers if requested to do so. However, the amended regulation clearly states that employers may take into account the already known information on the vaccination or recovery status of employees when implementing measures to protect against the spread of infection. It can be expected that further provisions will address the employer's "right to ask". A law to amend the Infection Protection Act is also expected this week, which will allow certain organizations (such as child-care facilities, schools and nursing homes) to request disclosure of the vaccination or recovery status. Even broader provisions are conceivable in light of the current discussions.

INFORMATION ON RISKS OF COVID-19

Sec. 5 (2) of the new Corona Occupational Health and Safety Regulation now provides that employers are obliged to inform their employees of the risks of Covid-19 and of the existing opportunities to become vaccinated.

EFFECTIVE DATE OF THE NEW PROVISIONS

The new provisions described above are supposed to come into effect on September 10, 2021. The reasoning behind this is that a significant share of those who are generally willing to become vaccinated have explained that they have not yet done so because they did not feel sufficiently informed or did not have the time to get vaccinated. By actively informing and promoting vaccination opportunities at work, this situation is meant to be improved and the willingness to become vaccinated is meant to increase.

CONTINUING OBLIGATIONS

Tried and true health and safety measures such as the duty to offer testing opportunities will remain in place. This also applies for the duty to reduce contacts at work to the necessary minimum. Finally, the drafting, updating and implementation of company hygiene concepts is an element of the Corona Occupational Health and Safety Regulation.

SUMMARY

With the amendment of the Corona Occupational Health and Safety Regulation, lawmakers have adapted the existing provisions to current developments during the ongoing pandemic. Employers are being increasingly involved in the campaign to increase the willingness of the public to become vaccinated. It is to be expected that the discussion of the right to ask about vaccination status will continue.

If you have further questions concerning the ongoing challenges in employment law during the pandemic, please feel free to contact us at any time. Should you not already be a subscriber to our free newsletter, we would be pleased to add you to our mailing list. Just send us a brief e-mail with your request.

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