

10 Pitfalls

when working remotely under German law



Remote work has become an integral part of modern employment structures. As digital infrastructure continues to evolve and employee expectations shift, more companies are embracing flexible work models. German labor law now recognizes various forms of remote work, such as "home office" and "mobile work," each with its own legal implications. But what exactly differentiates home office from mobile work? Who is liable if an accident occurs while working remotely? What risks should employers be aware of when granting remote work arrangements? And how can companies implement such models in a legally compliant and sustainable way?

With remote work no longer a temporary solution but a permanent reality, employers must navigate a complex legal landscape. This flyer provides an overview of key considerations for employers seeking to establish or revise their remote work policies.

1 Home office

A "home office" only exists if the employer sets up a fixed workplace for the employee outside company premises and the employee works from there. In the case of the "home office", the (partial) performance of work is rendered at a permanently installed workplace outside company premises, typically "within one's own four walls". There are two main issues that must be considered:

- The employer must ensure that the "home office" workplace meets the same legal requirements as the workplace at company premises.
- In case of "home office" work, the employee cannot freely choose their non-office workplace, but must render their services from a fixed, approved workplace at home.

the company premises (e.g. when traveling by train, staying in a hotel or even in bed at home). The employee does not necessarily have to work from home. He or she only has to ensure his or her availability.

3 No entitlement under German law (currently)

In Germany there is (currently) no legal entitlement to work from home or to mobile work. The employee is therefore only allowed to work from home or remotely if this is permitted either under an employment contract, a company agreement or provided for on a case-by-case basis as approved by the employer.

2 Mobile work

Mobile work means performing work with mobile devices at typically changing locations outside

4 Working time issues

The employer is responsible for complying with the provisions of the Working Time Act (*Arbeitszeitgesetz* – "ArbZG") even if the employee is not bound to a specific location.

The employer must ensure that the provisions of the *ArbZG* are complied with, e.g. provide employees with breaks and rest periods. The employer must also record and control working time that exceeds eight hours in the case of a location-independent activity. The employer, however, can delegate the recording of time to the employee. Violations of the *ArbZG* can result in substantial fines and the health and safety authorities can issue orders to ensure proper recording of working hours.

The total working time in any given workday is permitted up to a maximum of eight hours. This can be extended to up to 10 hours if the extra hours are compensated within six months or 24 weeks. This maximum limit of 10 hours of daily working time may not be exceeded even when undertaking mobile work.

After the end of the maximum working day, the employee must observe a rest period of 11 hours. By collective agreement, this rest period can be reduced to nine hours, which has already been done in Tariff Agreements for the metalworking industry.

Break times must also be observed during mobile work. Neither may they simply be deducted by the employer, nor may they be taken at the beginning or end of working hours. Breaks serve as the employee's rest periods between work hours. The employees' working times must be documented and observed via a suitable time recording system. The German Federal Labor Court (*Bundesarbeitsgericht* - "**BAG**") recently has ruled that every employer is obliged to introduce such a system in order to comply with sec. 3 (2) of the German Occupational Health and Safety Act (*Arbeitsschutzgesetz* - "**ArbSchG**") and EU law.

5 Occupational health and safety issues

The distinction between home office and mobile work is particularly relevant with regards to occupational health and safety. If the employer sets up a "home office", it must be ensured that this workplace meets the requirements of occupational health and safety standards. For this purpose, the employer must carry out a so-called "risk assessment" when setting up the

workstation. This means that the employer must be able to identify and eliminate risks in the "home office". Notwithstanding the above, the employer is not allowed to enter the employee's home without consent.

The requirements for mobile work are more flexible. Especially, the Workplace Ordinance (*Arbeitsstättenverordnung* - "**ArbStättV**"), which stipulates regulations to prevent accidents and occupational diseases caused at the workplace, does not apply – understandably, as it would be impossible for the employer to guarantee the safety of a table in a hotel room or a chair in a café. The other occupational health and safety regulations such as the risk assessment, however, also apply to mobile work, albeit only to a limited extent. In this case, the testing and documentary obligations should be carried out by the employer.

6 Data protection issues

Data protection considerations do not cease to exist when working remotely. Especially, when setting up a "home office", it is still the employer's obligation to assure data security through a data protection concept that also provides for suitable technical and organizational measures (widely known as TOM). These include, for example, the employee's obligation to keep work related documents in a lockable cabinet, to log on to the Internet only via VPN or tunnel solutions and not to store passwords in a freely accessible way. Printouts with sensitive company information that are no longer in use should be destroyed or at least not put in the general waste bin. Awareness must be created among the company's mobile workers of the issues surrounding the confidentiality of company information, especially when having phone calls or working on laptops while working in public places in order to avoid confidential information being inadvertently seen by surrounding people.

7 Accident insurance

It is also important to know what law applies if an employee has an accident in the "home office" or while undertaking mobile work. According to case law, an accident in the "home office" is only insured if there is an internal connection between the event leading to the

accident and the business related activity. According to German courts, the intended action of the insured person is essential for the assessment of this question, i.e., whether the insured person wanted to perform an activity serving the employer in the specific case and whether this intended action is confirmed by the objective circumstances of the individual case. Walking into the “home office” room, e.g. is a regular activity associated with work, so therefore, an injury while doing so would likely be covered. Making sandwiches in the kitchen and cutting off a finger, on the other hand, is not. When in doubt, the employee must prove that an insured activity took place. Thus, it is advisable either to include employees in an employer’s group accident insurance policy or to recommend that employees take out private accident insurance that also covers accidents in the “home office” or during mobile work that are not covered by statutory accident insurance.

8 Costs

Due to occupational health and safety and data protection considerations, it is advisable for the employer to provide the employee with work equipment (i.e. laptop or printer) as required for the “home office” workplace and, in some cases, also furnishings (office chair, desk, etc.). However, this also means that the introduction of a “home office” often involves higher costs for employers than mobile work. If work equipment or furnishings are not or only partially made available for a “home office”, the employee has the right to claim expenses, which are to be borne by the employer. Therefore, contractual cost regulations are advisable. If the employee is mobile working, they usually only need a laptop and/or a smartphone, and possibly a headset. According to sec. 670 German Civil Code (*Bürgerliches Gesetzbuch* – “BGB”), the costs for the acquisition of electronic devices are also to be borne by the employer – unless contractually agreed otherwise. However, these costs are likely to be much lower overall than providing a fully equipped “home office”.

9 Risk of a permanent establishment

If a German entity is yet to have been set up, there will be a risk that the employee’s activities or presence in Germany will create a permanent establishment for the employer. This would be the case if, for example, the employee has a sales or business development role and is habitually exercising an authority to conclude contracts in the name of the employer while in the host country.

If a permanent establishment is created, the profits attributable to that establishment would be subject to corporate tax in that country. Furthermore, the income tax exemption in the Double Tax Treaty (DTT) would not apply. While this may be less of a problem if your business already has established operations in the host country, it could be a serious issue if not.

10 Working from anywhere in the world?

Employers also should be aware of further social security/tax implications when the remote working request is cross-border related. The remote working activity may under certain circumstances lead to a change in taxation rights or change in the tax and social security status of the employees concerned. The relevant double taxation agreements and social security treaties must also be observed and each individual’s situation should be thoroughly investigated prior to agreeing any remote working arrangement.

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contracts, terminations, and litigation, while ensuring compliance and risk mitigation. With deep expertise in restructuring, corporate transactions, and works constitution law, Christian and his team support smooth workforce transitions and offer strong legal protection—both in and out of court.

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