

Information

from the Division of Human Resources and Legal Affairs on the handling of returnees from COVID19 risk areas

Employment law and civil service law issues in connection with mandatory quarantine upon return from risk areas for employees subject to collective bargaining agreements and for civil servants

In the matter stated above, the Brandenburg Ministry of the Interior (MIK) in consultation with the Brandenburg Ministry of Finance and European Affairs (MdFE) has published the following information relating to the factual and legal situation (MIK information from July 9, 2020; reference number 03-37-719-94/A2019#A06#V2020#V001):

A fundamental distinction must be made as to whether the destination to which the employee has traveled (A.) was already declared a risk area before entry or whether the destination (B.) was declared a risk area at a later time during the stay. It is therefore the responsibility of every employee to consult the website of the Federal Foreign Office (<https://www.auswaertiges-amt.de/de/ReiseUndSicherheit/covid-19/2296762>) or the Robert Koch Institute (RKI) (https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Risikogebiete_neu.html)

before his or her trip to find out if the intended vacation destination is a coronavirus risk area in the sense of Section 1 (2) of the SARS-CoV-2 Quarantine Ordinance, in which case a 14-day mandatory quarantine with a fine imposed in case of non-compliance in accordance with Section 1 (1) of the SARS-CoV-2 Quarantine Ordinance is to be expected upon return. The only way to avoid an order to quarantine is to present a medical certificate in German or English to the competent authority immediately after entry, which was issued no more than 48 hours before entry and confirms that there is no evidence of infection with the SARS-CoV-2 virus. It is therefore advisable to make use of available SARS-CoV-2 testing services.

A. The area had already been declared a risk area before the employee's entry

The deliberate acceptance of the subsequent quarantine order (Sections 611a, 241 (2) BGB (German Civil Code)) – which is mandatory and subject to a fine in case of non-compliance – constitutes a breach of duty which has the following effects on the employee's claim for remuneration:

1. Continued payment of remuneration

Continued payment of remuneration is excluded because the employee has culpably caused his or her de facto inability to fulfill his or her contractual employment duties due to the legally mandated quarantine order.

Should the employee actually fall ill with COVID-19 during the quarantine, there is also no entitlement to continued payment of remuneration due to illness in this case, because the employee deliberately caused the illness through gross negligence by traveling to a declared risk area for coronavirus.

2. Loss of earnings according to Section 56 IfSG (Protection against Infection Act)

There will be no claim for compensation for loss of earnings despite quarantine orders due to the deliberate entry into a high-risk area for coronavirus, because the quarantine order was avoidable.

As a result, before entering a COVID-19 risk area, it is the employee's responsibility to ensure that he or she can perform his or her work from home during the subsequent quarantine at home, or that he or she can use up appropriate working time credits and/or vacation days in order to avoid losing his or her entitlement to remuneration.

B. Continued payment of remuneration if the area was declared a high-risk area only after the employee's entry

In principle, the employee is entitled to receive compensation (loss of earnings) in accordance with Section 56 IfSG in this case, which is to be paid by the employer for a period of up to six weeks. Instead of the loss of earnings in accordance with Section 56 IfSG, the employee will receive extra-tariff continued remuneration in accordance with the Continued Remuneration Act. However, the respective departments must first determine whether the employee is able to fulfill his or her work duties during the quarantine from his or her home office or whether he or she can use up working time credits (no vacation days).

C. Further measures by the employer

An employee can still be given a 14-day leave of absence from work by the employer as a precautionary measure in individual cases, even if he or she enters the country from a non-risk area or if his or her test is negative. The entitlement to remuneration remains in force for this continued quarantine ordered by the employer. In this case, too, it must first be determined whether the employee can perform his or her work from home or use up the corresponding working time credit (no vacation days).

The employer is entitled to ask employees returning from a private stay abroad whether they have stayed in a COVID-19 risk area. He or she may also order employees to report to the employer, before taking up their duties, that they are returning from a high-risk area so that the employer can take appropriate measures to protect other employees effectively.

D. Legal situation for civil servants

Civil servants who go on vacation to an officially designated risk area for coronavirus and who therefore know in advance that they will be subject to quarantine upon their return must, before their departure, clarify with their department whether it is possible to work from home during the quarantine period or whether the vacation can be extended or another form of paid leave (working time credit) can be claimed. Otherwise, this will be considered a breach of duty.

If in such cases civil servants do not resume their duties in time after the end of an approved vacation leave, a culpable absence from work is to be assumed, which results in the loss of the right to remuneration (Section 61 (3) LBG (Civil Servants of the Land of Brandenburg Act), Section 9 BbgBesG (Brandenburg Remuneration Act)). In case of a foreseeable quarantine there is no possible justification.

The financial consequences of the decision to travel privately to a risk area are therefore to be borne by the civil servant.

In case of a declaration of the area as high-risk after the employee's entry, the above provisions for employees subject to collective bargaining agreements shall apply mutatis mutandis.

Division 3 is at your disposal for any further questions.

Last updated: August 26, 2020 (be)