

Coronavirus: Questions and answers related to labour law

Austria · 16.03.2020

The spread of the coronavirus (Covid-19) in Austria is continuing and the action being taken by the government to contain it are having an increasingly drastic effect on working life and, consequently, on working relations between employers and employees. Even though it is uncertain how the virus will continue to spread or what action will be required by the government and what additional restrictions will be imposed: We are on hand to provide you with comprehensive answers to the most important labour law questions related to the coronavirus (Covid-19) to enable you to handle the upcoming challenges in a practical way.

1. Is the employer obliged to take operational protective measures against the coronavirus?

Yes. The employer has an obligation to take action to protect employees from being infected by the coronavirus to the best of its ability. This means that the employer must follow current recommendations, in particular those issued by the [Ministry of Health](#) and [AGES](#) (Agentur für Gesundheit und Ernährungssicherheit GmbH) and coordinate protective measures with occupational physicians and health and safety officers.

The following preventative action is currently recommended in respect of the coronavirus:

- Wash hands thoroughly and repeatedly with soap or disinfectant;
- Keep away from persons suspected of being ill;
- Do not touch your eyes, nose and mouth and
- Do not cough or sneeze in your hands. Use your inner elbow or a disposable handkerchief

Appropriate protective measures that can be taken by the employer are therefore – at present – making hygiene recommendations, providing disinfectants and anticipatory planning of business trips. As things currently stand, the employer is not required to provide protective masks, except in special cases such as work in hospitals or travel to areas at risk.

As of March 13th, employers have been urged to allow for teleworking wherever and whenever possible.

2. Do employees have to notify the employer if they become ill with the coronavirus?

Yes. Even though employees are generally not obliged to notify the employer of a medical diagnosis, the coronavirus must be an exception to this rule: Since this is a highly contagious, notifiable illness, this means that the employee has a specific duty under labour law to report the illness to the employer promptly and without being asked to do so. This is the only way the employer is able to fulfil its duty of care vis-à-vis other employees and also assert its rights under the Austrian Epidemics Act (Epidemiegesetz) (see point 7 for further details). In addition, the employee may be viewed to have (tortious) liability vis-à-vis colleagues, i.e. if the employee conceals the fact that they are infected with the virus and then infects their colleagues.

3. What does the employer have to do when an employee is infected with the coronavirus?

Employers are legally obliged to provide information when the district administrative authority conducts surveys of actual and suspected coronavirus cases. It is generally advisable to contact the responsible district administrative authority and/or AGES immediately in the event of an employee becoming infected and to obtain recommendations on how to proceed. In view of its duty of care, the employer must immediately inform other employees about the case that has occurred in the company and, if necessary, take further recommended action.

4. Can workers insist on wearing protective masks at work?

It depends. If, due to the circumstances and the activity carried out, the probability of being infected by the coronavirus is low, the employer can prohibit the wearing of protective masks, because, for example, in activities involving customer contact, the employer usually has a legitimate interest in customers not being deterred by employees wearing protective masks. However, wearing a protective mask is justified in case of activities involving an elevated risk of infection (work at airports, contact with risk groups, etc.) as well as for persons for whom infection entails an increased health risk (e.g. weakened immune system, pregnancy). Whether or not the employer can prohibit employees from wearing protective masks on their own authority therefore depends on a balance of interests.

5. Is the employer allowed to prohibit travel to an area at risk?

The employer can definitely ban business trips to areas at risk because these are clearly within the sphere of the business. When deciding whether to undertake business trips at present, it is advisable to take account of risks and, if necessary, to plan ahead accordingly.

Holiday trips, on the other hand, are deemed to be private in nature, which means that the employer has no right to issue instructions and cannot prohibit travel to areas at risk. However, the employer may require workers returning home from such holiday trips to provide information as to whether they have visited an area at risk so that, if necessary, action can be taken to protect other workers. If an employee becomes ill with the coronavirus while on holiday in a known area at risk, this may be deemed to be a case of gross negligence – depending on the circumstances of the individual case. This would result in the employee losing their right to continue receiving a salary; see also point 12.

6. Are employees allowed to cancel planned leave (vacation)?

Leave needs to be arranged, which is why agreed leave can always be terminated by mutual consent. However, there is also a right to unilateral withdrawal from agreed leave for any reason that renders it unreasonable to maintain the agreed leave. In cases of force majeure – as is currently the case for trips to Italy or Spain – such a reason exists. In such cases, an employee may also unilaterally withdraw from agreed leave.

7. Are employees allowed to refuse to go on business trips to an area at risk?

As a rule, yes, even if this question also ultimately requires interests to be balanced. The employee has a right of refusal in spite of a general duty to travel on business if there is a greater than average chance that the health of the employee will be endangered by the business trip. This is currently the case when it comes to areas for which a travel warning has been issued by the Ministry of Foreign Affairs. The employee cannot refuse to go on business trips to other places unless there is also a high risk of infection in these areas due to the actual conditions. In the event of an employee falling ill during a business trip abroad, the employer is generally obliged under Section 130 of the General Social Insurance Act (ASVG) to advance the costs of medical treatment or accident treatment, but is reimbursed up to certain maximum limits.

8. What applies in the event of not being able to work due to official measures taken under the Austrian Epidemics Act?

According to the decree issued by the Minister of Health on 26 January 2020, the coronavirus is a disease within the meaning of the Austrian Epidemics Act. This means that action may be taken by the authorities that may result in individuals being prevented from working: e.g. company restrictions or closures, traffic restrictions ordered by the authorities, etc. If such measures listed in Section 32 para. 1 of the Austrian Epidemics Act lead to a loss of earnings, Section 32 thereof provides for the opportunity to assert a claim for remuneration vis-à-vis the Federal Government. All gainfully (employed or self-employed) natural persons and legal entities are entitled to assert this claim. **The action recently being taken by the authorities under Section 15 of the Epidemics Act are not mentioned in Section 32 of the Epidemics Act and therefore do not give rise to a claim for remuneration vis-à-vis the Federal Government.**

In these cases, the question of pecuniary loss due to the failure to perform work is generally governed by Section 1155 of the Austrian Civil Code (ABGB): Depending on the assignment of risk under labour law, the pecuniary loss occurs to the employer (continued payment of remuneration without work performance in the event of local disruption) or to the employee (no continued payment of remuneration despite readiness to work in the event of extensive disruption/force majeure). This differentiation under civil law has no effect within the scope of application of Section 32 of the Epidemics Act: Section 32 para. 3 of the Epidemics Act stipulates that pecuniary losses of

employees in respect of the Federal Government must first be met by the employer, and the employer can then subsequently take recourse to the Federal Government.

This means the following: If work is not performed due to official action in accordance with Section 32 of the Epidemics Act being taken, the employer is in any case obliged to continue paying salaries, irrespective of whether or not there is an obligation to continue paying salaries under Section 1155 of the Austrian Civil Code. The employer can, however, subsequently take recourse to the Federal Government under Section 32 of the Epidemics Act. According to Section 33 of the Epidemics Act, the claim for compensation must be asserted vis-à-vis the district administrative authority within six weeks of the official action having been ended, otherwise it will be forfeited.

Important: The Epidemics Act only covers action taken by the Austrian authorities. This means that if work is not performed due to action taken by foreign authorities (e.g. the employee is stuck abroad due to transport restrictions), the general rules on continued payment of remuneration under labour law of Section 1155 of the Austrian Civil Code apply; see point 13 for more details.

9. Are salaries still to be paid in the event of illness and/or quarantine?

In the case of falling ill due to the coronavirus, the general rules on continued payment of remuneration in the event of illness generally apply. If the sick employee is in an officially ordered quarantine, the same principle applies.

If, on the other hand, an employee who is capable of working is put into quarantine as a precautionary measure as they are merely suspected of being infected, the special provisions of Section 32 of the Epidemics Act apply. The same applies if the employee is unable to come to work due to restrictions on travel being imposed by the authorities within the meaning of the Epidemics Act; in such cases, the Federal Government bears the costs of continued remuneration: see point 8 for more details.

10. Is the employer allowed to send employees home for fear of spreading the coronavirus?

It is generally possible to send employees home at any time. It should be noted, however, that, under Section 1155 of the Austrian Civil Code, the salary must continue to be paid if the employee is prepared to work. The employee must, however, have everything credited to them which they have saved up as a result of not having worked or which they have acquired through other use.

11. What is the rule regarding remuneration in the event of a company being closed due to the coronavirus?

If the owner of the business closes the business voluntarily (i.e. without an official order), the employees are may be entitled to continued payment of their remuneration in accordance with Section 1155 of the Austrian Civil Code. If restrictions are placed on the company by the authorities, on the other hand, the provisions of the Epidemics Act apply, according to which the Federal Government bears the costs of continued remuneration; see point 7 for more details.

12. Is the employer required to continue paying salaries if the employee looks after their children themselves because the school/nursery is closed?

Taking time off work to look after or care for someone under Section 16 of the Austrian Work Leave Act (UrlG) requires that the child to be cared for is ill. If this is not the case, there is no entitlement to nursing or care leave for this reason.

However, employees may still have a claim to continued remuneration on important personal grounds (Section 8 para. 3 of the Salaried Workers Act (AngG)). The prerequisite for being able to assert such a claim is the timely notification of the inability to work and that the employee has not found any other reasonable alternative to have the child cared for. The entitlement to continued payment of remuneration exists for a maximum of one week per case.

13. Is there an obligation to continue paying salaries if the employee becomes infected with the coronavirus while on holiday or is stranded at the holiday

destination due to travel restrictions imposed during their holiday?

The general provisions on continued remuneration under labour law on the grounds of illness and personal incapacity to work apply here. A distinction must be made pursuant to these provisions:

- If an employee travels to an area at risk in spite of a travel warning and is forced to remain there for longer than planned for the leave due to travel restrictions, there is no entitlement to continued payment of remuneration on the grounds of personal incapacity to work because the inability was caused by negligence. If, in such a case, the employee falls ill with the coronavirus in the area at risk, it may even be a case of illness caused by gross negligence, meaning that there is no entitlement to continued payment of remuneration on the grounds of illness. This means that the illness does not interrupt the holiday and that the continued payment of remuneration ends at the same time as the holiday even if the illness continues beyond that.
- If, however, there is no travel warning, in the event of illness the remuneration is to be continued during the holiday as for normal sick leave (with continued payment), i.e. the duration of the illness is not counted towards the extent of the holiday, provided that it lasts longer than three days. If the employee cannot leave the holiday location (without falling ill themselves) because transport connections have been restricted due to the coronavirus, they are entitled to continued payment of remuneration if they notify the employer immediately and there are no other reasonable alternatives for leaving the country in which they spent their holiday and thus for returning to work on time. In such cases, the right to continued payment of remuneration exists for a maximum of one week.

If, on the other hand, the affected area is located in Austria, the special rules on continued payment of remuneration of the Epidemics Act apply, according to which the Federal Government ultimately bears the costs of continued payment of remuneration if the work is not performed due to action by the authorities (e.g. travel restriction); see point 7 for more details.

14. Is the employee allowed to stay at home of their own accord for fear of being infected by the coronavirus?

Basically no. However, employees who are at increased medical risk or who have individuals in their immediate environment who are, e.g. immunodeficiency, may have the right to stay at home because of their duty of care (see point 15 for the duty to work). If there is an objectively justifiable risk of contracting the virus at work, e.g. because several infections have already occurred in the immediate work environment, all workers have the right to stay at home.

15. Is the employer allowed to unilaterally order employees to work from home?

If the employee is equipped by the employer with equipment for flexible and mobile work (particularly a laptop and business mobile phone), and if the employee has also worked from home in the past, the employer can now also require the employee to work from home. However, even if the employee has not worked from home in the past, such a duty may exist in the event of a crisis in view of the duty of loyalty or broader interpretation of the contract: This will be the case if work in the company is not possible (e.g. due to restrictions imposed by the authorities), if the employer provides the necessary equipment to enable the employee to work from home, and if it is reasonable for the employee to work from home in view of their personal living and family circumstances. The latter will usually be the case.

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