



LEGAL NEWS

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REMOTE WORK: REVOLUTION IN THE LABOUR MARKET THROUGH HYBRID FORMS OF WORKING

I. HOW DOES EVERYDAY WORKING CHANGE?

Working from home, New Work, flexibility, self-organisation, trust-based working hours. These (and other) terms describe what is no longer a vision of the future or a mere phenomenon. Day-to-day working life has fundamentally changed in the last two and a half years at the latest since the start of the coronavirus pandemic, which acted as a catalyst in this respect. Out of simple necessity, it has been shown that in most cases daily work life (fixed working hours, requirements to be on site, etc.) which was previously often not reflected upon was not necessary and frequently more unproductive than the new work models. The focus is moving away from rigid frameworks and specifications to results. In a very short period of time, employees have become accustomed to this new work reality and do not want to miss it anymore; for many, they now already represent minimum standards in the choice of employer. Companies that do not offer these models will struggle to select new candidates and retain talent in the future.

Labour law, which has evolved many times over decades (if not longer) against the backdrop of a classic work environment, must now adapt to this new reality in record time. Various new challenges and assessment issues arise. The need for consultation in light of these diverse uncertainties is huge.

II. WHICH ROLE DO WORKING TIME FRAMES PLAY IN THE EU MEMBER STATES?

For many years, working hours law was unchanged. In view of the changing conditions of the world of work, this sub-area of labour law must also be adapted to meet the safety and health protection of employees and thus also to maintain the competitiveness of the companies and organisations. In many cases, they have already responded to the new challenges for working hours in recent years with operationally flexible working time models such as flex-time, flexible working time frames, working time accounts, sabbaticals and block time off. In this area, however, national legislators are generally still faced with great challenges in order to create the appropriate framework conditions and minimum standards in this regard. The possibilities of digitalisation open up an opportunity to make working time law more mobile and still ensure the protection of employees. At the same time, this is a way to strengthen the culture of trust in the company when flexible working hours are measured in a comprehensible manner (and thus fewer occasions for legal disputes arise).

A working time frame regulates the earliest possible start and the latest possible end of the daily working time and can be between 7:00 a.m. and 9:00 p.m., for example. In between, the employee can freely allocate his or her daily working hours. In order for the coordination and communication to work in work groups, etc., a so-called core time can also be specified (e.g., between 9:00 a.m. and 3:00 p.m.), in which part



of the work performance must be provided (reachability).

Depending on national law or the applicable collective agreement, the daily or weekly maximum working hours must be observed (whereby the legal assessment of the on-call service must also be observed).

III. HOW HAS WORKING FROM HOME BEEN INTEGRATED INTO THE WORKPLACE SINCE CORONA-VIRUS?

Before the disruption of everyday work due to the coronavirus pandemic, working from home was still rare and rather exotic in most industries. This changed overnight in March 2020. Due to the circumstances, working from home became the normal case for many employees, at least for a while. Legally, this was accompanied in the countries of the Schindhelm Alliance by an obligation to work remotely for a period that varied in duration depending on the country. Where the circumstances of the pandemic allow it, this obligation has mostly been lifted; at the same time, the working from home obligation was subsequently replaced by a legal entitlement of the employees to at least work from home in part. However, even where there is no legal entitlement, the topic is omnipresent. The following figures are from 2021 (the pandemic was therefore significantly more relevant in the surveys than it is currently) from Germany (source: Federal Ministry of Economic Affairs and Climate Action), but exemplify developments seen in many industrialised nations.

For example, 56 per cent of jobs can be performed at least in part from home. However, it can be assumed that it is actually only 30% of employees who work from home. In this respect, there is still enormous potential for growth.

Only 1 in 10 want to fully return to working on site after the pandemic. In contrast, the vast majority (nearly 90 per cent) want to keep working from home (at least in part). This tallies with results of other surveys, according to which the

satisfaction with working from home during the pandemic is generally very high.

The biggest benefit for employees is the improved work-life balance due to no longer having to commute. Many employees have also been enjoying their jobs more since working from home. It is also often easier to integrate breaks or physical exercise into the day.

However, one disadvantage to note is that it is often not easier to combine time off with work but rather that work can be better integrated into time off. Many employees report in surveys that they also sit down at their laptop late in the evening when it occurs to them that something needs to be done. It is often difficult to draw a line between work and free time. A lack of social contact and personal exchange can also become a burden for full-time working from home in the long run. Many therefore want some balance between working on site and working from home. Around 40% of employees therefore want to reduce the frequency of working from home to several days.

On the part of the companies, too, the experience often exceeded expectations for working from home – despite the adverse circumstances during the pandemic. For example, the majority of companies (54 or 58 per cent respectively) want to facilitate more working from home than before the coronavirus crisis. The benefits for employers can be diverse. They expect increased attractiveness for themselves in the competition for suitable specialists, the saving of office space and happier employees. Studies also show that employees sometimes work measurably more productively after moving to working from home.

Legally, this area can pose challenges in the area of occupational health risk prevention, data protection and working hours, in particular, depending on the national legal situation.



IV. IS THE 4-DAY WORKING WEEK THE FUTURE OR ALREADY THE PRESENT?

In the area of new forms of working, the 4-day week is also attracting increasing attention. This is by no means just a trend; the model has been under discussion for many years and has been extensively tested in various countries. The idea behind the shortened week is that employees work four days instead of five days on a full salary (with the total weekly working time being shortened accordingly). It is designed to make them happier, more motivated, more focused and more productive. In addition, it is intended for companies to create new jobs with the four-day week.

Since 2015, Iceland has examined the effects of shortened weekly working hours in more detail in a large-scale experiment, while eliminating the 5-day week with the 40-hour week. The following five findings were derived:

- Performance and productivity have remained constant throughout the 4-day week.
- The number of overtime hours did not increase excessively compared to the 5-day week.
- Switching to the 4-day week is not as costly as feared.
- Employees were off sick less frequently overall without a 40-hour week.
- Through the 4-day week, many employees used their free time sensibly, for example with sports.

Other countries also had similar projects with similar results. For example, Microsoft tested the concept in Japan in the summer of 2019 and saw positive results; productivity increased by 40 per cent as a result of the 4-day week.

The topic is also a current one in Europe; there are various experiments in this regard. In Spain, for example, there are various subsidy programmes for companies that implement the 4-day working week.

Apart from state programmes and subsidies, there are fewer labour law issues in this area

(there are few special features in this respect) than corporate and economic questions that every employer has to answer.

V. WHICH TAX ASPECTS NEED TO BE TAKEN INTO ACCOUNT IN THE REMOTE WORK INTERFACE?

If the work is performed remotely from another country, various tax aspects need to be considered.

Depending on the specific company activity and the activities performed by the employee abroad, it may be necessary for the employer to register an income tax or a mere payroll tax facility abroad (if necessary, linked to ongoing accounting obligations). This should be checked on a case-by-case basis before the start of the working from home. The employer will require a tax number on a regular basis.

In the case of longer-lasting working from home abroad (the 183-day period will become relevant in this respect, depending on the national legal situation), the employee may become resident for tax purposes in the country of work. This usually not only establishes the obligation to pay his or her income tax in this country, but also various other tax and information obligations for persons resident for tax purposes, depending on the national legal situation (disclosure of foreign assets, property tax where this exists, etc.).

Therefore, before employees work remotely from home abroad, both parties (including the employer) should seek appropriate tax advice.



VI. CONCLUSION

The new world of work offers a variety of new work models. As always with radical changes in an area, these bring various opportunities with them but they also present challenges. In this respect, there is substantial need for consultation with regard to labour law since the specifications of national legislators often still lag behind developments and there is frequently considerable creative leeway.

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