

COVID-19 and the "new normal" in the workplace

12 May 2020

With regard to occupational health and safety and employers' obligations, the Federal Ministry of Labour issued overall guidelines in April 2020 to which employers throughout Germany must adhere (see German SARS-CoV-2 Occupational Safety and Health Standard, https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Schwerpunkte/sars-cov-2-arbeitsschutzstandard-en.pdf?__blob=publicationFile&v=2). Although these standards are not directly legally binding, it can be assumed that courts will use them in disputes when interpreting the measures that are necessary under occupational health and safety law, and that they will therefore have indirect legal effect. For this reason, we recommend adhering to these standards. This note answers the most relevant questions for employers and gives an overview on the necessary measures that should be implemented.

In general, the following principles apply:

- In case of doubt where a safe distance (at least 1.5 m) cannot be reliably maintained, mouth-and-nose covering must be provided and worn.
- Persons with respiratory symptoms (other than, for example, a cold that has been diagnosed by a doctor) or with fever should not be in the office at all. The employer must establish a procedure (such as in an infection emergency plan) for dealing with suspected cases (such as if an employee has fever).

Health & safety in the workplace

What do employers have to consider when arranging the workplace?

Employees must keep a safe distance (1.5 m) from other persons. If this is not possible, including where it cannot be ensured by technical or organisational means, alternative protective measures must be taken (such as wearing mouth-and-nose-coverings). Transparent partitions must be installed in places frequented by the public and, if possible, between workstations wherever a safe distance cannot otherwise be maintained. Free office capacity must be used and work organised in such a way that multiple occupancy of office premises can be avoided or safe distances are maintained. There must be sufficient ventilation in all rooms.

The employer must carry out a corresponding risk assessment (*Gefährdungsbeurteilung*) to determine which measures must be implemented in the workplace. It is likely that different measures will have to be implemented in the various areas of the workplace, in particular:

- If there are areas in which safe distance (1.5 m) cannot be observed, the employer will generally be obliged to provide the employees with mouth-and-nose-coverings.
- If there are areas in which safe distance (1.5 m) cannot be observed and these are particularly hazardous work areas, the employer is obliged to provide the employees with personal protective equipment ("PPE").
- The more employees work in an area, the greater the risk of infection. Correspondingly, the protective measures must be more stringent. However, there are no restrictions as to the maximum number of employees per area or square meter.

What standards must the employer comply with regarding work equipment and tools?

If possible, tools and work equipment must be individually assigned. Where that is not possible, regular cleaning must be provided for, especially before handing over to another employee. Otherwise, suitable protective gloves must be worn when using tools unless this creates an additional hazard. Limitations on wearing time and employees' individual susceptibilities (allergies, etc.) are also to be taken into account.

What standards must the employer comply with regarding the means of access?

The use of means of access (such as stairs, doors and elevators) must be adapted so that safe distance (1.5 m) can be maintained. There are no limits imposed on the number of persons who can use means of access at the same time. Practically, only one person may use an elevator at the same time. At points where people tend to gather (time recording terminals, canteens, tool and material stores, elevators, etc.), safe distances must be marked out in queuing areas, for example with adhesive tape. Spots that are typically special sources of germs (e.g. door handles, elevator buttons) should be cleaned and disinfected regularly.

Should work be performed at home?

Work should still be performed if possible at home, especially if office premises would otherwise have to be used by multiple people with insufficient distancing. Home working can also help enable employees reconcile work with care needs (childcare or nursing care for relatives) as most care facilities and schools are currently closed.

Should business trips be cancelled?

Business trips and face-to-face interactions such as meetings should be reduced to the absolute minimum and, as far as possible, technical alternatives should be made available such as telephone or video conferencing. If face-to-face meetings are absolutely necessary, participants must maintain safe distance. There is no limit around the maximum number of persons for a meeting.

Should outside individuals be denied access to offices?

Access by outside individuals is to be reduced to the absolute minimum. Where possible, the contact data of outside individuals and the time and date of their arrival at and departure from the office or premises must be recorded. Outside individuals must also be informed about the SARS-CoV-2 infection control measures that currently apply in the company.

Are there any areas of the workplace that should not be made accessible to employees?

An area should only be made accessible to employees if safe distance and hygiene can be observed.

- Sufficient room cleaning and hygiene must be provided for, if necessary with modified cleaning intervals. This applies especially for washroom facilities, kitchens and other communal areas. Regular cleaning of door handles and handrails also helps prevent infection.
- Safe distance must be ensured in break rooms and other social spaces, for example by placing tables and chairs far enough apart. Care should be taken to avoid queues at food counters, kitchen supply return points and checkouts.
- Occupancy of work areas and communal facilities must be reduced by measures to spread utilisation over time (staggered working and break times; if necessary, shift working). When creating shift schedules, care must be taken to assign the same employees to shared shifts where possible in order to reduce the number of different contacts at work. Suitable organisational measures must be taken to prevent gatherings of employees at the beginning and end of working hours (such as at time recording terminals and in washrooms or kitchens).
- Since public gyms throughout Germany must remain closed, we recommend that the employer also keeps internal gyms closed.

Is the employer required to provide employees with personal protective equipment (PPE) and clothing in the workplace?

Where contact with other persons is unavoidable or safe distance (1.5 m) cannot be maintained, mouth-and-nose-coverings and, in particularly in hazardous working areas, personal protective equipment (PPE) must be provided and worn.

Particularly strict care must be taken to ensure that mouth-and-nose-coverings and PPE of any kind and work clothing are individually assigned. Provision must be made for employees to store their individual work clothing and PPE separately from their everyday clothing. Regular washing of work clothing must be ensured. If additional infection risks and/or hygiene deficiencies (such as due to dirt) can be ruled out and personal contacts within the office can be avoided as a result, employees are to be allowed to put on and take off their work clothing at home.

Is the employer required to provide employees with hand sanitizer?

Skin-friendly liquid soap and towel dispensers must be made available for hand cleaning. Information on personal hygiene in particular on hand washing in accordance with WHO recommendations should be posted.

Hand sanitizers must be provided in sufficient numbers. They should be distributed evenly throughout the office, especially in places where the distance to other employees can be maintained when using the sanitizer. Dispensers are recommended especially in toilets and at the entrance(s).

Is it mandatory for the employer to carry out temperature screening or temperature checks of employees?

No, it is not.

It is even not admissible for an employer to carry out/require temperature checks of employees or to view or collect the results of such temperature checks. The employer may, however, encourage the employees to carry out temperature self-checks on a voluntary basis. The offer of such self-checks is a valid approach and may be part of a set of preventive health measures. The employer is not allowed to ask for the results of the temperature checks though.

The employer may encourage employees to decide at their own discretion to go home/get medical treatment in case that they take a temperature of 40 degrees °C (104 degrees °F) or higher and/or if they do not feel well.

The employer may prevent an employee from entering the workplace (or may send him/her home) if the employer has specific evidence that the employee could be infected. Such evidence may, inter alia, exist if the employee shows relevant symptoms, admits increased body temperature or confirms recent contact with an infected person.

Is it mandatory for the employer to monitor any other symptoms of his employees?

There is no obligation and no permission to monitor the health status of employees or to collect respective health data.

However, symptoms that come to light or are voluntarily admitted by an employee may of course be noticed by managers and colleagues. The employer should observe the following rules in the event of suspected cases:

Company procedures must be specified for rapidly dealing with suspected cases of COVID-19. Notable symptoms of infection with COVID-19 include fever, coughing and shortness of breath. Employees with relevant symptoms are to be asked to leave the premises immediately or to stay at home. Until the suspected infection has been assessed by a doctor, the employee must be assumed to be unfit for work. Affected individuals (not the employer) should contact a doctor or the public health office (*Gesundheitsamt*) for assessment without delay, initially by telephone. Employers should specify procedures in a company pandemic plan for the event of a confirmed infection for identifying and informing persons (employees and where applicable customers) who are likewise at risk of infection through contact with an infected individual.

Ongoing reporting obligations in the workplace

Does the employer have an obligation to notify any authority about any known or suspected COVID-19 cases?

No. There is no legal obligation for an employer in Germany to notify any (health) authority about any suspected or known COVID-19 case. Only the examining doctor and the laboratory that conducted the COVID-19 test (and similar medical institutes) are obliged to report a suspected or confirmed COVID-19 case.

However, we recommend and advise on the following steps:

- If the employer suspects or is aware that the employee is a COVID-19 case, the employer should immediately send the employee home and refer the employee to see his/her doctor to ensure a safe and healthy physical working environment. The employer is required to ensure that other employees in the workplace are not unnecessarily exposed to potential infection risk by COVID-19 from the (potentially) infected employee.
- If an employee is suspected or confirmed to be a COVID-19 case, the examining doctor or laboratory will report the case to the competent health authority. The employee has to name

his/her employer. In order to trace the potential infection chain (and only to the extent necessary for this), the competent health authority may ask the employer to disclose information about such employee, on business and business processes, including their control, and to present respective documents. The employer also has to grant access to its business premises to the competent health authority to enable the authority to assess the risk of infection for other employees on site.

- If an employee is reported to be a (strongly) suspected or confirmed COVID-19 case, the competent health authority will likely ask the employer to disclose information on colleagues who were recently in contact with the (potentially) infected employee and will ask such colleagues to undergo a COVID-19 test.
- The respective competent health authority for the employer offices in Germany can be found by entering the office's postal code here: [RKI PLZTool](#)

Travel to and from the workplace

What permissions are needed for employees to go to work and return from work?

Employees are allowed to go to work and return home from work. There is no need for permission.

The police are currently controlling the public movement restrictions. During such control, an employee must provide credible evidence that he or she is on the way to or from work. For this purpose, the employer could (but is not required to) provide an employer's certificate that would make it easier for the employee to provide credible evidence. A short letter is sufficient. A QR code is not sufficient.

What measures does the employer have to take when providing transportation services to employees?

A safe distance of at least 1.5 m should also be observed in firm transportation vehicles if possible. As required in public transport in all federal states (*Bundesländer*) from the end of April onwards, employees should always wear mouth-and-nose-coverings. The employer has to provide his employees with mouth-and-nose-coverings. We recommend using the same mouth-and-nose-coverings which the employer provides for use in/at the workplace.

Fixed teams should be formed that are as small as feasible (such as two to three employees – but there is no generally imposed limit) in order to reduce the number of different contacts among employees during travel and deployments to and away from the office. Facilities for frequent hand hygiene must also be provided. Company vehicles must be equipped with hand hygiene and disinfection products, paper towels and waste bags. For necessary work-related trips or shuttles, wherever possible, the same vehicles should not be used by multiple employees. The group of employees who share a vehicle – simultaneously or consecutively – must also be kept as small as possible, for example by assigning a vehicle to a fixed team. The interiors of company vehicles must be regularly cleaned, especially if they are used by multiple employees. The frequency of cleaning depends on the extent of use. Cleaning after each use by different employees is recommended.

Facemasks

Is the use of facemasks mandatory or recommended in workplaces?

In workplaces, employees must keep a safe distance (1.5 m) from other persons. If this is possible, there is no need to wear mouth-and-nose-coverings. The employer may nevertheless require employees to wear mouth-and-nose-coverings in/at the workplace even if safe distance can be observed.

If safe distance is not possible, including where it cannot be ensured by technical or organisational means, alternative protective measures must be taken (such as wearing mouth-and-nose coverings, installing transparent partitions between the workstations etc.).

What are the requirements for mouth-and-nose-coverings in workplaces?

If wearing mouth-and-nose-coverings in the workplace is required, because safe distance cannot be observed and other protective measures cannot be taken, the mouth-and-nose-coverings have to comply with certain standards (other than for private use in public). The German SARS-CoV-2 Occupational Safety and Health Standard does, unfortunately, not state what requirements mouth-and-nose-coverings have to meet.

The requirements are in any case fulfilled if mouth-and-nose-coverings comply with the requirements of the Ordinance on Safety and Health at Work on the use of personal protective equipment at work (*German PPE Use Ordinance - Verordnung über Sicherheit und Gesundheitsschutz bei der Benutzung persönlicher Schutzausrüstung bei der Arbeit*). Where mouth-and-nose-coverings do not comply with these standards, the requirements might be nevertheless complied with if the mouth-and-nose-coverings comply with DIN EN 14683:2019-6 "Medical face masks - Requirements and test methods" (*Medizinische Gesichtsmasken - Anforderungen und Prüfverfahren*) (surgical masks). Simple mouth-and-nose-coverings ("community masks") might be not sufficient.

Health care professionals shall have sufficient access to medical facemasks and PPE which protect the wearer from infections. Their use by other (particularly non-essential) employees/workers is not recommended as long as their availability is limited. Therefore, the employer should limit his effort to requiring/providing mouth-and-nose-coverings as the availability of PPE is limited and should also focus on ensuring safe distance instead of providing PPE.

Since the state is aware of the current exceptional situation and in particular the lack of PPE and surgical masks, we recommend contacting the responsible occupational health and safety authorities and clarifying with them whether the use of simple mouth-and-nose-coverings is currently sufficient under occupational health and safety law.

We appreciate to assist and to take care of the coordination and communication with the relevant authorities.

If safe distance can be observed, but the employer, nevertheless, asks employees to wear mouth-and-nose-coverings, for this purpose, simple mouth-and-nose-coverings are sufficient.

Is it mandatory or recommended for the employer to provide facemasks to his employees for their travel between their home and the workplace?

The employer is not required to provide mouth-and-nose-coverings for his employees for their travel between their home and the workplace. Employees must get their own (simple) mouth-and-nose-coverings if they need them for travel, for example when using public transport.

The situation is different if the employer provides firm transportation services to his employees. If safe distance cannot be observed, employees should always wear mouth-and-nose-coverings. The employer has to provide his employees with mouth-and-nose-coverings. We recommend using the same mouth-and-nose-coverings which the employer provides for use in/at the workplace.

The employer is also required to provide mouth-and-nose-coverings for his employees if they are deployed outside the office and if and to the extent and quality they are required to wear mouth-and-nose-coverings there (for example in third party retailer stores, public transportation or if safe distance to other persons in another workplace or firm transportation vehicles cannot be observed).

Is it mandatory or recommended for the employer to provide facemasks to his employees in the workplace?

The employer is required to provide mouth-and-nose-coverings for his employees if and to the extent and quality they are required to wear it or if the employer requires them to wear it at/in the workplace.

If the employer provides mouth-and-nose-coverings to his employees, the employer has to communicate quality, objective and way of use.

- If such mouth-and-nose-coverings comply with DIN EN 14683:2019-6 (surgical masks), it must be made clear to employees that these are not PPE, but certified medical masks. They do not provide comprehensive protection against infection.
- If such mouth-and-nose-coverings are neither PPE nor surgery masks, i.e. so-called "community masks", it must be made clear to employees that these are neither medical devices nor PPE and that these are therefore not intended to protect against infections or other health hazards.

Are there any restrictions or prohibitions on the employer which would prevent him from requiring employees to wear facemasks in the workplace or on their journey to the workplace or from the workplace?

As the way from home to work is a private matter for the employees, the employer may not generally require employees to wear mouth-and-nose-coverings on their travel to the workplace (for example when using a private car). Employees may refuse to comply with such requirement, as the employer would unduly restrict their private sphere. However, employees have to wear mouth-and-nose-coverings in public transportation anyway due to official government guidelines.

The employer may recommend wearing mouth-and-nose-coverings where safe distance cannot be observed.

Other relevant considerations

What else should be considered:

- The prevention and occupational safety and health measures taken must be fully communicated within the office. Instructing managers enables them to act with confidence. Such instruction should be provided on a centralised basis where possible. Fixed points of contact should be available and a good information flow should be ensured. Protective measures are to be explained and instructions are to be made clear (with signs, notices, floor

markings, etc.). Attention must be drawn to compliance with personal and organisational hygiene rules (distancing, coughing and sneezing etiquette, hand hygiene and mouth-and-nose-coverings/PPE).

- Employees must have access to or be offered preventive occupational health care. Employees can seek individual advice from the occupational physician, including on special risks due to a prior illness or individual susceptibility. They must also be able to address anxiety and psychological stress. The occupational physician knows the workplace and can suggest suitable preventive measures to the employer in instances where the normal occupational safety and health measures are not sufficient. If necessary, the occupational physician may recommend that other duties should be assigned to an employee. The employer will only learn about this if the person concerned gives their express consent. Preventive occupational health care may be provided by telephone; some occupational physicians provide a hotline for employees.

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