



## ✕ PARTICULAR RISKS AND CHALLENGES OF MOBILE WORK ABROAD

- ✕ If applicable, mandatory employee protection regulations apply, which the employer is obligated to comply with; work permission obligations must also be checked and complied with if necessary
- ✕ If applicable, social security contributions must be paid in the other country and (corporate) taxes must be paid when a permanent establishment is set up
- ✕ **ADVICE:** Therefore, mobile work abroad should not be permitted across the board; if the employer decides to permit mobile work abroad, he can specify the details in an individual exercise of the right to issue instructions or in abstract terms by means of a company policy
- ✕ In case of violation of the individually exercised right to issue instructions or the policy, sanctions under labor law are conceivable (e.g. warning, termination)

## ✕ RECOMMENDED ACTIONS FROM THE EMPLOYER

- ✕ Analysis of activities suitable for mobile work
- ✕ No blanket offer to the employee, but only associated with a detailed contractual agreement

## ✕ CONTACT PERSONS



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# MOBILE WORK

## KEY FACTS

(from 1 July 2021)





### ✘ IMPORTANT CHANGE FROM 1 JULY 2021

The employer is no longer legally obliged to offer to perform office activities at home (Sec. 28b (7) in conjunction with (10) sentence 1 IfSG); continuation or restart of activities outside the office is now subject to contractual agreements between the employer and the employee.

### ✘ TERMINOLOGY

#### ✘ Mobile work

The possibility of performing work at mostly changing locations outside the company by making mobile devices available.

#### ✘ Home Office

Occasional or permanent work at the employee's private premises; subcategory of mobile work.

#### ✘ Telework

The employer relocates the office workstation in whole or in part to the employee's private premises, connects the employee via telecommunications, sets up the computer workstation and regulates the conditions in an agreement; also a subcategory of mobile work.

#### ✘ Alternating telework

Employee alternates between telework and working in the company office.

### ✘ IMPORTANT OBLIGATIONS OF THE EMPLOYER

#### ✘ Obligations around work equipment:

- Provision of all necessary work equipment
- only in cases of telework places: concrete obligations for the design of the workplace in accordance with No. 6 of the Annex to the ArbStättV

#### ✘ Obligations around working time:

- Monitoring compliance with working time regulations (maximum working time, breaks, rest periods)
- If necessary, setting up a system for recording working hours, in particular recording of overtime hours

#### ✘ Obligations around data protection:

- The employer remains liable for data protection in relation to third parties as defined by the GDPR (DS-GVO); therefore, following measures shall be taken based on contractual agreements with the employee:
  - ✘ Access control to rooms in which work is performed (also for the employer to check whether the employee is behaving in accordance with data protection regulations)
  - ✘ At least lockable cabinets, better lockable workroom (incl. securing of other accesses, e.g. windows)
  - ✘ Securing of the entire apartment against unauthorized access
- Secure storage of data media and their encryption as well as destruction and logging of destruction, if necessary

- Setup of VPN tunnels including password assignments, disabling of ports and printer shares as well as unauthorized WIFI access

#### ✘ Obligations around occupational health and safety:

- The employer must take all necessary occupational health and safety measures that affect the safety and health of employees at work
- Applies to any place where the employee works (home office or other place of mobile work)
- Risk assessment according to Sec. 5 ArbSchG for all workplaces of the employee (not only limited to home office)
- Design of display screen workplaces according to the specifications of No. 6 of the Annex to the ArbStättV
- A waiver by the employee is not possible, as this is mandatory employee protection law

#### ✘ Duties relating to co-determination in the workplace:

- Involvement of the works council in accordance with the new Sec. 87 (1) No. 14 of the Works Council Constitution Act (BetrVG) on the organization of mobile work, if such a council exists
- Decision on whether to introduce mobile work remains with the employer

### ✘ GENERAL RISKS OF MOBILE WORK

#### ✘ Employee uses private work equipment:

- Employer has no claim to surrender of storage media, for example
- Employer cannot prohibit access by third parties
- **ADVICE: Provision of company work equipment combined with agreement on usage restrictions**

#### ✘ Employee works in different places:

- Employer remains responsible to comply with occupational health and safety
- No legal obligation of the employee to inform about the place of work
- **ADVICE: Contractual agreement of a notification obligation, if necessary restrictions with regard to the place of work**