

No compensation for loss of earnings for the unvaccinated in the event of quarantine

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Decision of the Conference of Health Ministers

On 22 September 2021 the German Conference of Health Ministers (Gesundheitsministerkonferenz) held that starting no later than 1 November 2021 the German states will no longer grant compensation for loss of earnings to those persons who as either contact persons or travellers returning from high risk areas must quarantine themselves on account of an administrative order and cannot demonstrate full vaccination protection against COVID-19. This, of course, only applies when the affected person is covered by a public recommendation for preventative vaccination.

Compensation for loss of earnings will continue to be granted to persons who were not covered by a public recommendation to be vaccinated against COVID-19 in a period of up to eight weeks before quarantine. The same applies if it can be evidenced by way of a doctor's note that the person has a medical contraindication with regard to the COVID-19 preventative vaccination.

Situation under the Infection Protection Act

It has already been stipulated for a long period of time by the German Infection Protection Act (Infektionsschutzgesetz, IfSG) in section 56 (1) sentence 4 that compensation for loss of earnings is not received if the person could have avoided quarantine through preventative vaccination. However, this rule was not applied in the past due to the initial predominant lack of vaccines.

After vaccinations could be made available nationwide, initially only individual German states announced that the regulation would apply in the future. The rule will now apply in all German states from 1 November 2021 as a result of the decision of the Conference of Health Ministers.

Obligation to continue to pay remuneration as per section 616 BGB

However, in the event of a brief period when an employee is unable to work due to quarantine the obligation to con-

tinue to pay remuneration as per section 616 of the German Civil Code (BGB) is to be, in principle, first taken into account, provided the provision is not expressly excluded in the employment contract. The requirement for the claim is that the employee cannot carry out their work for a relatively insignificant period of time through no fault of their own.

What time period is to be considered significant in the event of quarantine ordered by the authorities is decided by the courts on a case by case basis. In isolated cases the employment courts have even considered a 14-day quarantine to be an insignificant period of time.

With regard to the question of responsibility, the value of section 56 (1) sentence 4 IfSG will have to be assessed although vaccination has not been compulsory in Germany up until now. Therefore, an employee is only then responsible if they could have avoided quarantine by having preventative vaccination.

It remains to be seen how the employment courts deal with such cases.

Is quarantine really always avoidable for the unvaccinated?

The requirement for excluding a compensation claim for loss of earnings is that the quarantine would have been *avoidable* through vaccination.

The decision of the Conference of Health Ministers means that persons with full vaccination protection are, in principle, no longer subject to an obligation to quarantine. This is, however, too short-sighted. The Robert Koch Institute is currently recommending that those who have been vaccinated also quarantine themselves if they have come into contact with a person infected with one of the Beta (B.1.351) or Gamma (P.1) variants of the virus. In these cases quarantine cannot be avoided even with vaccination. Consequently, claims for compensation due to loss of

earnings for unvaccinated persons in the event of quarantine due to contact with a person who is infected with the Beta or Gamma variant cannot be excluded.

Politics is silent on this issue and shifts the problem to the employer.

Comments

Employers can only be advised to initially stop any payment of wages to an employee as soon as they are ordered to quarantine by the authorities and then to enquire as to their vaccination status.

This applies unless the employee has COVID-19 themselves or the employer is already aware that the employee

has been fully vaccinated. If the employee can evidence that they do not fall under any of the groups for which vaccination recommendations are available or can provide a doctor's note stating that they have a medical contraindication with regard to the COVID-19 preventative vaccination, a reduction in salary likewise does not come into question.

Should an unvaccinated employee rely on the argument that the quarantine imposed upon them would've affected a vaccinated person in the same way, continued payment of remuneration should nevertheless be refrained from. It remains to be seen how the employment courts and the authorities will position themselves here. In addition, questions of the obligation to present their case and the burden of proof will have to be addressed which are still unclear.

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Lena Klever unter +49 221 33660-544 or by email to lklever@goerg.de. For further information about the author visit our website www.goerg.com.

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