
MEMORANDUM

SUBJECT: Home office regulations
TO: To whom it may concern
FROM: MLaw Julia Blattner, Attorney at Law
DATE: January 15th, 2021

Home office regulations

The COVID-19 pandemic has led to an enormous acceleration in the spread of home office within a very short time. Experts assume that home office will remain an integral part of the working world in the future. At the same time, the organization and implementation of home office work can give rise to a wide variety of individual issues. The introduction of home office regulations can clarify these individual issues and thus create legal certainty for employers and employees.

I. Definition and prevalence of home office

Home office means that the work is performed from home. The scope and form of home office work can vary greatly: Home office can be performed fully or partially, regularly or irregularly.

The COVID-19 pandemic has led to an enormous acceleration in the spread of home office in a very short time. On 13 January 2021, the Federal Council even introduced a Swiss-wide home office obligation with effect from 18 January 2021 (at least where possible and feasible with reasonable effort). An end to this development is not in sight. In addition, many employees have already become accustomed to the advantages of home office and want to maintain it even after the pandemic. Employers must therefore consider whether, and if so

under what conditions, they wish to introduce home office as a standard practice in the future (i.e. irrespective of any pandemic-related obligation or recommendation).

II. Legal framework for home office

There is no specific legal framework for home office work (apart from possible emergency regulations of the Federal Council due to the COVID-19 pandemic). Neither the Code of Obligations nor the Labor Code explicitly regulate this form of work. However, the provisions of these laws also apply to home office work, such as health protection or working and rest times.

III. Advantages of a home office regulation

Generally formulated regulations have recently found their way into everyday employment life and have proven to be a useful instrument to supplement individual employment contracts. The aim of such regulations is to define the framework conditions of the employment relationship, or only part of it, for all or a certain category of employees. While until now mainly personnel, bonus, flexitime or expense regulations have been known, it may make sense to create and introduce separate home office regulations due to the current development and the merely general legal framework. This is particularly useful in companies in which home office has been little or not at all widespread and accordingly no or few internal company principles exist.

IV. Content of home office regulations

The home office regulations serve to define the framework conditions for home office work. In addition to the usual provisions (i.e. scope, final provisions and entry into force), it is therefore advisable to regulate the following topics in particular in the home office regulations:

- Entitlement and requirements for home office work;
- place of work (e.g. should work in a vacation chalet be permitted?);
- scope of home office work (especially important for cross-border employees);

- accessibility in the home office;
- furnishing of the workplace;
- health protection in the home office;
- cost regulation for home office work;
- handling of work equipment and confidentiality obligations;
- return of work materials provided by the employer.

V. The introduction or amendment of home office regulations

When introducing or amending personnel regulations (including home office regulations) a certain degree of caution is required: On the one hand, the employer has the right to issue instructions in certain areas, but on the other hand, the introduction or amendment of regulations (usually) also leads to a change in the existing employment contract. Therefore, the introduction or amendment of home office regulations cannot be done unilaterally and only in compliance with certain deadlines. We will be happy to advise and support you regarding the introduction or amendment of home office regulations.

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Basel, January 15th, 2021

MLaw Julia Blattner, Attorney at Law