

The home-office-package

Since April 2021, there have been corona-related labour, social security and tax regulations for working in the employee's own home (home office). In future, corresponding regulations should also apply if employees do not work from their own home but at another location (e.g. holiday location, coffee house). The federal government has now presented a draft Teleworking Act, the parliamentary adoption of which remains to be seen. The draft stipulates that, with effect from 1 January 2025, employers and employees will be able to enter into teleworking agreements under labour law by mutual agreement and in writing.

The following can be mutually agreed as teleworking locations:

- Main and secondary residence of the employee
- Home of a relative
- Office space rented by the employee (= coworking spaces)
- Other locations, such as a coffee house, park, outdoor pool
- Holiday location (hotel, holiday flat)

The employer is generally obliged to provide the digital work equipment required for teleworking. This can be deviated from by agreement if the employer makes an appropriate contribution to the costs of the digital work equipment provided by the employee.

For social insurance purposes (insurance cover for accidents at work), a distinction must be made between teleworking in the narrower sense and teleworking in the broader sense:

- Teleworking in the narrower sense takes place at the employee's main and secondary place of residence. It can also take place in the home of a close relative and in coworking spaces if these locations are close to the employee's place of residence or the employer's business.
- In the case of teleworking in the narrower sense, accident insurance cover applies both at the place of work and on the way to these locations.
- Teleworking in the broader sense takes place at other locations (e.g. coffee house, holiday resort). In this case, insurance cover only applies to the actual work performed and not to events on the way to the teleworking location.

From 1 January 2025, employers will be able to pay an equivalent tax-free teleworking allowance in place of the previous home office allowance for income tax purposes. As before, this will amount to a maximum of € 3 per teleworking day, for a maximum of 100 days/year.

It is essential for teleworking that the work is performed regularly and therefore repeatedly at certain intervals. If the work is only to be performed outside the company's premises on an occasional basis, without the parties to the employment contract intending to make further regular assignments away from home, this does not constitute teleworking.

The same data protection regulations apply to teleworking as in the office (in particular the DSGVO and DSG). The following data protection issues can be considered in the agreement:

- Determination of responsibility under data protection law for data processing and data security in the case of teleworking, in particular when working with the employee's digital work equipment;
- Requirements for the secure storage of access data and passwords for digital devices when teleworking; requirements for the secure storage of digital devices, data carriers and printouts;
- secure deletion of personal data on the employee's digital devices;
- Use of external data carriers and their protection (e.g. encryption);
- Information on the obligation to report data breaches, which also applies to teleworking, and liability for damage caused by data breaches.

We will be happy to assist you in preparing the necessary documents and are always available to answer any questions you may have.