

Mannheim/Frankfurt/München, 19 November 2021



From now on: 3-G at the workplace, and home office

There has been much and long discussion about workplace access regulations for the purpose of pandemic control. Now these have been adopted alongside the renewed home office requirement as part of updating sect. 28b IfSG.

3-G at the workplace:

Sect. 28b IfSG, in force as of tomorrow (November 20, 2021) and for now until 19 March 2022, stipulates:

- Only recovered, vaccinated or tested employees, managers and business owners have access to establishments.
- The employer must check and document this on a daily basis, i.e. he must record - ideally by means of daily lists - on a person-by-person basis whether the status is recovered, vaccinated or tested. This information must be able to be presented in case of inspections.
- Employees, managers and business owners who are on the premises must be able to produce the proof on request.
- Anyone not complying risks a fine (administrative offence) – including employees.

However, the provision does not regulate dealings with external persons (e.g. customers, suppliers, craftsmen, etc.). For these, the employer should issue rules as part of exercising his house rights.

Sect. 28b IfSG also specifies which requirements the evidence must meet (cf. Sect. 2 No. 3, No. 5, No. 7 COVID-19 Protective Measures Exemption Ordinance of 8 May 2021):

- Vaccinated persons must have proof of vaccination with an authorized vaccine more than 14 days ago.

- Those who have recovered must provide so-called proof of recovery of an infection that has been proven by recognized testing (PCR) and that occurred not less than 28 days and not more than 6 months ago.
- For those tested, the following options can be considered:
 - In vitro testing with an approved or CE-marked test (according to the update of the Occupational Health and Safety Ordinance, to be offered twice a week by the employer) that
 - takes place on site under the supervision of the person who is subject to the respective protective measure (i.e. implementation in the company, supervised)
 - is carried out as part of an in-company test as defined by occupational health and safety rules by personnel who have the necessary training or knowledge and experience to do so, or
 - has been carried out or supervised by a recognized test center.
 - PCR test carried out no more than 48 hours ago.

Those who have recovered or have been vaccinated can choose to deposit the certificate with their employer instead of showing it every day. Of course, the employer must then always keep an eye on whether the deposited proof is still valid and, if not, request a current proof (**tip**: make a suitable note of the "expiry date" of the test proof and set up a reminder in good time before expiry).

Without this proof, the enterprise may be entered for the purpose of obtaining a vaccination offered by the employer. It is not regulated, but the logical consequence is that after the vaccination has been carried out, the worker must either leave the workplace or present one of the above proofs.

Special, stricter regulations apply to companies in the health care sector (see sect. 23 para. 3 IfSG).

Duty to offer Home Office:

Sect. 28b IfSG reintroduces the regulation already in force until June 30, 2021 that the employer is obliged to offer all employees, in the absence of compelling operational reasons to the contrary, the opportunity to work from home. The employee is obliged to accept this if unless he has compelling reasons to deny. It is also essential that the employer documents this offer so that proof can be provided in the event of inspections.

Sect. 28b IfSG and the package of measures do not regulate how to proceed if employees refuse to cooperate with these obligations towards their employer. As long as an employee works from a home office, he or she does not have to provide evidence according to sect. 28b IfSG. However, working from a home office is not always an option; if an employee refuses to provide evidence under Sect. 28b IfSG in this case, he or she is making himself or herself from performing his or her work. In this case, one will probably come to the conclusion that the employer is at least not obliged to pay the agreed upon remuneration.

If you have any further questions, please do not hesitate to contact the team of the [Labour Law Practice Group](#) at RITTERSHAUS.