



Back to Liberty?

Legal obligation to offer home office expires on 19.3.2022

The obligation for employers to offer home office pursuant to [section 28b IfSG](#) (German Anti-Infection Law) is going to expiry on March 19, 2022. By law, employers are thus once again free to instruct employees to work in the company. Even the works council cannot enforce mobile working or working in a home office, because the pertinent co-determination right pursuant to [Section 87 \(1\) No. 14 BetrVG](#) only extends to the "how" of structuring mobile working and home office.

Legal situation versus factual needs

However, this legal situation should not obscure the factual pressure generated by the wishes and needs of employees, and validated by the positive experience with mobile work in many places during the Corona pandemic. Employers now face a wide variety of trade-offs:

Employees' desire for maximum flexibility on the one hand, and the need to interact face-to-face with colleagues on-site at the company on the other; the employer's own goal of bringing teams back "together at the table", having "access" to workers and eliminating (perceived) productivity constraints, as well as restoring balance in the relationship with employees who have a permanent job at the company and cannot work mobile; but also the employer's goals of increasing employee satisfaction, building a positive employer image, and possibly generating potential savings.

And how can legal framework conditions still be reconciled with this multitude of needs?

In this situation, it is important to create a transparent, legal framework, whether through individual agreements, a general guideline or, if a works council exists, a shop agreement. Here, clear rules must be established as to when and to what extent an employee is entitled to work mobile or in a home office and, conversely, when the employer can demand that he or she work at the company. Occupational health and safety must not be forgotten, which is currently mandatory in the case of home office, only, and limited to a risk assessment pursuant to the Occupational Health and Safety Act in case of mobile working. Last but not least, data protection and ensuring the confidentiality of company data, compliance with the Working Hours Act and questions of cost reimbursement play a significant role.

If there is a works council, it has a right of co-determination on the actual implementation of home office and mobile work. In this context, further elements from the catalogue of co-determination issues pursuant to [§ 87 BetrVG](#) may have to be taken into account. Since the topic of home office and mobile work is likely to be high on the agenda of works councils anyway, it makes sense for employers to approach the works council with a concrete own draft for a works agreement and not to leave the field to the works council. We are happy to support you in creating regulations on mobile working and home office, whether it is an individual agreement, an in-house guideline or a works agreement. You can find your contacts in the Labor Law Practice Group at: <https://ritter-shaus.net/kompetenzen/arbeitsrecht.html>.