

Austria: New Home Office Act improves the legal situation of people working from home

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At the end of March 2021, the Home Office Act was passed by the Austrian parliament. This new regulation, when compared with the previous situation, firstly provides for greater legal certainty for employees working from home. In addition, it contains new specific regulations in the areas of labour law, social insurance and tax rules.



Description

The COVID-19 pandemic has brought renewed attention to the issue of working from home. Hitherto, in Austria no explicit and integrated regulation existed for employees providing telework from home. Against this background, general provisions of labour and social insurance law were previously applied to home office employment by extension and analogy. However, this led to legal uncertainty regarding certain questions, and the increasing use of home office work environments due to the COVID-19 pandemic highlighted the deficits of the existing regulations.

As early as March 2020, a reform was decided upon regarding accidents occurring while performing home office work. The criteria for defining an accident as an “accident at work” were reformulated in a more inclusive way, thereby improving the legal situation of teleworkers. This provision was introduced retroactively from 11 March 2020 as a temporary rule; it was repeatedly extended, and then finally made permanent with the Home Office Act, the subject of this report.

Negotiations between the social partners’ organisations and the federal government on further issues concerning home office work started in autumn 2020, and an agreement on the main elements of the envisaged reform was presented to the public at the end of January 2021. It took until the end of March 2021 until all parts of the reform were ultimately enshrined in legislation.

A first element of the reform is the definition of home office. This makes the

usual meaning official, defining “home office” as a situation where “an employee performs work in the home”. This does not mean that the work may be performed at any location, but rather in a private residence. This can be the employee’s own home, but also, for example, a second home or the home of a partner.

Under the new regulation, teleworking is still based on an agreement between the employee and his/her employer. This means that there is no unilateral right or obligation to work from home. Home office agreements now generally must be in writing, while previously only a few collective agreements required a written agreement on teleworking.

The individual home office agreement may, inter alia, stipulate a time limit and conditions for terminating the agreement. However, the Act clarifies that – irrespective of the initial agreement – termination for a good reason is possible, but subject to a notice period of one month. Examples of good reasons include significant changes in the operational requirements of employers or the employee’s housing situation.

The new regulation also stipulates that the employer is obliged to provide the employee with the “necessary digital work equipment”. This especially includes IT-hardware and also a data connection (Internet). Alternatively, if the employee makes use of his or her own equipment, the employer is obliged to cover “appropriate” related costs, potentially in the form of a flat-rate compensation. However, the law does not define in more detail what is meant by “appropriate” costs, with the actual

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amount to be determined in the individual case.

Furthermore, rules on liability for damage to equipment provided by the employer were reformulated under the new Act. As a result, often no compensation, or only a low amount, has to be paid by the employee if the owner's equipment is damaged, even when the damage is caused by other members of the employee's household or by his/her pets.

Another important new feature is that the general conditions for working from home may, in addition to the related rules stipulated by law, also be regulated by a company works agreement. Until now, such additional regulations were only possible via collective agreements. Company works agreements may, for example, deal with issues of work equipment or cost reimbursements, such as a daily flat rate for home-office expenses etc. This still does not mean that there is an obligation to conclude such a works agreement, and the home office arrangement itself must in any case be set out in an individual agreement.

Finally, the Home Office Act also includes measures regarding tax law, which will – however – only remain in place until the end of 2023. According to these temporary rules, digital work equipment provided by the employer is not regarded as remuneration in kind and does therefore not cause any tax or social insurance liability. In addition, special payments made by the employer to employees working from home are exempt from income tax and social insurance for up to 100 days per year, up to an amount of €3 per

day. These payments can include compensation for costs of digital work equipment and any other additional compensation. In total, the amount exempt from income tax and social insurance is capped at €300 per year. If this maximum sum is not reached, the employee can claim the difference, up to a maximum of €300, as job-related expenses within the yearly income tax declaration. In addition, employees can deduct self-reported costs for the purchase of ergonomic furniture up to an amount of €300 per year.



Outlook and commentary

The issue of working from home has been on the political agenda since the beginning of the COVID-19 pandemic and – irrespective of flaws/gaps in the previous regulations – it took over a year until the reform package described above was decided. This reform package derives from a compromise between employers' organisations, the trade union federation and the federal government.

Importantly, earlier temporary rules ensuring more inclusive occupational accident coverage for people working from home were made permanent. Other specific outcomes are the aforementioned – however temporary – rules on exemption from income tax and social insurance contributions. Time will tell whether these exemptions will be extended in the future. Furthermore, it appears that the related maximum yearly cap, amounting to €300, is rather low. For example, the Chamber of Lawyers argued that flat rate home office compensation (to cover the

costs of IT equipment and other costs related to teleworking) usually amounts to between €30 and €80 per month.

Regarding the obligation for employers, under a mutual home office agreement, to provide the employee with the "necessary digital work equipment" or to cover "appropriate" related costs, as now explicitly determined by law, the actual impact is also not yet known. One open aspect in this context is that there is still no definition of how "appropriate" related costs are to be calculated.

The implementation of the Home Office Act and its impact are to be evaluated after two years, and possible further reform steps and adaptations may then be decided.

Further reading

Information on the Home Office Act prepared by the Austrian parliament:

https://www.parlament.gv.at/PAKT/VHG/XXVII/A/A_01301/index.shtml

and https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME_00094/index.shtml

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