

New Occupational Health and Safety Rule sets out detailed guidance for employers

The German Federal Ministry of Labour and Social Affairs (BMAS) recently announced the new "SARS-CoV-2 Occupational Safety and Health Rule", which was then published in the Joint Ministerial Gazette (a pdf copy of the regulations – only in German – can be found [here](#)). It codifies the "SARS-CoV-2 Occupational Safety Standard" (Occupational Safety Standard), which was published several months ago.

According to the BMAS, employers can assume that the requirements of the Occupational Safety and Health Act ("*Arbeitsschutzgesetz*") and the associated ordinances are met if they observe the specifications of the Occupational Safety and Health Rule.

What is the aim of the Occupational Safety and Health Rule?

- Like the Occupational Safety Standard, the new Occupational Health and Safety Rule intends to help interrupt chains of infections in companies as far as possible and to protect the health of employees.
- For this purpose, the new regulations are more specific than the general guidelines contained in the Occupational Safety Standard.

Are the new guidelines binding on employers?

- Just as with the Occupational Safety Standard, the legal nature of the Occupational Health and Safety Rule cannot be precisely classified (it is neither a federal law, an ordinance, nor a DGUV regulation). This raises a question as to how binding the occupational health and safety regulation is for employers.
- Notwithstanding this uncertainty, employers should implement the occupational health and safety measures presented in the Occupational Health and Safety Rule in the best possible way. After all, under the Occupational Safety and Health Act, every employer is already obliged to take the necessary measures to prevent risks to employee's health.
- In particular, employers are obliged to regularly inspect all workplaces for hazards and to act appropriately to reduce or eliminate hazards. In addition, the employer has the duty to instruct the employees regularly with regard to occupational health and safety.
- If employers (still) remain inactive in the face of the current pandemic or do not constantly review the current status of occupational safety measures taken to date, sanctions may be imposed, including fines or claims for damages.



What should employers take into account when implementing the guidelines?

- The Occupational Health and Safety Rule first of all contains a request to employers to review their risk assessment due to the pandemic and update it if necessary. The company physician and the occupational safety specialist must be involved in this process. Particular emphasis is placed on the integration of employees in the home office and consideration of the psychological stress that the pandemic is causing people.
- Insofar as employers choose protective measures that deviate from the occupational health and safety regulations, they must ensure that these measures provide the same level of protection.
- When implementing occupational safety measures, employers must above all bear in mind that co-determination rights of works council's exist (for example, the introduction of adapted working time models or with regard to the content of risk assessment).
- If there is any doubt, employers should seek expert legal advice in order to minimise the risk of violations and sanctions.

What are the new regulations?

- and Safety Standard depending on the situation in which the employees find themselves. The individual protective measures are set out in more than ten pages of the Occupational Health and Safety Rules. We set out below an overview of some of the most important aspects, but employers should in any case carefully review the document and seek legal advice if there are any remaining questions.
- The core of the new rule is the codification of the protective measures specified by the Occupational Health and Safety Rules at work. The guiding principle here (as is currently the case in all public life) is the reduction of contact between people and - as far as possible - compliance with the rules on distancing.

Compliance with minimum distances:

- A minimum distance of 1.5m from other people should be maintained. This continues to apply – whether at work or during leisure time.
- If this is not possible, alternative protective measures should be taken, such as transparent partitions or protective masks. Markings, barriers or access regulations also help to implement the distancing regulation.

Sanitary rooms:

- In changing rooms and washrooms, technical and organisational measures should be taken to ensure that employees have sufficient space to comply with the distance rule, for example by means of distance markings on floors, limitation of the number of persons or staggered use.



Break rooms and Canteens:

- The distancing rule must be maintained in break rooms and areas, tea kitchens and at cooking facilities as well as in rooms and areas for on-call duty.
- Particular measures to achieve this include the adjustment of seating, the application of floor markings and the staggered organization of working and break times with the aim of reducing the occupancy rate. For example, limiting the number of persons or extending the canteen and food serving times to avoid queues, or an instructing person could be installed.
- Hand hygiene facilities must be provided for use before entering and using the break rooms or canteens.

Ventilation

- Increased ventilation may reduce the concentration of virus-contaminated aerosols possibly present in the room air. The simplest form of ventilation is window ventilation. A window ventilation must be carried out in the rooms when the activity starts and then at regular intervals.
- Meeting rooms must be additionally ventilated before use, especially if other people have been there before.
- The use of devices in recirculation mode, such as fans (for example stationary fans), systems for personal cooling (such as mobile air conditioning systems and split air conditioning systems) or devices for heating (for example fan heaters) is generally only permissible in rooms with individual occupancy.

Priority for working from home

- Employers should continue to allow employees working from home where possible and legally permissible.
- Otherwise, for office workplaces the free space capacities should be used and work should be organised in such a way that multiple occupancy of rooms is avoided or sufficient protective distances are provided.

Business trips and meetings

- The number of employees who are exposed to an additional risk of infection because of business trips or meetings (for example in regions with high infection rates) must be limited to what is necessary for the performance of the work task. In view of the epidemic situation on site, businesses should consider whether business trips or meetings can be replaced or reduced by the use of electronic communication.
- The minimum distance must also be observed when vehicles are shared during business trips. The number of persons in vehicles should be limited accordingly. If the distance rule cannot be implemented, partitions must be installed or personal protection measures (at least MNB) must be implemented.



Working hours and breaks

- Given the additional burdens caused by the lack of infrastructure to support the domestic sphere and the general insecurity and associated psychological stress situation of many employees, the organization of working hours is of particular importance.
- At the beginning and end of the working time and the location of the breaks, suitable organizational measures shall be taken to avoid, as far as possible, close meetings of several employees (for example, in break rooms, canteens, changing rooms, washrooms and showers), difficult implementation of the distance rule or not inconsiderable delays for the employees.

Suspected cases of Covid-19

- Persons with symptoms of a respiratory disease with suspected Covid-19 illness must stay away from the workplace.
- If there is a suspicion of a Covid-19 illness, which can arise in particular from fever, coughing and respiratory distress, the affected persons must be requested by the employer to leave the workplace immediately and recommended to seek medical treatment if necessary.

Consideration of mental stress

- In order to protect employees from Covid-19 as far as possible, new and redesigned workplaces and processes are required in many locations. This includes in some cases far-reaching changes in work organization, workplace and working time arrangements, as well as in the way in which communication and cooperation take place at work, which in turn can lead to psychological stress.

Instruction and active communication

- Occupational safety instructions (“*Arbeitsschutzunterweisung*”) and the specific occupational safety regulations must also be carried out during an epidemic.
- It is possible to carry out the instruction via electronic means of communication. It must be ensured that a comprehension test is carried out between the employees and the instructor and that questions can be asked at any time.

Return to work after a Covid-19 illness

- Employees returning to work after a Covid-19 illness have a special need for support in coping with work-related physical and psychological stress due to a possibly severe course of the illness.
- Before returning to work, returnees should receive information on the protective measures taken in the establishment or facility due to the Covid-19 epidemic.



Comment

- The new Occupational Health and Safety rule provides a good orientation for employer by specifying the Occupational Safety Standard.
- Employers should carefully review the new occupational health and safety regulations and ensure that they are observed. They can get help from the occupational safety specialists and the company physicians. The employer is responsible for implementing the necessary concrete protective measures resulting from his risk assessment. Employers should also seek legal advice for any remaining questions.
- The new occupational health and safety rule expressly points out that laws of the federal states may also provide regulations for the protection of employees that deviate from those of the occupational health and safety rule. As a precaution, employers should therefore also keep an eye on the regulations in the respective federal state.

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