

HOME OFFICE WORK IN GERMANY



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Many employees continue to work from home even after the end of the COVID-19 pandemic. Working from home has become a permanent part of the daily work routine and offers many advantages for both employers and employees.

For work from home, the regulations of the European Union and, for employees working from home under a German contract, the provisions of German law are relevant. Below, we will discuss the regulations regarding work from home in Germany and the EU, and what they mean for employers and employees.

Regulations for Work from Home

Work from home is referred to as "telework" in the regulations. The legal foundations for work from home in Germany are the Occupational Safety and Health Act, the German Social Accident Insurance Regulation 1 "Principles of Prevention," and the Workplace Ordinance.



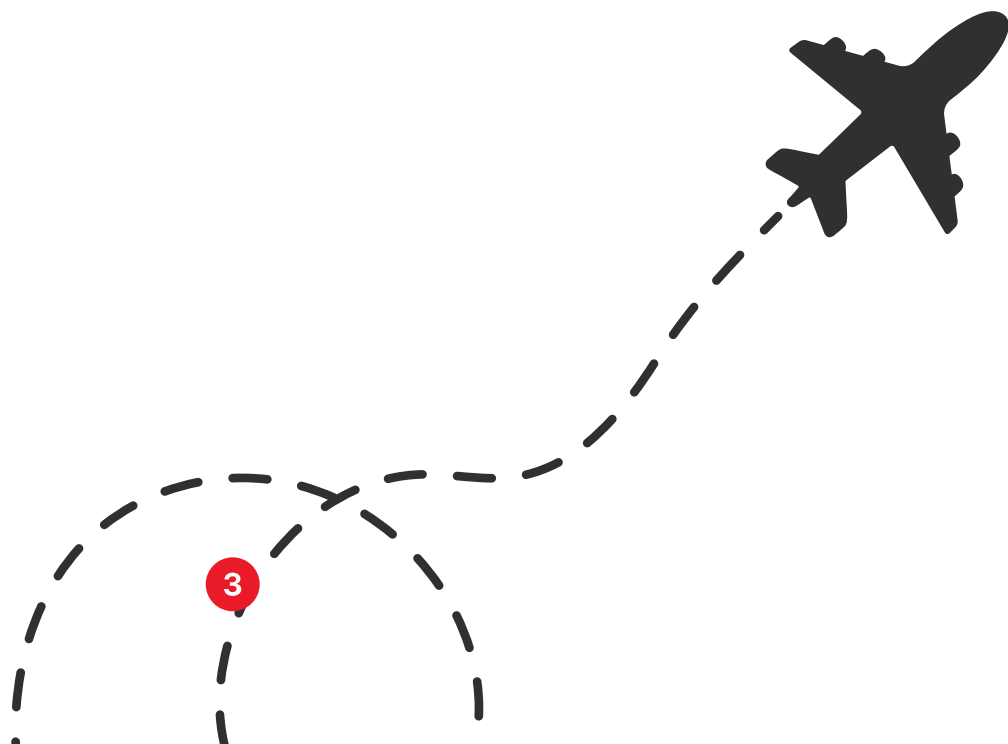
Homeoffice or Mobile Workplace?

Before assessing each employee who works from home, ensure that it truly constitutes telework in a legal sense. Only then are the same legal obligations for occupational safety as those for a regular office workplace applicable. For a "mobile workplace," which allows occasional work from different locations, this is not the case.

In home office arrangements, (partial) performance of work is carried out at a permanently set-up workstation outside the workplace, typically within the employee's home. The following applies:

- The employer must ensure that the home office workstation meets the same legal requirements as the business office workplace.
- The employee is not free to choose their non-workplace, as the work must be carried out from a fixed, certified workstation.

Mobile work refers to the ability to perform work at varying locations outside the business premises through the provision of mobile devices (e.g., traveling by train, staying in a hotel, or working from home). The employee does not necessarily have to work from home; they must merely ensure their availability.



Right to Work from Home

There is no statutory regulation in Germany granting an entitlement to work from home. Currently, the decision on whether remote work is possible lies with the employer. Employees cannot generally demand to work from home. However, many companies offer the possibility to work from home - regardless of a legal entitlement.

Work Protection Measures

The employer generally has the duty - whether in the office or at home - to ensure the health and safety of employees at work. The necessary workplace safety measures are regulated in the Workplace Ordinance as follows:

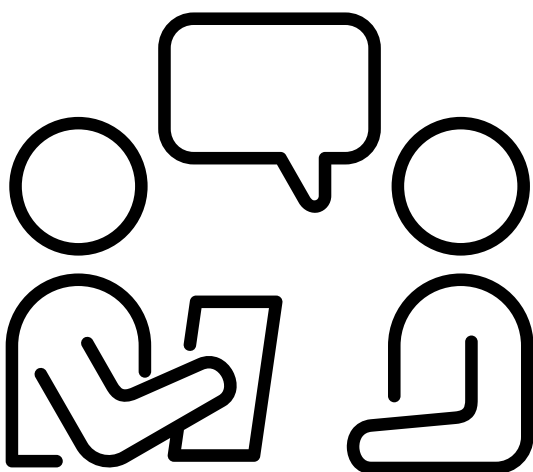


(1) Conducting a risk assessment

The employer is obligated to conduct a risk assessment for the employee's home office once, at the commencement of regular remote work. This does not entail an onsite inspection of the home office workspace, but rather requires a thorough inquiry into the circumstances, deriving appropriate safety measures from the findings, and providing the employee with adequate instruction regarding the requirements of the Occupational Health and Safety Regulation for work equipment.

(2) Monitoring the risk assessment

Once the employer has implemented the necessary workplace safety measures, they are required to monitor their effectiveness. If the conditions in the employee's home office necessitate adjustments, the employer must make the necessary changes. For example, if the employer identifies that additional lighting is needed in the home office workspace, they must ensure its provision.



Work Protection Measures - Homeoffice Checklist

The setup of a home office can vary widely based on personal preferences, home conditions, private circumstances, and professional requirements. However, there are key considerations for workplace design in a home office that both employees and employers should evaluate. A checklist would be beneficial, which employees working from home can fill out themselves. The primary focus should always be:

Is the workstation and its equipment set up safely and ergonomically to avoid injury risks and health issues?

Specifically, the following equipment should be assessed:

- **Monitor**
 - CE and/or GS certification
 - Size appropriate for the task (depends on the task)
 - Placement (best positioned 90° to the window)
 - Stability (no flickering)
 - Appropriate viewing distance (ideally 60 to 80 cm)
 - Adjustability in brightness and contrast
 - Easily adjustable tilt and rotation

Keyboard, Mouse, Document Holder

- Separation between keyboard and monitor
 - Key height (preferably no more than 3 cm)
 - Desk space in front of the keyboard (preferably 10–15 cm)
 - Easily readable keyboard labels
 - Mouse grip area (preferably no more than 30 cm from the front edge of the desk)
 - Document holder (stable, adjustable tilt, and height)
- **Desk**
 - Desk width (preferably 120 cm with one monitor and minimal paperwork, at least 160 cm for two monitors)
 - Desk depth (preferably at least 80 cm)
 - Desk height (preferably 72 cm for non-adjustable desks, 68–76 cm for height-adjustable desks)
 - Anti-reflective surface
 - Sufficient legroom
- **Office Chair**
 - Appropriate seat height and seating area
 - Ergonomic sitting posture
- **Lighting**
 - Not too dark
 - No screen reflections
 - No flickering lamps
 - Sun protection
- **Space Requirements**
 - Sufficient workspace
 - Movement space
 - Access routes to the workstation

The overall workspace environment should be designed to minimize health risks to the employee (e.g., no drafts, no exposed electrical cables that could cause tripping hazards).

In addition to the completed self-check, employers should request digital photos of employees' home offices. This allows them, as responsible parties, to assess whether adequate workplace safety measures are in place and fulfill their duties properly.

Requirements for Working Hours

In both home office and traditional work settings, EU law and the German Working Hours Act (ArbZG) apply. Therefore, employees working from home must adhere to regulations regarding maximum working hours, breaks, rest periods, and the prohibition of Sunday and holiday work—except for a few exceptions. For instance, employees must have an uninterrupted rest period of eleven hours within a 24-hour period. Additionally, EU law mandates a continuous rest period of 24 hours within a seven-day period, and these two rest periods must not overlap.

The Working Hours Act, applicable even in home office settings, specifically regulates:

- The duration of daily and weekly maximum working hours. The maximum working hours per day are eight hours, and per week are 48 hours. This limit can only be extended to ten hours per day if, over a six-month period, the average remains eight hours per day.
- The requirement to take breaks (a 30-minute break must be provided for shifts lasting six hours or more).
- Ensuring an 11-hour rest period between the end of work and the beginning of the next workday

When does the daily working time in home office start and end?

Generally, the same rules apply to working hours in the home office as in the office. This means that for the employee, the working hours specified in the employment or collective agreement apply, e.g., 7.5 hours per workday, start at 8 a.m., end at 4 p.m. (including a 30-minute break).

If the employer and employee have agreed on the start and end time of daily working hours in the employment contract, this must be adhered to. During these times, the employee must work. However, the employee must not be reachable outside these hours.

If flexibility is to be granted to the employee, the start and end times of daily working hours cannot be regulated. This can be done either through flexible working hours or through trust-based working hours. Flexible work models include flexitime or annual working hours instead of fixed weekly or daily working hours. However, this must be agreed upon with the employer! Trust-based working hours are neither legally defined nor regulated. With trust-based working hours, the employer allows the employee to decide when to perform the contractually owed working hours. For example, an employee who must work 7.5 hours daily can decide whether to work between 7 a.m. and 3 p.m. (including a half-hour break) or between 4 p.m. and midnight (also including a half-hour break). There is no obligation to be constantly reachable. However, it is recommended that the employee informs the employer regarding their "sign-in" and "sign-out" times for clarity.

Watching your favorite series or helping your kids with homework – is this considered time fraud?

In general, during working hours, work is expected to be completed, and this applies both in the office and in the home office. If an employee is required to work 7.5 hours per day, they owe this working time. Watching TV series or doing homework with children is clearly not part of the workday. However, activities like making coffee, which is similar to breaks taken in a regular office, are generally permitted. The key is that making coffee should take the same amount of time as in the office, without extending beyond what is reasonable.

In summary, normal, short breaks such as making coffee are not considered time fraud. Watching TV series or doing personal tasks like completing children's homework and then claiming it as work, however, is generally considered time fraud.

Important: Employers should emphasize adherence to these guidelines and ensure that time recording is contractually regulated with the employee.



Occupational Accident Insurance in Homeoffice

The protection of statutory accident insurance applies to the same extent as when performing duties within the company, even when the insured activity is carried out at the insured person's home ("Homeoffice") or at another location ("mobile work"). Additionally, accident insurance coverage is extended to include journeys employees undertake outside the home to take care of their children. Practically, this means that when employees transport a child living with them in the household from home office to external childcare, they are covered by insurance on the direct journey there and back.



Data Protection

High demands are placed on data security and IT infrastructure in the home office. The employer must ensure suitable data protection measures when setting up a home office workspace. Additionally, the employer must ensure that data protection requirements are continuously maintained by the employee during their work at home. The employee must ensure that only they themselves, and not family members or third parties, have access to the computer, mobile phone, and thus confidential data at the home office workplace. Data security for data transfer can be ensured, for example, through VPN connections. It must also be ensured that data is securely stored, preferably via a server within the company.

Homeoffice Agreement in Employment Contract

The specific regulations for working at a home office workplace should be clearly defined in the employment contract. It is useful to establish agreements regarding the scope of work, availability at the home workplace, the distinction or definition of the workplace for accident insurance purposes, or the transfer of documentation responsibilities to the employee.

- The employer can offer trust-based work without detailed recording, allowing the employee to manage their working hours. It should be explicitly stated that through self-determined overtime, no obligation to pay for additional hours at higher rates is triggered.
- The employer's duty to document work beyond the daily working hours can be delegated to the employee in the home office policy.
- Additionally, a ban on using personal work equipment may be advisable in terms of technical work safety.

It may also be beneficial to include a contractual right of access for the employer to the employee's residence.

Collective Bargaining Agreement for Work from Home

If a works council exists, the rules for working from home can be established in a works agreement. A works agreement on the topic of home office can and should define the framework conditions and be further specified and supplemented by individual arrangements.

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