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Notes on holiday travel and private trips (MIDM notes)

General information

For civil servants and employees, the regulation of the Ministry of Social Affairs on quarantine measures for incoming and outgoing travellers to contain the SARS-CoV-2 virus (Corona Regulation Entry Quarantine - CoronaVO EQ) applies in the currently valid version. According to § 1 Para. 1 CoronaVO EQ, officials and employees who enter Baden-Württemberg from abroad and who have been in a risk area according to § 1 Para. 4 CoronaVO EQ at any time within 14 days before entering the country must generally be quarantined for a period of 14 days. Classification as a risk area is carried out by the Ministry of Social Affairs taking into account the information published by the Robert Koch Institute. § Section 2 CoronaVO EQ allows various exceptions to the quarantine.

Employees who have a medical certificate (not older than 48 hours when entering the country), according to which there is no evidence of infection with the corona virus, are exempt from the quarantine obligation in accordance with § 2 para. 5 CoronaVO EQ BW.

You will find the prescription and current risk areas under the following link: <https://www.baden-wuerttemberg.de/de/service/aktuelle-infos-zu-corona/verordnung-fuer-ein-und-rueckreisende/>

What applies to civil servants?

Due to the predominance of general freedom of action (Article 2 (1) of the Basic Law), civil servants are in principle free to undertake private trips to risk areas. The necessary risk assessment is left to the autonomous decision of the civil servant.

However, the duty to maintain the ability to work (§ 34 p. 1 of the Civil Service Status Act - BeamtStG) requires that civil servants weigh up the necessity of the trip and the respective risk in a responsible manner. In addition, they must ensure that they can carry out their job with full commitment after returning from holiday.

In the view of the state government, an unauthorised absence from work in accordance with § 68 para. 1 of the State Civil Service Act (LBG) exists if civil servants who have to maintain a quarantine after returning from a risk area on holiday do not ensure their ability to work. This only applies if the area was already classified as a risk area before the start of the journey. In such cases, the impossibility of carrying out the duty is caused contrary to duty. For this reason, flexitime credits or vacation or, if these are used up, vacation for other reasons with loss of remuneration (Section 31 (3) of the Working Hours and Vacation Regulation - AzUVO) must be used as a rule if teleworking or mobile working is not possible. If this does not take place, there is usually a culpable absence from work during the quarantine period which leads to a corresponding reduction in salary (§ 11 para. 1 of the State Salary Law of Baden-Württemberg). In addition, the civil servant must expect this to have disciplinary consequences.

In any case, however, an individual case decision is required which takes into account the respective underlying circumstances. Thus, case constellations are conceivable, e.g. in the case of a serious illness of one or a close relative within the meaning of § 7 Para. 3 of the Pflegezeitgesetz - PflegeZG, in which the impossibility of performing the service is not caused in breach of duty by the journey to a risk area with subsequent quarantine.

- Before the start of a journey, it must be clarified with the supervisor(s) how the ability to work can be ensured after the return.

Notes on holiday travel and private trips (MIDM notes)

- When returning from a risk area, contact must be made in good time with the supervisor(s) and the personnel department and it must be clarified what must be observed and what applies in the specific case.

What applies to employees?

Employees are not obliged to have a holiday trip to a risk area according to § 1 para. 4 CoronaVO EQ approved by their employer. Nor can the employer forbid them to take a holiday trip. However, it must be pointed out to them that they must go into quarantine in accordance with the CoronaVO EQ regulations when they return from a risk area, unless there is an exceptional case under Section 2 CoronaVO EQ.

Employees should therefore clarify with the office before they start their journey how their ability to work can be ensured after their return (e.g. through teleworking or mobile working). If teleworking or mobile working is not possible and if flexitime credits and further leave cannot be used on a voluntary basis, employees should be informed that they may not receive any remuneration or compensation for the period of quarantine in accordance with Section 56 (1) sentence 3 of the German Protection against Infection Act (IfSG).

Employees who return from an area which was not yet classified as a risk area under the CoronaVO EQ when they started their journey, but which was classified as such within 14 days prior to their return, are obliged under the CoronaVO EQ to return to their own home or other suitable accommodation (quarantine) for 14 days after entry. During this period, employees are not entitled to their collectively agreed remuneration, provided that during the quarantine no teleworking or mobile work is possible (Section 326 (1) of the German Civil Code - BGB). Instead of the collectively agreed remuneration, employees are entitled to compensation in accordance with § 56 (1) IfSG (during quarantine in the amount of the net loss of earnings), which is paid by the State Office for Remuneration and Care.

Employees who return from an area which was already classified as a risk area under the CoronaVO EQ when they started their journey and which is classified as such within 14 days before their return are not entitled to their collectively agreed remuneration if no work can be done during quarantine in telework or mobile work (§ 326 Para. 1 BGB). There is no entitlement to compensation under § 56(1) IfSG because the person concerned could have avoided quarantine, § 56(1) sentence 3 IfSG. Such "fault against oneself" exists if a person has travelled to a region or country without compelling reason and this region or country was already classified as a risk area at the time of departure to that region or country, § 1 para. 4 CoronaVO EQ. Employees then receive no monetary support whatsoever during the period of quarantine.

If, in individual cases, the trip to a risk area is based on personal reasons which cannot be postponed, or if not starting the trip would entail unreasonable and unforeseeable economic disadvantages for the employee, compensation can still be granted in accordance with § 56 para. 1 IfSG in the absence of blame. This can be assumed in particular in the event of a serious illness of a close relative within the meaning of § 7 Para. 3 PflegeZG, in the event of unavoidable cancellation costs and in the event of necessary protection of property.

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In addition, the employee is free to reduce overtime or flexitime credits or to take leave during the period of quarantine for which no compensation is paid in accordance with § 56 para. 1 IfSG, in order to secure a collectively agreed remuneration entitlement.

- Before the start of a journey, it must be clarified with the supervisor(s) how the ability to work can be ensured after the return.
- When returning from a risk area, contact must be made in good time with the supervisor(s) and the personnel department and it must be clarified what must be observed and what applies in the specific case.