

The background of the entire page is an abstract, fluid design composed of numerous thin, overlapping lines in various shades of blue, teal, and green. These lines flow and swirl together, creating a sense of movement and organic form, reminiscent of water or smoke. The colors transition from deep blues and greens on the left to lighter, more vibrant greens and yellows on the right.

**Baker  
McKenzie.**

# World of Work Post-COVID-19

MAKE YOUR COMPANY FIT



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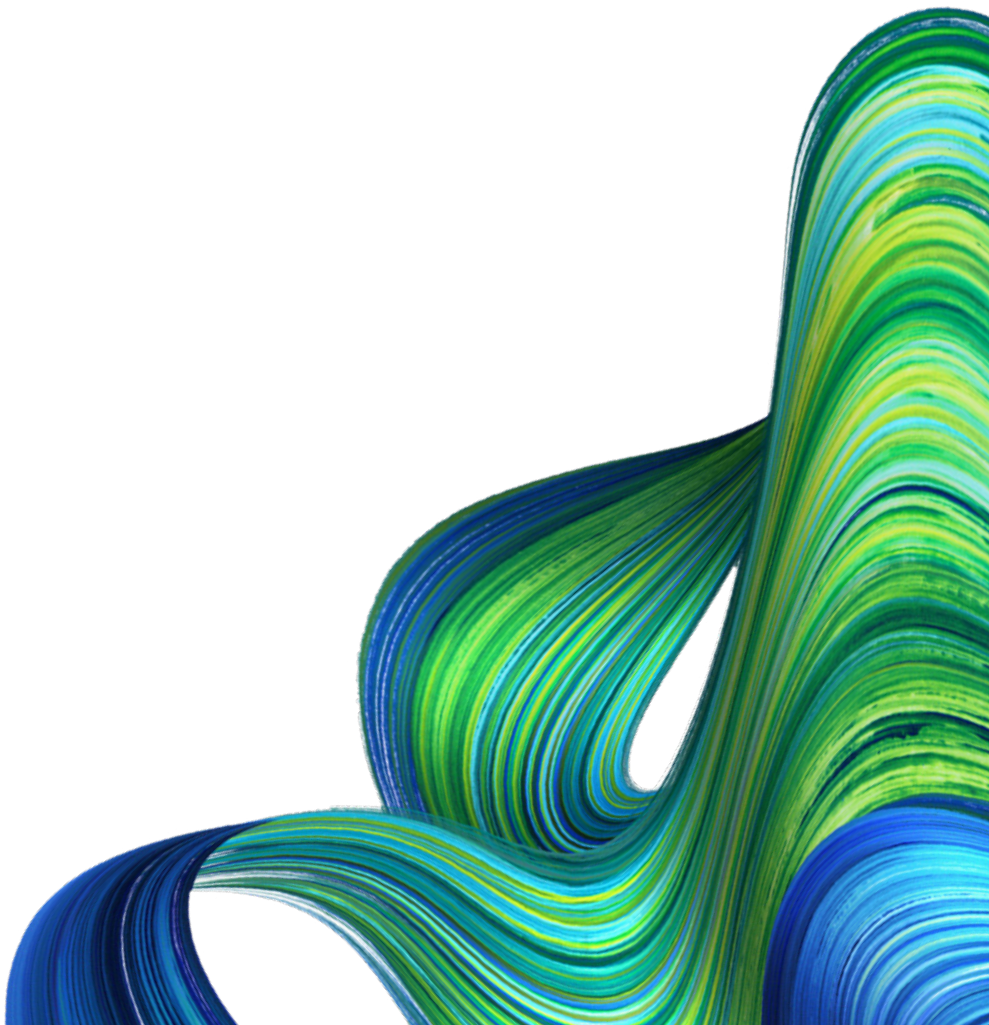
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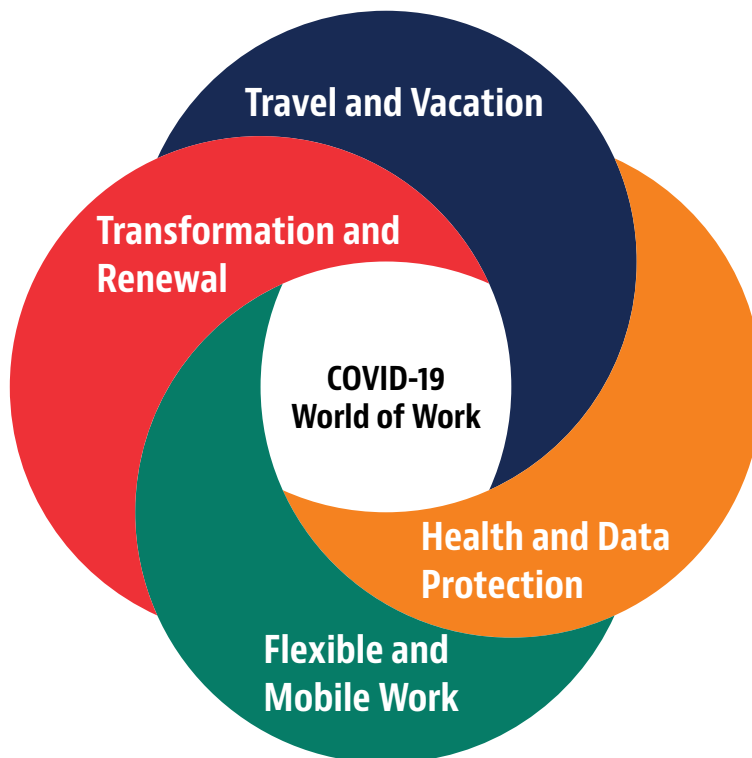
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# Introduction

The world of work after COVID-19 is not the same as before. The pandemic has triggered a **change in employment** law and created **new challenges**.

We want to raise **awareness** of these employment law developments and prepare your company for the post-COVID-19 world of work. The focus of the new challenges is on the following **four key areas**:



**We are happy to tackle your employment law challenges and make your company post-COVID-19 fit!**



## Travel and vacation after the COVID-19 pandemic

In view of the declining number of infections, vacation travel and business trips will increase again. Employers and employees have special obligations around this topic. These should be clearly defined before the start of the trip. This is the only way to avoid risks and doubts.

The obligations of the employer and the employee differ depending on the purpose of the trip. Therefore, a distinction must be made between vacation trips and business trips.

## Business trips

**Business trips** offer many advantages and they are often unavoidable. Especially in companies with many locations worldwide, business trips strengthen team spirit. Also, personal contact with customers is particularly important. In addition, to perform certain activities, it is often necessary to leave the regular place of work. For example, the personal presence of an employee with specific knowhow may be required at another location.

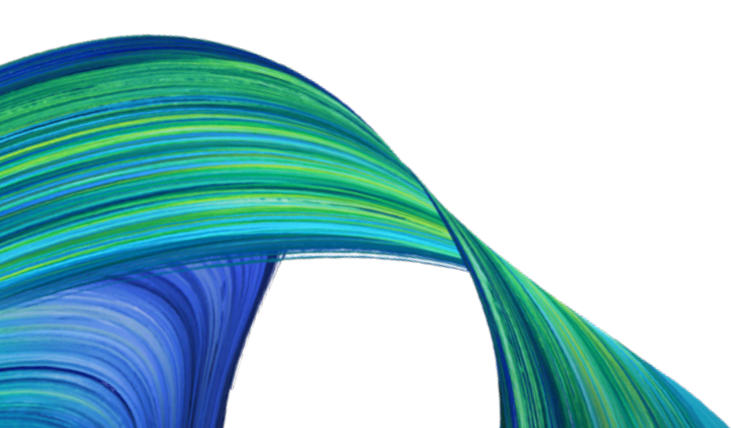
Particularly in the case of business travel following the COVID-19 pandemic,

employers have to fulfill **special obligations** to comprehensively protect employees from infections. Despite declining infection figures in Austria, employers must evaluate the safety situation in the destination area of the trip and heed travel warnings. Further, they have to prepare a safety concept for the employees before the start of the trip to ensure comprehensive health protection. Upon an employee's return, the employer also has a duty to protect other employees who encounter the employee returning from the trip.

## Vacation trips

With regard to **vacation trips**, the employer should take action before employees take their vacation. Above all, the employer should extensively inform employees about their obligations in connection with the vacation trip. This includes, for example, the duty not to travel to areas with a high risk of infection. Employers have a duty to test employees after they return from certain areas or to obtain sufficient information from them regarding possible infection. In this way, the consequences for the employee under employment law can be avoided and a good working relationship can be ensured in the long term.

Employees also have far-reaching obligations to observe. This applies in particular to **vacation trips** to areas still at risk from the pandemic. Although employees are free to choose the type and destination of their vacation trip, they must nevertheless consider the employer's operational interests. If employees act with gross negligence during their vacation and they are unable to start work as a result, they must accept the consequences under employment law such as losing continued pay of remuneration.



## Take action

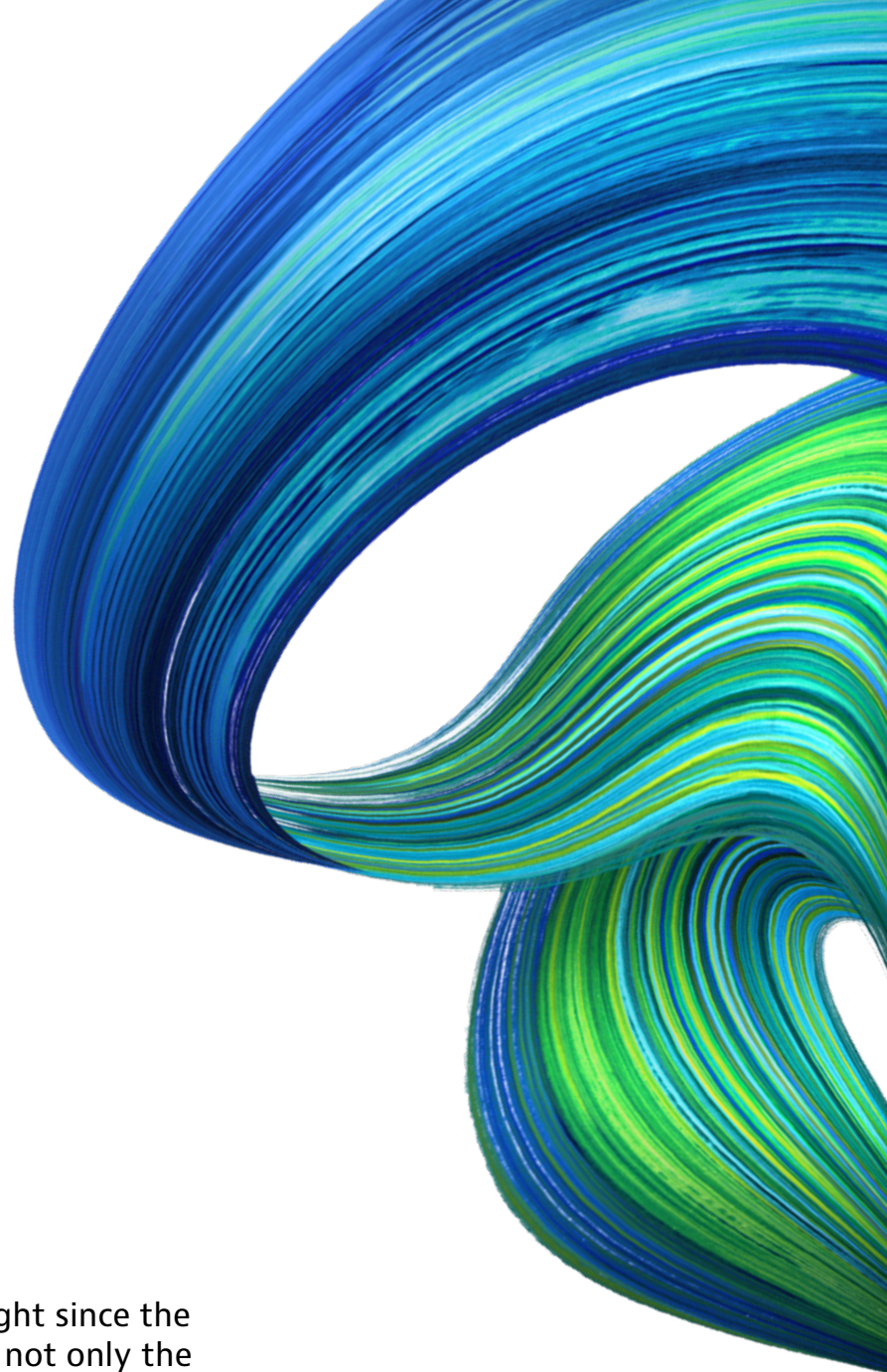
Employers have special information rights and options to take actions vis-à-vis employees around travel, for example, in certain cases, canceling sick pay, prohibiting the employee from starting work or even dismissing the employee.

### **It should be clearly defined and communicated in advance how the company handles vacation and business trips!**

In order to be able to take advantage of the benefits of travel and to avoid the associated risks, clearly communicating the rights and obligations of the parties involved is necessary. Companies should implement the following two **key points** around **vacation and business travel**:

- **Establish a contractual set of rules around the topic of vacation and business trips.** The rights and obligations of employees and employers on the subject of vacation and business trips must be clearly defined and communicated. Employees must know which obligations they have to fulfill vis-à-vis their employer during vacation and on a business trip. We evaluate necessary and advantageous regulations and create a long-term and individual vacation and business trip concept or a vacation and business trip policy.
- **Deal with employees who do not comply with their duties.** Correctly dealing with these persons can effectively avoid lengthy court proceedings. We advise on all aspects of possible measures to be taken by employers.





## Health and data protection

Health issues have been in the spotlight since the COVID-19 pandemic has begun. Now, not only the COVID-19 disease itself, but also the aftermath of the disease is challenging. Of practical relevance is prevention through vaccination. In addition, the checking of the health and vaccination status and the handling of the data collected as a result are becoming increasingly important for employers.

The following topics relating to health and data protection must therefore be taken into account:

## Aftereffects of Long COVID-19

If symptoms persist for months after a COVID-19 infection, it is referred to as **Long COVID-19**. The symptoms range from fatigue/lack of concentration to physical (e.g., fever) or psychological (e.g., depression) impairment. Many employers are now reviewing how to deal with affected employees.

When dealing with affected persons, it is decisive whether they are fit for work despite Long COVID-19; “half sickness” does not exist from an employment law perspective. Employees who are unable to work are entitled to paid sick leave the length of which depends on the duration of employment. It is not possible to estimate the duration of Long COVID-19. In the case of long periods of sick leave, questions may therefore arise regarding the **possibility for termination**, especially since the person concerned could apply with the

authorities to be granted the status of a privileged disabled person (as, for example, in the case of burnout), which could lead to **special protection against dismissal**.

However, the handling of employees who are fit for work but who nevertheless suffer from Long COVID-19 (e.g., constant fatigue) raises new issues. Indeed, despite the employee being able to work, employers have **employee protection and welfare obligations**, e.g., when assigning tasks to such employees. These duties should be observed in any case in order not to expose the company to compliance risks or claims for damages. If companies would like **to support affected persons voluntarily**, there are instruments under employment law that can be offered (e.g., **subsidized part-time reintegration** or flextime).

## Vaccination

Currently, the COVID-19 vaccination is probably the best way to **prevent** the disease and thus also Long COVID-19. Due to the progress of the vaccination rollout, the question of how to deal with “vaccination refusers” is now of **practical relevance**.

Currently, it is not possible to mandate vaccinations. However, **incentives** to do so can be offered, for example, by means of “vaccination bonuses” in the form of cash or noncash benefits (e.g., vacation days) or “privileges” for vaccinated persons (e.g., allowing them to consume food in the

common room). However, if these do not help, there are also **restrictive means** by which companies can persuade new and existing employees to be vaccinated, such as providing for a vaccination requirement in the employment contract and enforcing vaccination by means of a notice of termination.

Before implementing such measures, companies should always consider how to deal with employees who cannot be vaccinated for health or religious reasons so as not to expose themselves to accusations of **discrimination or unequal treatment**.



## Health data in employment and data protection law

Releasing information on the health and vaccination status has become socially acceptable due to COVID-19. Nevertheless, such information concerns the personal sphere and the data collected is sensitive **health data**. Collecting and processing this data is subject to **strict restrictions** from an employment and data protection law perspective.

Employers will often operate in “gray areas” here. From an employment law perspective, therefore, comprehensively **weighing interests** should always take place. Employees must answer permissible questions (truthfully). Failure to answer or answering incorrectly COVID-19 related questions can justify terminating the employment relationship, even without notice. From

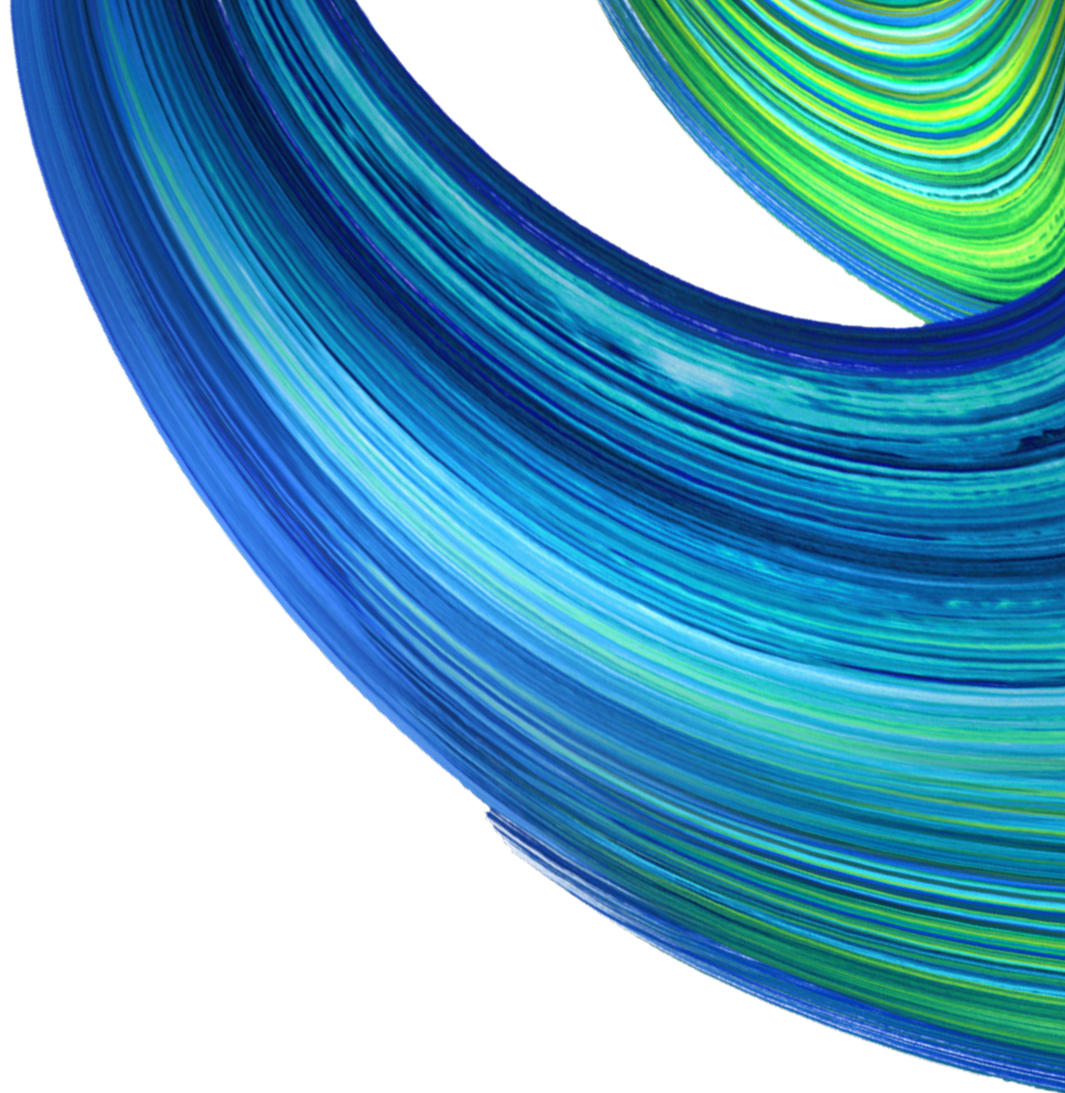
a data protection law perspective, a **declaration of consent** could eliminate doubts about admissibility, but here, too, there are some “stumbling blocks” to be avoided. Finally, companies should strictly ensure that health data is deleted as soon as it is no longer required for the purposes of processing. A strict “need-to-know” principle should be followed here. It is also important to remember to keep the data protection notice up to date at all times.

The employees’ field of activity must also be considered in any review. In terms of permissibility of data processing, it can make a difference whether employees work in a home office or have a lot of customer contact.

## In order to protect the health of employees and their health data, companies need to have clear framework conditions!

When it comes to health and data protection, employers should consider the following **four key points**:

- **Establish an individual concept for dealing with Long COVID-19.**  
The concept should contain both the mandatory measures based on the duty of care and employee protection as well as voluntary offers of support for affected employees.
- **Deal with employees and applicants who refuse the COVID-19 vaccination.** The aim here is to create legally secure incentives for vaccination and to lawfully deal with “vaccination refusers” as well as to create clear conditions before the employment relationship begins.
- **Consult with the works council on health (data).** The works council has a wide range of co-determination rights, including the right to information and consultation in many health and safety matters. In individual cases, a works council agreement may also be required in order to be able to ask questions regarding health data as well as for automatic data processing.
- **Review the employment and data protection aspects of health data.** Creating company guidelines on health status queries and processing health data is as indispensable as creating consent declarations and data protection notices.



## Flexible and mobile work

In view of the lockdown, mobile work has become widely established and entrenched in everyday working life. One thing is clear: mobile working offers many advantages. However, it also poses significant risks for employers. Therefore, companies should not only use the advantages of mobile working, but also address the evident and obvious legal and factual challenges.

For strategic considerations around mobile working, three topics point the way forward:



## Rethinking the place of work

Mobile working opens up a wide range of **savings opportunities** — this applies to both employees and employers. Employees save on daily commuting time and gain flexibility. Companies become attractive as employers and they can reduce operating expenses by downsizing their office space.

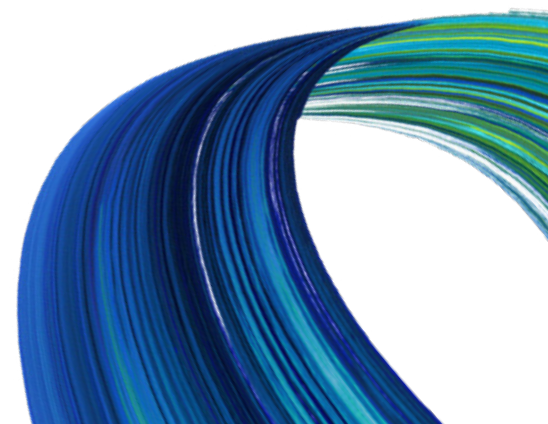
Mobile working can be designed flexibly. Many employers choose a combination of home office work and working at the company's headquarters. Other employers often get rid of the physical office altogether. They use co-working spaces or let their employees work exclusively from a home office. This can be located in the home country or abroad, or even in a vacation home by the sea or in the mountains. In particular, working from a mobile office abroad is a growing trend that allows employees to ideally combine working time and free time. Companies often underestimate the

legal and financial risks associated with such employee mobility. For example, downsizing office space/relocating from the company's headquarters gives rise to co-determination rights of the works council. Working in a home office also leads to claims for compensation on the part of the employee and to additional duties of care on the part of the employer. The performance of work in a mobile foreign office may trigger the application of very sensitive employment law regulations, such as secondment and immigration issues. Further, tax law issues should not be underestimated when dealing with foreign matters. Non-compliance can lead to severe penalties. Finally, it should be noted that working in a home office always requires the consent of the employee and this mode of working must comply with the requirements of the new Home Office Act.

## Clearly define a working time model

Mobile work blurs the boundaries between professional and private life. It is often unclear when working time begins and when free time starts. For example, does the online chat with colleagues over morning coffee count as working time? What about waiting for a call from the team leader after the official end of work? In any case,

employers should clarify these questions in advance. Companies should therefore establish an **effective working time model** for mobile working. This should clearly distinguish working time from free time and reduce the risks associated with overtime, on-call duty, maximum working hours and minimum rest periods as much as possible.



## Ensure data protection

Data is exposed to particular risks in a mobile office. Security gaps must therefore be identified and prevented from the outset as data leaks are expensive and destroy a company's reputation.

The benefits of mobile working can only be realized if data protection is guaranteed from a technical and legal perspective. For this reason, high standards must be established for organizational and technical measures to ensure data protection.

## Mobile working is attractive, but it requires clear framework conditions and an effective compliance system!

For a company to make use of the advantages of mobile working, precise evaluation and preparation is necessary in each individual case. When it comes to mobile working, companies should keep the following four key points in mind:

- **Establish an individual mobility concept.** Creating concrete framework conditions to emphasize the benefits and to limit the risks of mobile working is indispensable. Employees need to know at which locations and under which conditions mobile working is accepted and compensated. A long-term and individual mobility concept or mobility policy should be created.
- **Consult with the works council on mobile work.** The works council has a wide range of information and codetermination rights. In particular, terminating use of operational facilities and relocating to a mobile office give rise to strong co-determination rights; these extend all the way to the mandatory conclusion a works council agreement.
- **Correctly deal with employees who reject the mobility concept.** Here, all options for dealing with employees who do not want to (or cannot) support the mobility concept should be evaluated. Dealing with such employees correctly can effectively avoid lengthy court proceedings.
- **Review the data privacy aspects of mobile working.** Creating corporate guidelines and a package of measures in the event of incidents endangering data protection in a mobile office is mandatory for employers.

# Transformation and renewal

Efficiently using resources is more important today than ever before. Employers must effectively adapt their personnel costs to the economic situation and retain good employees for the long term. However, efficiently using resources requires implementing well-designed and effective transformation processes.

Companies that recognize this need early on have a clear competitive advantage. Companies should consider three key areas in their strategic alignment:

## Transformation of incentive systems

Many **financial incentive systems** that served well in the years before COVID-19 are now outdated and need to be refreshed. This primarily concerns the level of compensation to be paid out. This should be quickly adapted to new business conditions. Further, the targets to be achieved by employees, the basis for calculating bonuses, systems for employee retention and payment dates should be brought into line with the new challenges post COVID-19. This increases the attractiveness of incentive systems for companies and employees alike.

**The transformation of compensation systems** can essentially be implemented in two ways: consensually by concluding new agreements with employees or unilaterally. However, a unilateral change is only possible if the

previous compensation models contain a "change reservation" that permits unilateral adaptations. Nevertheless, even if such reservation exists, adaptations are only permissible to the extent that they are "reasonable" for the employee. Here, the changed circumstance "COVID-19" can certainly act as a "wild card." Changes to compensation systems are more "reasonable" the more the business and economic conditions have changed. In the event of changes, companies can therefore rely with great confidence on the fact that the period after COVID-19 will simply require different incentive systems and that the level of compensation will no longer be in line with the circumstances after the pandemic.





## New working environments

As the circumstances have changed, employees' areas of activity, **working time models and places of work** can also be changed if the employment contracts contain corresponding reservations regarding such changes. The only prerequisite is that the change is "reasonable" for the employees. Whether this is the case must be assessed based on operational requirements on the one hand and the employee's professional experience, training and personal circumstances on the other hand. It should

also be noted that in the event of a deterioration of the employee's working conditions, the works council, if one has been established, must give its consent to a change. However, consent can be replaced by the court if there are objective reasons for the change (such as a change due to economic circumstances).

Companies should therefore examine the contractual situation to evaluate unilateral change options and then prepare a solid argumentation concept to effectively and legally enforce changes in practice.

## Efficient personnel adjustments

Fortunately, the great wave of layoffs has yet to materialize, but many companies still need to get a grip on their **personnel costs** and selectively terminate employment relationships. One "trend" that can currently be observed in disputes over terminations is that many terminated employees cite the current allegedly disastrous labor market situation and the threat of long-term unemployment. However, companies can counter this with increasingly strong labor market data. Further, they can highlight that after the economically challenging COVID-19 years of 2020/2021, **cost reductions** are essential for the successful future of the company and for retaining the remaining workforce. In any case, the realignment

of business units and the transformation of entire business models that are now implemented by many companies are solid justifications for staff reductions. These economic aspects are currently being treated favorably by many courts, which makes restructuring relatively easy. This development also means that severance packages and social plans can be relatively inexpensive compared with earlier times when the economy was running at "full steam". This is because, in practice, the amount of the termination packages usually depends on the employer's risk of losing in legal proceedings against a terminated employee. Such risk is currently manageable.

**Currently, companies can take advantage of a particularly large number of opportunities to create new working environments and adapt headcounts to the challenges of the future.**

**Please feel free to contact us at any time if you have any questions or need further information.**

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