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Home office and remote work in Austria

Summary: **1.** Introduction. **2.** Terminology. **3.** Implementing home office. **4.** Work equipment and reimbursement of costs. **5.** Other aspects regarding home office. **6.** Collective agreements regarding home office. **7.** Terminating home office. **8.** Conclusion and evaluation.

1. *Introduction*

Working from home and remote work have been discussed by legal doctrine in Austria since at least the 1990s[1]. Also, working from home and remote work to some degree have been the object of interest in the practice and in a few collective bargaining agreements, to the extent that some specific rules were introduced for this kind of work. However, working from home only became a widespread phenomenon due to COVID-19. With effect from 01.04.2021, Austrian legislation reacted to this development by implementing new provisions regarding "home office"[2]. This essay addresses the most relevant legal aspects of working from home under the old and the new legislative rules, highlighting the achievements and shortcomings of the new legislation.

[1] TROST, *Der Arbeitnehmer in eigener Wohnung*, in *ZAS*, 1991, p. 187.

[2] Federal Act amending the Employment Contract Law Amendment Act, the Labor Constitution Act, the Employee Liability Act, the Labor Inspection Act 1993, the General Social Insurance Act and the Civil Servants' Health and Accident Insurance Act (*Bundesgesetz, mit dem das Arbeitsvertragsrechts-Anpassungsgesetz, das Arbeitsverfassungsgesetz, das Dienstnehmerhaftpflichtgesetz, das Arbeitsinspektionsgesetz 1993, das Allgemeine Sozialversicherungsgesetz und das Beamten-Kranken- und Unfallversicherungsgesetz geändert werden*; BGBl I 61/2021).

2. *Terminology*

Before the implementation of the rules regarding home office, different terms had been used for forms of work where the employee is not present at the employer's facilities, including telework and home office. There was no legally binding definition and those terms ended up meaning different things in different contexts[3].

Since 01.04.2021 there is a statutory definition of "working in a home office". The statutory requirements of home office are that an employee regularly performs services in the home (section 2h paragraph 1 AVRAG[4]). Therefore, three criteria have to be met to qualify the services of an employee as home office: the regularity, the performance of services and the home.

Legislation does not expatiate on the exact meaning of "regularly". In German, (*regelmäßig*), this could mean that there needs to be a minimum extent of home office (e.g. 10 hours per week on average) or that there has to be a specific rhythm/routine (e.g. every Monday and every Friday). However, legal literature suggests that every mode of working from home can be qualified as home office, as long as it is not performed as such only exceptionally[5]. The explanatory notes to the law support this view[6]. From the perspective of tax law, on the other hand, a certain minimum number of days must be spent in the home office for certain benefits to apply (section 16 paragraph 1 number 7a litera a) EStG[7]).

The term "services" refers to all services under the employment contract. Whether the employee is obliged to provide this type of service is not relevant, as long as the employee performs the services to fulfill his or her employment contract[8]. Whether the activity is performed using information and communication technology is not relevant[9].

[3] Felten, *Home-Office und Arbeitsrecht*, in *DRdA,* 2020, p. 512 ff.

[4] Employment Contract Law Amendment Act (*Arbeitsvertragsrechts-Anpassungsgesetz*, BGBl 459/1993).

[5] Gruber-Risak, *Homeoffice-Maßnahmenpaket 2021 (Stand IA 1301/A) - Eine erste Einschätzung der arbeitsrechtlichen Inhalte*, in *CuRe*, 2021/5; Dullinger in Köck, *Der Homeoffice-Kommentar*, Manz Verlag, 2021, § 2h AVRAG, paras. 18 ff.

[6] Initiativantrag 1301/A BlgNR 27. GP p. 5.

[7] Federal Law of July 7, 1988 on the Taxation of the Income of Individuals (*Bundesgesetz vom 7. Juli 1988 über die Besteuerung des Einkommens natürlicher Personen*, BGBl 400/1988).

[8] Dullinger in Köck, *Der Homeoffice-Kommentar*, cit., § 2h AVRAG, para. 22.

[9] Initiativantrag 1301/A BlgNR 27. GP p. 4.

"Home" means the apartment or house where the employee lives, including a balcony or garden and the cellar or the garage[10]. The apartment or house of the partner or a close relative is covered too. However, this does not include, for example, working from a cafe, on a train, or from a coworking space[11]. Although this distinction is widely challenged in legal literature[12], it clearly conveys the legislation intention[13].

Forms of work where the employee is not present at the employer's facilities and does not regularly perform services in the home are not covered by the latest legislation and are defined as remote work in the following sections.

3. *Implementing home office*

The implementation of home office primarily concerns the place of work. According to general rules, the place of work is either specified in the employment contract or results from usage and circumstances of the employment contract[14]. In case of doubts, the work shall be performed at the employer's premises[15].

In Austria, employment contracts typically explicit the place of work. It is usually also agreed upon that the employer can modify this place of work unilaterally (at least to some extent). According to the prevailing interpretation, however, such a general transfer clause does not permit the unilateral implementation of home office[16]. It cannot be assumed that the employee, by agreeing upon such a general clause, intended to allow the employer the right to dispose over his/her living space. This would require a special agreement, although part of the literature even considers such an

[10] Dullinger, in Köck, *Der Homeoffice-Kommentar,* cit., § 2h AVRAG, para. 27.

[11] Initiativantrag 1301/A BlgNR 27. GP p. 4.

[12] Körber-Risak, *Home-Office als neue Arbeitsform*, in Körber-Risak, *Praxishandbuch Home-Office*, 2021, p. 9.

[13] Initiativantrag 1301/A BlgNR 27. GP p. 4; Felten, *"Mobile" Arbeit - eine arbeitsrechtliche Annäherung*, in *DRdA*, 2022, p. 163.

[14] Kietaibl, Rebhahn in Neumayr, Reissner, *Zeller Kommentar zum Arbeitsrecht*, Manz Verlag, 2018, § 1153 ABGB para. 22.

[15] OGH 16.9.1987, 9 ObA 92/87.

[16] Bartmann, Ondrejka, *Home-Office in Zeiten von COVID-19*, in *ZAS*, 2020, p. 165; Felten, *Home-Office und Arbeitsrecht*, cit., p. 516.

agreement to be inadmissible[17]. Other parts of the legal literature tend to allow such agreements in principle, provided that such a provision is appropriate for the employee in the specific individual case[18].

When COVID-19 started to spread in Austria, one part of legal literature argued, therefore, that an obligation to work from home under certain circumstances follows, as a matter of fact, from the employee's accessory contractual obligations (*Treuepflicht*)[19]. In emergency situations, employees are in fact obliged to provide services that they would not be obliged to provide under normal circumstances[20]. Since then, however, what was supposed to be a temporary answer to this crisis, became a permanent *status quo* in many sectors, which can by no means be based on the duty of loyalty. The other part of legal literature argues that the unilateral implementation of home office was unlawful even at the beginning of the crisis[21].

The newly adopted section 2h paragraph 2 AVRAG stipulates that home office can only be implemented upon a mutual agreement between the employer and the employee. Therefore, there is neither a statutory right to work from home, nor an obligation to work from home. The parties to the employment contract also cannot agree that the employer has the right to unilaterally order home office[22].

According to the explicit wording of section 2 paragraph 2 AVRAG, the agreement has to be in writing. However, an oral agreement or an agreement by conduct is still valid and there is no direct sanction for its absence[23]. Nevertheless, it could be that some uncertainties regarding the exact content of the agreement are to be borne by the employer, if he or she fails to comply with the requirement that the agreement is in writing[24].

This provision is not applicable to remote work; nevertheless the general

[17] Felten, *Home-Office und Arbeitsrecht*, cit., p. 518.

[18] Auer-Mayer in Köck, *Der Homeoffice-Kommentar*, cit., § 2h AVRAG, paras. 118 ff; Dullinger, *Vertragsgestaltung bei der Einführung und Ausgestaltung von Homeoffice*, in *ZAS*, 2021, p. 189.

[19] Friedrich, *Entgeltfortzahlung nach § 1155 ABGB und COVID-19*, in *ZAS*, 2020, p. 157 ff; Eichmeyer, Egger, *Ausgewählte Praxisrechtsfragen zum Homeoffice,* in *RdW*, 2020, p. 849.

[20] OGH 20.4.1994, 9 ObA 23/94; Kietaibl, Rebhahn in Neumayr, Reissner, *Zeller Kommentar zum Arbeitsrecht*, cit., § 1153 ABGB, para. 38.

[21] Felten, *Home-Office und Arbeitsrecht*, cit., p. 516 ff.

[22] Dullinger, *Vertragsgestaltung bei der Einführung,* cit., p. 189; Auer-Mayer in Köck, *Der Homeoffice-Kommentar*, cit., § 2h AVRAG, paras. 120 ff.

[23] Initiativantrag 1301/A BlgNR 27. GP p. 4.

[24] Auer-Mayer, in Köck, *Der Homeoffice-Kommentar,* cit., § 2h AVRAG, para. 112.

rules of contract law in most cases lead to the same result. The most significant difference is probably that the contracting parties may in principle also establish a right of the employer to issue an instruction to work remotely.

4. *Work equipment and reimbursement of costs*

Once home office is successfully implemented, the first question that arises is that of cost bearing. Who has to provide the necessary equipment and who has to bear the costs associated with home office?

According to general rules, the employer has to provide all the necessary equipment and has to pay for it[25]. However, the parties to the employment contract can agree otherwise. Therefore, it is possible that the employee has to provide the necessary equipment or parts thereof (e.g. a table and a chair or an internet connection)[26]. It is still not clear to what extent the costs can be passed on to the employee. However, there are good reasons to believe that, at least additional costs actually incurred, cannot be passed on to the employee in most cases. However, if the home office work is in the sole or predominant interest of the employee, it may be possible to further limit the employer's obligation to reimbursement of expenses[27].

With regard to digital work equipment, the newly adopted section 2h paragraph 3 AVRAG strengthened the rights of employees. If the parties agree on home office, the employer has to provide all necessary digital work equipment (e.g. a notebook, a smart phone or an internet connection). If the parties agree that the employee shall use his or her own equipment, the employer has to reimburse the corresponding costs. The costs may also be borne by means of an appropriate[28] lump sum. Deviations from this rule are only permitted if they are more favourable for the employee. A limitation of the reimbursement entitlement is therefore in general not possible.

[25] Windisch-Graetz, *Arbeitsrecht II*, new academic press, 2020, p. 67; Risak, *Home Office I - Arbeitsrecht - Vertragsgestaltung, Arbeitszeit und ArbeitnehmerInnenschutz*, in *ZAS*, 2016, p. 206; Eichmeyer, Egger, *Ausgewählte Praxisrechtsfragen zum Homeoffice*, in *RdW*, 2020, p. 851.

[26] Haider in Kozak, *ABGB und Arbeitsrecht*, ÖGB Verlag, 2019, §§ 1014–1016 ABGB, para. 24.

[27] Dullinger, *Vertragsgestaltung bei der Einführung,* cit., p. 191.

[28] Gruber-Risak, *Homeoffice-Maßnahmenpaket 2021 (Stand IA 1301/A) - Eine erste Einschätzung der arbeitsrechtlichen Inhalte*, cit.

In respect of non-digital work equipment, the general rule mentioned above is still relevant. The same is true for all forms of work equipment in the case of remote work.

5. *Other aspects regarding home office*

Several other legal aspects were discussed in relation to home office, and some of them were addressed by the newest legislative measures.

If an employee unintentionally causes damage to the employer while working, the compensation for damages can be reduced or omitted (section 2 paragraph 1 DHG[29]). There is no reason why this should not be the case for damages occurring while working from home[30]. However, it was unclear whether or how this privilege could be extended to other persons living with the employee (e.g. a spouse or kids) if, for example, they should damage the employer's work equipment. New legislation (section 2 paragraph 4 DHG) stipulates that this privilege also covers persons living in the same household as the employee who cause damage to the employer in relation to the work performed in the home office (in the sense of section 2h paragraph 1 AVRAG). However, due to the somewhat ambiguous wording and omitted clarifications, the scope of this privilege is unclear in detail[31].

Similar questions arise concerning occupational accidents. Occupational accidents are accidents that occur in a local, temporal and causal connection with the employment (section 175 paragraph 1 ASVG[32]). Because of some older decisions of the Supreme Court, it was unclear how far the protection against occupational accidents in the home office reaches[33]. Therefore section 175 paragraph 1a ASVG now expressly states that accidents occurring during home office are protected as well. Recently, the Supreme Court also recog-

[29] Federal Act of March 31, 1965 on the Limitation of Liability for Damages owed by Employees (*Bundesgesetz vom 31. März 1965 über die Beschränkung der Schadenersatzpflicht der Dienstnehmer*, BGBl 80/1965).

[30] Brodil in Köck, *Der Homeoffice-Kommentar*, cit., § 2 DHG, paras. 5, 17; *Brodil*, *Home Office II - Haftung bei entgrenzter Arbeit*, in *ZAS*, 2016, p. 210 ff.

[31] Brodil in Köck, *Der Homeoffice-Kommentar*, cit., § 2 DHG, paras. 19 ff.

[32] Federal Law of September 9, 1955 regarding General Social Security (*Bundesgesetz vom 9. September 1955 über die Allgemeine Sozialversicherung*, BGBl 189/1955).

[33] Brodil, *Neue Arbeitsformen und Unfallversicherung - Versicherungsschutz bei entgrenzter Arbeit*, in *ZAS*, 2019, p. 14 ff.

nised a social security protection under the general provision as a general rule[34]. However, the precise distinction between an occupational accident and a non-protected accident remains difficult in cases regarding home office[35]. The same is true for remote work[36].

There is a dispute in the literature as to whether the provisions on occupational health and safety (especially the ASchG[37]) must be complied with in the home office. The legislation only comments on this matter in the explanatory notes to the new law[38], but it makes no legally binding decision. The legislator regulated only one specific aspect: the control bodies of the labour inspectorate are not entitled to enter the home of an employee working in home office (section 4 paragraph 10 ArbIG[39]). In literature, the view prevails that the provisions of the ASchG are generally not applicable in the home office. Only in the case the employer designs the workplace by himself/herself do some of the provisions apply[40]. However, there is a growing number of voices in recent literature arguing that at least the general provisions of the ASchG apply to work in the home office as well[41]. A key argument in favour of this view is the interpretation of the scope of the ASchG in accordance with Directive 89/391/EEC[42-43].

It is largely undisputed, though, that the regulations regarding working time apply to home office. Therefore, both the maximum daily working time limits and the minimum rest periods must be observed. The same is true for

[34] OGH 27.4.2021, 10 ObS 15/21k.

[35] Brodil in Köck, *Der Homeoffice-Kommentar*, cit., § 2 DHG, paras. 35 ff.

[36] Brodil in Köck, *Der Homeoffice-Kommentar*, cit., § 2 DHG, paras. 59 ff.

[37] Federal Law on Safety and Health at Work (*Bundesgesetz über Sicherheit und Gesundheitsschutz bei der Arbeit*, BGBl 450/1994).

[38] Initiativantrag 1301/A BlgNR 27. GP p. 4.

[39] Federal law on labor inspection (*Bundesgesetz über die Arbeitsinspektion*, BGBl 27/1993).

[40] Bartmann, Ondrejka, *Home-Office in Zeiten von COVID-19*, cit., p. 164; Köck, Prasser, *Checkliste: Home-Office-Vereinbarung*, in *ZAS*, 2016, p. 247; Risak, *Home Office I - Arbeitsrecht - Vertragsgestaltung, Arbeitszeit und ArbeitnehmerInnenschutz*, cit., p. 208 ff. See also Gruber, *Arbeitnehmerschutz bei Teleheimarbeit*, in *ZAS*, 1998, p. 67 ff.; Trost, *Der Arbeitnehmer in eigener Wohnung*, cit., p. 184.

[41] Stinauer, *Arbeitnehmerinnenschutz im Home-Office*, in Körber-Risak, *Praxishandbuch Home-Office*, 2021, p. 83 ff; Felten, *Home-Office und Arbeitsrecht*, cit., p. 520 ff; Dullinger, *Vertragsgestaltung bei der Einführung*, cit., p. 191 ff.

[42] Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183/1989, p. 1.

[43] Dullinger, *Vertragsgestaltung bei der Einführung*, cit., p. 191 ff.

weekend rest and national holidays[44]. According to the general rules, working time records must also be kept in the home office (section 26 AZG[45]). The beginning and end of the working time must be clearly documented in this record. According to section 26 paragraph 3 AZG, however, only the duration of daily working time must be recorded for employees who perform their work predominantly from their home. Since the ECJ, based on the Working Time Directive[46], stipulates an obligation to keep detailed records of daily working time[47] and since it is not possible to check whether the minimum rest periods have been observed using this form of recording – since it is not evident when the work began and when it ended – this option is not compatible with EU law[48].

Finally, there is a substantial debate about data protection in the home office. On the one hand this concerns the safety of the employer's data, on the other hand it concerns the processing of employee data. Again, there are no specific legal provisions on the matter[49].

6. *Collective agreements regarding home office*

In Austria, there are two different types of collective agreements. On the one hand there are collective bargaining agreements (*Kollektivverträge*), on the other hand there are works agreements (*Betriebsvereinbarungen*). While the former typically cover entire industrial sectors, the latter are applicable at the level of the individual company or plant[50]. Neither a collective bargaining agreement, nor a works agreement is necessary to implement home office.

Prior to the aforementioned legal changes, collective bargaining

[44] Bartmann in Köck, *Der Homeoffice-Kommentar*, cit., 2. Teil, paras. 2 ff.

[45] Federal Law of December 11, 1969 on the Regulation of Working Hours (*Bundesgesetz vom 11. Dezember 1969 über die Regelung der Arbeitszeit*, BGBl 461/1969).

[46] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299/2003, p. 9.

[47] ECJ 14.5.2019, C-55/18, *CCOO* paras. 40 ff.

[48] Mazal, *Neue Arbeitszeitaufzeichnung: Wahrheit statt Schönung - Konsequenzen auch für Home-Office*, in *ecolex*, 2019, p. 657 ff.

[49] Leissle, Terharen in Köck, *Der Homeoffice-Kommentar*, cit., 4. Teil, paras. 1 ff.

[50] Kietaibl, *Arbeitsrecht I*, new academic press, 2020, p. 196 ff, 262 ff.

agreements could already contain comprehensive provisions on home office[51]. In practice, however, this was only the case in a few sectors and the stipulated rules in most cases were rather general[52]. Whether and to what extent works agreements could contain regulations on home office was controversial. However, it is relatively certain that at least some aspects of home office could be regulated by company agreement (for example aspects of working time and the use of the employer's equipment taken home)[53].

These uncertainties have been largely eliminated by the legislator. Pursuant to section 97 paragraph 1 number 27 ArbVG[54], the works agreement may now regulate the general conditions of the home office. This section includes, in particular, regulations regarding the necessary equipment and the bearing of the corresponding costs[55]. More detailed specifications regarding the place of work and modifications to working hours are also possible. Finally, it is also possible to specify occupational health and safety, data protection and the protection of equipment by means of a works agreement. However, an agreement that directly regulates remuneration would be inadmissible[56]. An obligation on the part of the employee to work from home would also not be permissible, because this would conflict with the principle of voluntary participation set forth in section 2h paragraph 2 AVRAG[57]. Whether a right to home office for the employee can be part of a works agreement is, yet, disputed[58].

[51] Felten, *Home-Office und Arbeitsrecht*, cit., p. 513 ff.

[52] Felten, *Home-Office und Arbeitsrecht*, cit., p. 513.

[53] Gruber-Risak, *Homeoffice-Maßnahmenpaket 2021 (Stand IA 1301/A) - Eine erste Einschätzung der arbeitsrechtlichen Inhalte*, cit.; Dullinger in Köck, *Der Homeoffice-Kommentar*, cit., § 97 ArbVG, paras. 14 ff; Felten, *Home-Office und Arbeitsrecht*, cit., p. 514 ff.

[54] Federal Law of December 14, 1973 concerning the Labor Constitution (*Bundesgesetz vom 14. Dezember 1973 betreffend die Arbeitsverfassung*, BGBl 22/1974).

[55] Initiativantrag 1301/A BlgNR 27. GP p. 5.

[56] Dullinger in Köck, *Der Homeoffice-Kommentar*, cit., § 97 ArbVG, paras. 5 ff.

[57] Auer-Mayer, in Köck, *Der Homeoffice-Kommentar*, cit., § 2h AVRAG, paras. 122 ff.

[58] Against this possibility: Gerhartl, *Gesetzliche Regelung des Homeoffice - Arbeitsrechtliche Aspekte der Neuregelung*, in *ASoK*, 2021, p. 164. In favor of this possibility: Auer-Mayer, in Köck, *Der Homeoffice-Kommentar*, cit., § 2h AVRAG, para. 125.

7. *Terminating home office*

According to general rules, an agreement regarding home office, which is an integral part of the employment contract, cannot be unilaterally terminated or cancelled by one of the two parties. This would only be the case if the agreement contained a reservation of the right to change or revoke the agreement[59].

However, the newly created provisions regarding home office provide for a deviation from this principle: according to section 2h paragraph 4 AVRAG, an agreement on home office may be terminated by either party to the employment contract for good cause by giving one month's notice on the last day of a calendar month. The agreement may also be concluded for a fixed term or contain termination provisions. This provision is noteworthy for two reasons. On the one hand, it provides for the possibility of terminating only a part of the employment contract, which is not possible under the general rules of Austrian labor law. On the other hand, it combines termination for good cause with a notice period and a termination date, which is inconsistent with Austrian labor law[60]. This particularity causes serious problems. There are situations in which at least one party cannot be expected to continue with the home office arrangement even on a temporary basis. And, yet, the wording of the law, which is clear in this respect, also requires compliance with the notice period and the termination date in these cases. The affected party to the employment contract, then, has no other option than to seek agreement with the other party or to terminate the entire contract in order to overcome this situation.

This problem can be somewhat mitigated by clever contract design. The parties to the employment contract are free to agree upon regulations regarding termination. However, the details about the extent of individual freedom are not clear. For example, it is not manifest whether a termination option can be created without a notice period and without a date, and whether a termination option can be created that is only open to the employer, but not to the employee[61].

However, problems will arise in practice for other reasons as well. When

[59] Reissner in Neumayr/Reissner, *Zeller Kommentar*, cit., § 20 AngG, paras. 96 ff.
[60] Auer-Mayer, in Köck, *Der Homeoffice-Kommentar*, cit., paras. 180 ff.
[61] Dullinger, *Vertragsgestaltung bei der Einführung*, cit., p. 193 ff.

this new regulation came into force, home office was practiced in many companies in Austria due to the pandemic, without the legal basis for this being clear. However, the new regulations also apply to these agreements. Employers in particular, however, generally speaking, will not be eager to establish a home office option that cannot be terminated without good reason. These cases can only be solved by assuming a conclusive fixed term depending on the pandemic situation.

8. *Conclusion and evaluation*

Some legal aspects of the home office can be solved with already existing general regulations, although these results are not always in line with reality. A perfect example of this is the unilateral instruction to work from home. The awareness of the unlawfulness of these directions was probably not particularly well developed. Other legal aspects of the home office could also be solved with existing law, but under the old legislation there used to be room to weaken the corresponding standard of protection under the agreement. Although this possibility was subject to legal constraints, in practice it could be overused by many employers due to the existing legal uncertainty. The perfect example for this is bearing of costs. Other problems could not be solved adequately on the basis of the old legislation, such as the liability of the employee's relatives for damage to equipment.

The introduction of specific regulations for the home office is, therefore, in principle to be welcomed and has the merit of having to deal with the matter of homeoffice in the light of a changed socio-economic scenario. However, the details are problematic. This starts with the fact that new regulations have led to the creation of new differentiations. Above all, the differentiation between home office and remote work, that raises not only practical, but also constitutional problems. It is questionable, whether a justification can be found for this different treatment of otherwise comparable situations or whether there is a violation of the fundamental right to equal treatment (Article 7 paragraph 1 B-VG[62]) here[63]. The same is true, *mutatis mutandis*, for the distinction between digital and non-digital work equipment.

[62] Federal Constitutional Act (*Bundes-Verfassungsgesetz*, BGBl 1/1930).

[63] DULLINGER in KÖCK, *Der Homeoffice-Kommentar*, cit., § 2h AVRAG, paras. 37 ff.

Another major point of criticism is the fact that the legislator did not explicitly address problems that it should have or even did recognize. In particular, the applicability of the ASchG for the home office should have been clarified by law, as this issue has a direct and far-reaching impact on the work performed in the home office.

Finally, new regulations were created that are inconsistent with the existing legal system. These rules may have pursued legitimate objectives, but, in doing so, they neglected other legitimate concerns. This creates legal uncertainty and the potential for inappropriate outcomes in individual cases.

Abstract

Working from home and remote work have been discussed by legal doctrine in Austria since at least the 1990s. Also, working from home and remote work to some degree have been the object of interest in the practice and in a few collective bargaining agreements, to the extent that some specific rules were introduced for this kind of work. However, working from home only became a widespread phenomenon due to COVID-19. With effect from 01.04.2021, Austrian legislation reacted to this development by implementing new provisions regarding "home office". This essay addresses the most relevant legal aspects of working from home under the old and the new legislative rules, highlighting the achievements and shortcomings of the new legislation.

Keywords

Remote work, home office, reimbursement of work costs, risks for employer and employee, legal uncertainty.