**Topics in our issue:**



# The 2021 legislative package to govern working from home ("home office")

With the onset of the COVID-19 crisis, working from home has become a prevailing mode of employment. The long-awaited package of measures for home office 2021 has introduced notable amendments in labour law and tax law.

According to the statutory definition, "home office" means that an employee regularly works from his/her own home (Section 2h (1) of the Act Governing Amendments to Employment Law (AVRAG)). According to the legislative procedural records, "home" includes a residential building, a secondary residence, or the home (house) of a near relative. Consequently, the new regulations do not apply to other types of mobile working, e.g. in a public coworking space. Such flexible types of work may certainly be agreed on but will not be governed by the regulations of the new package.

**Remote working continues to be subject to mutual consent**

Even before the new arrangements entered into force, remote working has always required an **agreement between employer and employee**. Section 2h (2) AVRAG specifically stipulates that remote working must be agreed on in writing "for documentary purposes". According to the legislative procedural records, agreeing to a unilateral reservation of instruction on the part of the employer (i.e. the employer's right to unilaterally order an employee to work from home) is not permissible. However, since this restriction is not found in the actual law, it must still be possible to have unilateral instructions to work from home temporarily considering the mutual duty of care and loyalty, at least in special exceptional cases such as granting leave of absence to high-risk groups, for quarantine or in the event of an urgent health recommendation (e.g. a possible fourth wave of the pandemic in autumn).

According to the legislative procedural records, the lack of a written (signed) agreement does not cause such agreement to be void; an agreement may also be achieved electronically (e.g. by email).

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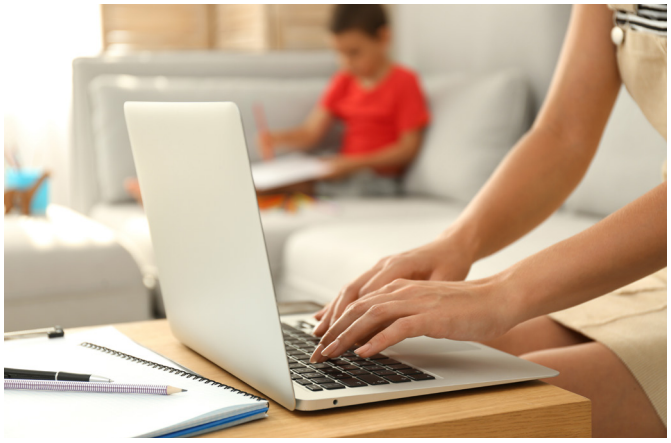
The digital tools required for regular work from home (laptop, mobile phone, data link) must be provided by the employer (Section 2h (3) AVRAG). The parties may agree to depart from this rule, provided that the employer bears the reasonable and necessary costs of the digital tools made available by the employee; such costs may be recompensed as a lump-sum.

For important reason, a remote-working agreement may be cancelled at a month's notice on the last day of any calendar month (Section 2h (4) AVRAG). Irrespective of this option, the parties may agree time limits and provisions for (ordinary) termination of employment. Mutually agreed termination is possible at any time.

**Voluntary works council agreement**

In Section 97 (1) no. 27 of the Austrian Labour Constitution Act ArbVG, the legislative package also introduces a specific works council agreement ("framework regulations for working from home") which provides the prerequisites for detailed regulations at company's level (provision of working tools, rules for cost remuneration, etc.). Such works council agreements may be used as a basis for the individual agreements which are always required.



**Accidents at work**

The Third COVID-19 Act has already come up with special temporary rules regarding accidents sustained at work. They are now adapted and made permanent: accidents at work now include accidents that occur at home in a temporal and direct context of the insured employment relationship (Section 175 (1a) of the Austrian General Social Security Act ASVG). By equalling the place of abode with the place of work in Section 175 (1b) ASVG, coverage now includes certain en-route accidents.

Furthermore, Section 2 (4) of the Austrian Act Governing Liability of Employees (DHG) stipulates that the provisions of this act must apply when the employer sustains damage from persons living in the employee's household in connection with such employee working from home.

**Working from home and taxation**

The tax side of the package governing remote working was regulated in the Second COVID-19 Tax Act with a view to compensating employees for the higher costs of working from home.

It stipulates that the value of the digital tools provided for free by the employer to the employee for the latter's work, as well as a **lump-sum allowance for remote working** granted by the employer are not taxable (and not subject to social insurance contributions). The lump-sum allowance is, at most, EUR 3 for each day that the employee works solely from home; it is payable for not more than 100 days per calendar year. A lump-sum allowance exceeding EUR 300 per calendar year is deemed to be remuneration for work and subject to taxation and social security contributions. When the lump-sum allowance is less than the maximum of EUR 3 per day of working from home, the employee may assert the difference for each day of actually working from home (within the limit of 100 days) as lump-sum allowance for promotion expenses in his/her tax return. The lump-sum allowance for remote working cuts the deductible expenditure on digital tools for use at a home workplace by the asserted amount. It is not credited against the general lump-sum allowance for promotion expenses of EUR 132.

Expenses on ergonomic furniture (including but not limited to desk, swivel chair, lamps) of a home workplace may be asserted as income-related expenses for up to EUR 300 per calendar year (without being credited to the lump-sum allowance for promotion expenses), subject to having at least 26 days of remote working per calendar year. If the total purchasing or production costs of such furniture exceed the maximum amount, the excess may be asserted, again up to the maximum amount, in a subsequent year up to the calendar year of 2023. For assets procured in 2020, a transition rule applies in such way that the maximum amount for the 2020 calendar year is EUR 150 (always provided that the employee worked from home for at least 26 days). An application to account for such costs constitutes a retroactive event within the meaning of Section 295a of the Austrian Federal Tax Code BAO. The maximum amount for the 2021 calendar year thus is EUR 300, reduced by the amount asserted in the 2020 calendar year. Altogether, up to EUR 900 in additional promotion expenses are tax-deductible up to 2023. However, the employee must not assert any further expenses for a work room at home in the same calendar year.

Contrary to the labour law provisions, the tax provisions are time-limited and will become ineffective on 1 January 2024.

**Amendment of the Ordinance Governing Payroll Accounts**

A change in the Ordinance Governing Payroll Accounts needs to be noted by employers: In order to compute the maximum non-taxable lump-sum allowance for working from home, and the lump-sum allowance for income-related expenses regarding ergonomically fit furniture for remote working, it is necessary to enter in the payroll account every day on which the employee works solely from home, regardless of whether or not a lump-sum allowance for working from home is actually paid out.

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# Full-scale reform of Austrian execution law

On 1 July 2021, comprehensive amendments to the Austrian Execution Code (EO) will enter into force. They are the (tentative) conclusion to the reforms of execution law which started with the 1991 Amendment to the Austrian Execution Code (Exekutionsordnungsnovelle 1991).

The current amendment is designed to boost the efficiency of execution proceedings to collect debts. The new (extended) "execution package" aims to further reduce the principle of speciality, according to which the creditor needs to choose the remedy and object of execution in the application, and to reduce the number of applications for execution.

**(Extended) execution package**

As a new feature, an application for execution that does not explicitly name specific means of seizure will automatically include seizure of chattels, seizure of wages/salaries, and the creation of a list of assets. In doing so, the reform reflects current practice while avoiding problems of boundaries between the types of execution.

Another problem in connection with the seizure of claims and other assets was that the petitioning creditor had to specify the objects of execution already in the application, even though in most cases such assets (in particular claims against unknown third-party debtors, such as bank deposits) came to light only through the debtor's list of assets. By the time the seizure was to take place (which required another application), these claims/assets typically had vanished, or it was difficult for the creditor to assess whether the debtor's claims against the third party were actually enforceable.

In order to avoid such a situation, a creditor no longer needs to list assets in the application. Instead, as a part of the extended "execution package", the court will appoint an administrator who will be in charge of identifying the assets, selecting suitable objects and handling the procedure including their utilisation. This means that the new execution proceedings will copy the established model of utilisation by an administrator used in insolvency proceedings. However, execution on real estate - as before - must be applied for separately.

Same as the seizure of chattels, execution of claims will be continued until the creditor is satisfied, even if the third-party debtor should change.

**Concentration of jurisdiction**

All procedures to collect monetary debts from personal property will be combined at the debtor's general place of jurisdiction (domicile). This makes it easier to determine whether the debtor is insolvent, a major aspect since creditors may, in insolvency proceedings

instituted at a later date, have to return payments received after the debtor has become insolvent. If the debtor is clearly insolvent, the execution proceedings must be aborted. Creditors may file a petition for insolvency; debtors must do so.

**Extended right to inspect execution data**

Whereas it was previously only permissible to request data concerning execution proceedings in order to assess whether it was appropriate to conduct civil or execution proceedings, it will also be possible to request such data in order to assess whether insolvency proceedings should be initiated. Debtors can make a free query via a representative (lawyer, notary or debt counselling centre) and prepare their debt relief.

**Editorial changes**

The current full-scale reform has also been taken as an opportunity to ensure a clearer and more systematic structure of the regulations as well as a more contemporary and less abstruse language. This is intended to make the legal text, parts of which are still in their original version drafted in 1896, easier to read and apply.

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## New members and new publications of Preslmayr Rechtsanwälte

Over the past few months, we were pleased to welcome two new members in our team: we salute **Clemens Jenny** (see above) and **Johannes Safron** (right) and look forward to working with them!

Recent legal publications include two books to which our partner **Erland Pirker** (below) contributed: ***Vorsorgewohnungen*** (Investment Flats), meanwhile into its fourth edition, is a practical manual for the purchase of flats for retirement provision describing how to prepare and ensure the smooth handling of the purchase of a flat as a retirement plan.

Also being a specialist in banking law, Erland Pirker contributed a chapter on deposit defaults and legal consequences in ***Einlagensicherung*** (Deposit Guarantee Schemes). Have an inspiring read!



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