Corona Virus – Legal Information for Expats

Even though the reason for this article is the worldwide increasing concern relating to the Corona Virus, the following explanations can basically also be transferred to several other scenarios that comprises an evacuation or quarantine and remain valid even beyond the current situation.

After the retrieval of German citizens from the Chinese crisis area, especially in the area of Wuhan, by the German Armed Forces, the German Federal Foreign Office announced, that the evacuated persons would be charged – at least pro rata – with the expenses of this undertaking. Taking this into consideration, the question of the relevant legal basis for that reimbursement as well as the general evacuation procedure has increasingly arisen. The following statements are intended to explain the current legal situation.

1. Duty of Care by the German State

The German Constitutional Law itself states a duty of care by the German state for its citizens all over the world. In relation to the matter here, the German Consular Act describes this duty in more detail and obliges the state to support Germans abroad with advice and assistance. One primary way of fulfilling this duty of care, is evacuating German citizens, if necessary.

However, any assistance of the state is not to be seen as an unconditional obligation, but rather at the dutiful discretion of the authorities. Therefore a citizen is not entitled to claim a specific kind of state assistance. Minor violations of the rights of individual citizens abroad may for example be acceptable in order to keep higher-ranking interests of the general public safe. However, the German Federal Foreign Office sees the abovementioned "dutiful discretion" in its constant administrative practice as a "duty", which is expressed regularly to the public. This practice, related with the constitutional principle of equality, results in a self-commitment of the administrative authority. Further to that, the constitutional duty to protect the life and physical integrity of the citizens must be taken into consideration once the authority exercises its discretion. In a nutshell it can regularly be expected that the authority will promptly evaluate the situation and initiate the needful assistance procedures.
In case an evacuation has taken place, it has to be clarified who is obliged to bear the costs of the required procedures. Even though this might seem unexpected, the costs are basically to be borne by the individual affected citizen.

The German Consular Act in relation with the German Foreign Costs Act and the German Foreign Costs Regulation build the legal framework for this procedure. As a general rule, the recipient of consular assistance is obliged to reimburse the state for its relevant expenses. Moreover, the state is not only entitled but obliged to claim reimbursement of its expenses. Only in particular cases - especially in cases of hardship - the claim for reimbursement of expenses can be waived by the state.

2. Duty of protection by the employee

In the event of work assignments abroad, the employer may also have duties to protect its employees. If German labour law is applicable, the employer's duty of care must be considered, which results as an accessory obligation from the employment contract. Depending on the individual case, this duty can have a wide variety of impacts. The duty ranges from general information on how to behave during crises to warnings in individual cases to more extensive actions, such as retrieval from abroad combined with accommodation in back in Germany.

3. Quarantine measures

After a successful evacuation to Germany, quarantine measures may be ordered. In accordance with the German Infection Protection Act, it is at the competent authority’s (usually the district administration) discretion to order quarantine measures for suspected cases of infection or disease. The quarantine can also be carried out by force.

If evacuation or quarantine measures have been ordered by the authorities and are followed by the affected persons, obviously these persons are no longer able to carry out employment on site. As per the German labour law, the contractual obligation to work is waived in these cases. Consequently the question arises, if the Employer remains obliged to pay the employee’s salary. Depending on the individual case, the continued payment of wages due to “personal prevention” may come into consideration. In this case, the employer is obliged to continue to pay wages for a few days up to several weeks without the employee having to provide any services.

If this wage-preserving legal rule does not apply, because it has been waived in the employment contract, a claim for compensation as per the German Infection Protection Act can be asserted. Unlike the costs of evacuation measures - and subject to other special regulations - the costs of quarantine measures are borne by the state in general.
4. Office shut down

Last, the procedures of temporary office and operations shut down due to dangers or protective measures have to be highlighted. In case the Employee is willing and able to work, the entitlement to remuneration retains, as per the German labor law. An Obligation to provide the omitted work at a later stage does not exist.

Further labour law related procedures in this context may also be the extension of the employer’s right to issue instructions as well as the unilateral postponement or revocation of leave.

Please be informed, that our labor law team is highly educated in German and local labor law. We are delighted, to answer all of your questions in the abovementioned regard. If you have any other legal questions, notwithstanding the above, please do not hesitate to contact our Dubai Office under maria.christina@roedl.com, or +971 (4) 2950020. Our team would be pleased to answer your queries.

Roedl & Partner wishes you and your families a healthy and safe upcoming time.

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