

THE STATE OFFICER FOR DATA PROTECTION AND FREEDOM OF INFORMATION

Press Office of the State Commissioner for the

Data protection and freedom of information

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PRESS RELEASE

Continued payment of wages in the event of quarantine:

LfDI provides information on the - unfortunately unclear - legal situation

Through

one

Row

from

changes

of

Infection Protection Act, it was clarified that employers

not in general, but only in the area of certain industries –

e.g. hospitals, medical practices and care facilities –

the

immunization status

the

employees

(vaccinated/recovered) may inquire. One is currently reaching us

Multitude of inquiries as to whether employers are eligible for

their

employees

in the

frame

any

entitlement to continued payment of wages information about the vaccination status

to demand.

If an employee is subject to a quarantine

The employer pays if ordered by the health department

initially the continued payment of wages for up to six weeks. Of the

Employer accepts this payment on behalf of “the

competent authority”. In a second step, the

Employers from the competent authority then reimbursement

request the amounts paid out. A claim to

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An employee has compensation according to § 56 paragraph 1 sentence 4,

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IfSG

however, not if the employee uses these

quarantine

through

Making use of

one

general

recommended vaccination or by not attending one

avoidable trip

in a risk area could have avoided

be able.

This initially understandable legal regulation allows a

Series of follow-up questions open, which the practical

Implementation of continued wage payments relate to:

☐ May the employer request the wage refund from the

Authority to get the employee according to his

Ask vaccination status?

☐

Conversely, if the employee is obliged to

vaccination status

opposite to

his employer

to

disclose, and / or he must do so to the employer

even provide receipts (vaccination card, etc.)?

☐ In the case of non-vaccinated persons, does the employer also check whether

health

reasons

(heavy

illness/operation,

Pregnancy,

Immune disorder etc.) or compelling respectively

unavoidable reasons for traveling abroad

Risk area (death or serious illness of a

close relatives, spa stay, medical

intervention

in the

Abroad,

professionally

prompted

stay abroad etc.)?

The legal situation is ambiguous in this respect

Practically relevant questions are not clarified by the law.

This weighs heavily because from the point of view of data protection

Employer private matters of the employee (e.g.

pregnancy, illness diagnoses) should not concern us.

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In order to provide more clarity here for employers, employees and

Creating authorities is the responsibility of the State Commissioner for the

Data protection and freedom of information in Baden-Württemberg

Dr Stefan Brink submitted a position paper in which he

essential questions are clarified. Not all points are there

Agreement with the competent authorities.

The state commissioner Brink: "The pandemic is taking hold

before massively in the civil rights of the people. Unfortunately

the legal requirements leave many questions unanswered,

this also applies to continued salary payments in the event of quarantine. Of the

Employers may in the context of wage reimbursement after

ask the employee's vaccination status, the employee

but does not have to reveal his sensitive data to him if

he doesn't want that. The employee can also use this

responsible

regional council

the

continued payment of wages

ensure without the employer's knowledge of the

health data obtained. Those responsible see that

Authorities but unfortunately partly different. Such different

Opinions are unfortunate for both employers and employees

Ultimately, only the legislature can provide clarity. and

so should he.”