

Working from home in times of Coronavirus

The Office regularly updates its [information and advice](#) for staff about the crisis. We recommend you to read it as it contains useful information to preserve your health and the health of persons you live with. Still, we would also like to add our grain of salt to some advice it gives, especially in section VI of the FAQ. The advice below applies to staff not being put on sick leave.

Are you expected to work from home?

It is useful here to recall a few principles:

- Work must normally take place on Office's premises¹ and the Office has a duty of care. In other words, it must provide you with suitable means to allow to work in compliance with recognised standards, including ergonomic standards. Working from home is therefore an exception and it cannot be considered an obligation under the Service Regulations, as a matter of principle.
- The host countries guarantee inviolability of the private home². They also guarantee protection of private and family life, i.e. also for other persons living in your household.
- The relationship between the Office and its employees is based on mutual trust and good faith, so that an employee can be expected to take reasonable measures to mitigate the consequences of the President's decision and to try to discharge their duties³.

In the GCC meeting on 2 March 2020, the President mentioned some "contract" to be agreed between line manager and staff member in case of quarantine but he ignored our request for consultation on a collective framework. Your work relationship essentially relies on the Service Regulations⁴ and you should resist agreeing to such an additional individual contract that would be binding on you. By nature, neither you nor the Office can control the conditions under which you would work from home. Furthermore, your work depends on the work of others (e.g. examiner colleagues and formalities officers in DG1), whose work will also be affected by the crisis. Therefore, you should not be expected to give any guarantee as to the volume or deadlines of the work you will deliver under those exceptional conditions and you should not impose upon yourself expectations that might endanger your health.

In order to avoid any misunderstanding in the future, especially when the Office will appraise your performance, do not just discuss with your line manager on the phone but write minutes of any important point you have discussed or any instruction you might have received and share them with your line manager.

¹ See Article 55a(1) ServRegs

² See for instance Article 13(1) of the German Basic Law: "Die Wohnung ist unverletzlich."

³ See Article 20 ServRegs

⁴ Contract staff might be in a different situation.

What will your administrative status be when instructed to remain at home?

First of all, you must obey an official instruction³ to remain at home (actually not to enter Office's premises). In case of doubt you should seek written confirmation of that order. You do not have to take any type of leave during that time⁵.

What should you do if you are expected to work from home, don't have PTHW equipment or a laptop with you?

The question is rather: what are reasonable conditions for home working? The official FAQ is fairly evasive here. It appears fair to examine this under objective criteria.

We could not find any passage in the Service Regulations covering a situation similar to the present crisis. However, the Part-Time Home Working (PTHW) scheme gives useful directions, where the President of the Office would allow staff to work from home on a voluntary basis⁶.

Home working is subject to some conditions, especially the compliance of the home workplace with the health and safety regulations of the Office (which the Office may check only if authorised by the staff member⁷). The [Guidelines for part-time home working at the EPO](#) gives useful recommendations on several aspects, most notably:

- the framework, e.g. the condition for start, interruption, end;
- the shaping of the working place, especially a separate office with adequate furniture / lighting...
- the job performance (duration, production, compulsory presence at the workplace)...;
- agreement on any costs to be borne by the Office;
- liability and insurance matters, including data protection and immunity.

The Health & Safety Department has also published [recommendations for an ergonomic workplace](#) in addition to the statutory Ergonomics guidelines for work with display screen equipment at the EPO⁸. We cannot see that the present crisis would justify less protective conditions, quite to the contrary. You should pay heed to your health before considering Office's priorities and you should follow the ergonomic recommendations issued by the Office, i.e. avoid unreasonable ergonomic conditions, stick to a 40-hours week with more frequent breaks than in near-optimal conditions. More specifically, the Guidelines make clear that, for most staff, working from home with an official laptop as only equipment would most certainly harm their health. You should definitely ask for a monitor⁹, at least.

In addition, staff members usually share their household with other persons. You have to consider them as well and avoid any situation increasing stress that might in turn affect your health, their health, and so defeat the preventative measures. You can also legitimately trust that the Office does not impose stress on you with unrealistic expectations.

In conclusion, you should assess your personal situation taking all those elements into account. It might even be that you cannot work from home at all.

⁵ This also applies if you have to care for a child who cannot go to the crèche/school/ESM.

⁶ See for instance Articles 25, 26b, 55a(8) ServRegs

⁷ See Article 7 Guidelines for part-time home working at the EPO

⁸ See CODEX, Part 4a: "If the main computer is a laptop the Office shall provide a docking station, separate display equipment and a keyboard."

⁹ See the BIT service desk: [FAQ Possibilities to work from home in case of quarantine due to corona virus](#)"

If you are in the PTHW or AHTW¹⁰ scheme, do you have to make any changes to your current agreement?

The PTHW scheme implies at least that you have an ergonomic workplace at home. However, this does not necessarily mean that you can use it forty hours a week, e.g. in case you need to share it with a partner. Furthermore, measures linked to the crisis, e.g. closure of a crèche/school, could even cause that a child would have to remain at home. Also, some work can only be done in the non-PTHW time, i.e. on Office's premises. Therefore, the conditions you agreed to with PTHW for part-time home working cannot be extrapolated to full-time home working. They might even have to be temporarily adapted. Once again, this depends on your personal circumstances and you should not agree (i.e. commit) to anything beyond your PTHW (or AHTW) agreement.

If you consider it necessary to work from home to reduce the risk of contamination

Also due to your personal circumstances - such as health weakness in your household or the danger associated with travelling in public transportation - you might consider it advisable or necessary to work from home. You mustn't stay at home of your own motion without express authorisation. As regards the possibility of "self-quarantine" mentioned in the FAQ, if you are not (yet) written off sick but feel unwell, you must clarify your personal situation with the Office in writing (preferably by email, i.e. not coming on the Office's premises). Otherwise you might be put on unauthorised absence, with salary deduction and possibly disciplinary measures¹¹.

Conclusion

As any employer, the Office bears alone the operational risk and it must accept the consequences of the Coronavirus crisis, even if it is not responsible for it. However, the President must manage the Office and ensure its functioning. It is thus understandable that he offers staff a possibility of working from home, in order to limit the impact of the crisis for the Office, its users and the public

However, quarantine does have an adverse psychological impact, with individuals showing exhaustion, anxiety, irritability, insomnia, poor concentration, indecisiveness and deteriorated work performance¹². This is why the Office must avoid imposing unnecessary stress on staff when "ensuring business continuity". Thus, staff's rights and expectations are also legitimate, in order to preserve their health and their private life, i.e. not to sacrifice them to financial or other extraneous interests.

The Staff Representation has already made health the first item on its own [social agenda 2020](#). We hope that the present crisis will further raise the awareness of the Office and make health matters a priority on their social agenda too.

The present situation calls for a collective framework ensuring legal certainty and equal treatment of all staff. We are still waiting for any proposal from the President, prior to statutory consultation in the COHSEC and in the General Consultative Committee, as required in the Service Regulations¹³.

Please do not hesitate to give the Staff Representation or your Union any feedback you may consider valuable. Solidarity and sharing of information will also help to overcome the present crisis.

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¹⁰ Ad hoc teleworking is merely a pilot project.

¹¹ See Article 63 ServRegs

¹² See e.g. The Lancet online, "[The psychological impact of quarantine and how to reduce it: rapid review of the evidence](#)"

¹³ See Articles 38a (3, 5) and 55a(2) ServRegs