

POSITION STATEMENT

Reform of Workplace Regulation

Position Statement of the Social and Labor Affairs Committee of the American Chamber of Commerce in Germany

February 2015

Reform of Workplace Regulation – excessive and distant from reality

Occupational health and safety protection are important issues. However, the proposed amendments by the German Workplace Regulation (*ArbStättV*) go far beyond the current regulatory area and would, if put into practice, present companies with great challenges. Although some parts of the proposed amendments by the Federal Council (*Bundesrat*) are accurate, they do not solve problems regarding the improper inclusion of telework.

AmCham Germany therefore strongly urges the Federal Government to reject the proposals of the Federal Council and improve the cabinet bill (*Kabinetentwurf*) in certain areas. Although the political procedure is already in an advanced stage, massive concerns on behalf of business should be considered and taken into account appropriately.

Make occupational safety practical

The possibility to occasionally work from home or during travel is standard practice in many companies. The high level of flexibility implied by this practice is often wanted by workers, as it not only facilitates the reconciliation of work and family, but also allows for the pursuit of hobbies and social commitments. However, given the planned reform, our member companies are uncertain about how to fulfill the necessary risk assessment in these cases. The cabinet bill leaves many questions unanswered, which urgently have to be clarified.

In order to provide sufficient legal certainty, the definition of a "workplace" (Section 2(4) BR509/14) should be defined more clearly. In particular, it has to ensure that temporarily exercised "home office activities" will not fall within the scope of regulation. An examination of these workplaces would constitute an enormous burden for many companies. This is aggravated by the fact that no legal base has been defined on how risk assessment should occur in the private domain of employees (Section 2 (6) BR509/14).

Today's inappropriate and impractical inclusion of telework becomes even more apparent through the example of mobile working. According to the broad definition in Section 2 (4) of the bill, even work on a PC in a hotel room or the use of smartphones and tablet computers on the train could fall within the proposed regulation. This cannot be the intention of the federal government. There is an urgent need for clarification. Otherwise, companies would be affected by massive legal uncertainty, which could ultimately lead them to prohibit the use of these new, digital forms of work among their employees. This would strongly contradict the interests of the younger generation of workers who increasingly demand this form of flexible work from their employers.

Stop excessive bureaucracy

According to the draft regulation, companies must not only provide "lockable coat racks" for all employees - regardless as to whether they are a craftsman or an accountant. The proposed bill would also regulate room temperature in storage rooms and archives. In addition, it would become compulsory for restrooms and kitchens to have access to daylight. Such bureaucratic and impractical overregulation would especially burden our small and medium-sized businesses disproportionately.

Furthermore, the reorganization of the instruction of employees combined with a corresponding documentation requirement in § 6 of the draft regulation is unnecessary. A provision has already been established in § 12 of the Working Conditions Act (*Arbeitsschutzgesetz*). Furthermore, the Industrial Safety Ordinance (*Betriebssicherheitsverordnung*) regulates the obligation to provide instructions. In particular, the obligation to reinstruct workers for the same occupation in a new workplace creates unnecessary bureaucracy.

Implement European requirements "one-to-one"

We also note with great concern that the current proposals go far beyond European Law. One can no longer talk about a "one-to-one" implementation of the Council Directive 89/654/EEC concerning workplace requirements. This was, however, the declared goal of the new federal government in order to prevent further burdening of companies located in Germany and provide for fair competition among their European neighbors. Therefore, we urge the government to act in the interest of the coalition agreement by not taking a different German approach, but rather acknowledging European and global competition conditions.

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