



21ST TSC LEGAL INFORMER



SPRING 2024

Telework by Spouses of U.S. Forces Personnel

By Joerg Modellmog, Marianne Schoonjans, Jarin Nijhof and LTC Justin Evison

Living overseas has special challenges. This is particularly true for dependent spouses that want to continue working for their stateside employer. This article will discuss telework by the spouses of service members and civilian employees working for the U.S. Forces in Germany, Belgium, the Netherlands and Italy. While service members and civilian employees of the U.S. Forces are protected by the NATO Status of Forces Agreement (SOFA) and various supplemental agreements, these protections may not always apply to their spouses when the spouses work for private companies, either in the host nation or in the United States. There are unique rules in each country, so each will be discussed separately.

Germany

While Germany allows dependent spouses to work, such employment is not protected by the NATO SOFA and, therefore, subject to German rules. Luckily, there is an Agreement between Germany and the US on Social Security. Based on it, your US employer may apply online for a Certificate of Coverage with the US Social Security Administration at https://www.ssa.gov/international/CoC_link.html. It will allow you to be kept under the US social security system.



However, when it comes to income taxation, the situation is much more complex. If you are present in Germany for more than 183 days and perform telework in Germany, you will generally be subject to German income taxation, even if your employer is American and is located in the United States. An exception exists if your stateside employer is a governmental agency.

If your work in Germany is minimal and preparatory in nature and you fly back to the US on a regular basis to perform the clear bulk of your work there, you will not be subject to German income tax. An example is a spouse working for a Florida real estate broker who posts photos of Florida homes on a US website in Germany but regularly flies to Florida to show the homes and to close the deals.

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The 21st TSC Legal Informer is the newsletter of the 21st Theater Sustainment Command (TSC) Office of the Staff Judge Advocate.

Our mission is to provide outstanding legal support to Soldiers, Civilian Employees and Family Members assigned to or supported by the 21st TSC. Our headquarters is located in Kaiserslautern, Germany. We have branch offices in Kaiserslautern and Baumholder, Germany, Mons, Belgium, Brunssum, The Netherlands and Camp Bondsteel, Kosovo.

Copies of this and previous newsletters may be found at: https://armyeitaas.sharepoint-mil.us/sites/21TSC_SJA.

Telework by Spouses of U.S. Forces Personnel (continued)

Teleworking Americans will generally only be subject to limited taxation (beschränkt steuerpflichtig) in Germany: the Germans will only tax the income generated by the teleworking in Germany. On the US side, you should be able to avoid double taxation of that income by using the Foreign Earned Income exclusion when doing your federal taxes and claiming the "physical presence test" on IRS Form 8833.

While teleworking Americans can opt for unlimited taxation (unbeschränkt steuerpflichtig) in Germany, it is generally not advisable to do. It will subject your worldwide income to German taxation. Finally, in order to file taxes, you will have to pay a German tax consultant because all paperwork and software will be in German.

Belgium

Many dependent spouses come to Belgium hoping to supplement the family income, but employment in Belgium can bring unintended consequences. There are many important points to keep in mind when considering whether or not to work in Belgium, which includes remote work (telework) for a U.S. company.



There are some practical consequences for US personnel who engage in commercial activity. US dependents engaging in a commercial activity are immediately treated as an ordinary resident of Belgium, which makes them ineligible to apply for positions with US forces in Belgium. They also lose their special Protocol ID card and the opportunity to make tax-free purchases at SHAPE activities on behalf of their sponsor that comes with it. Please note that you will retain most of your U.S. privileges, as they come from your sponsor. These consequences apply regardless of the type of commercial activity you are involved in (i.e., self-employment or employment with an off-post non-

government affiliated company) or where the business takes place (in US owned/leased housing or in privately leased housing or building).

Any U.S. spouses who are present in Belgium for more than 183 days in a year and who work for any employer other than the U.S. government are subject to Belgian income taxation. This is true even if the employer is an American company, is located in the United States, and has no operations in Belgium. Thanks to an agreement between the U.S. and Belgium, such spouses will not need to pay taxes to both countries, but they will need to file taxes in both countries.

In addition, these spouses will need a work permit from the regional government where they live, either Flanders, Wallonia, or Brussels. Spouses' employers will be responsible for securing such permits, but self-employed spouses will have to do this themselves. They will also need separate health care insurance.

Netherlands

Telework by spouses is permitted by the Netherlands, subject to a number of limitations. The teleworking spouse must be employed by a Dutch employer or properly registered with the appropriate Dutch Chamber of Commerce as self-employed (<https://www.kvk.nl/english/>). The Dutch authorities consider teleworking from the Netherlands as a Home-Based Business activity performed in the Netherlands. U.S. dependents are not required to obtain a Dutch work permit, pursuant to a special agreement between the Dutch and United States government (the Dutch – American Friendship Treaty).



Teleworking by Spouses of U.S. Forces Personnel (continued)

Regardless of whether the company the spouse is teleworking for is located in the U.S. or in the Netherlands, Dutch labor and taxation laws will apply. Under Dutch law, it is the location of the economic activity (telework), NOT the location of the employer, that is decisive. If the spouse is working for a company located in the U.S., the company must establish a local European branch office to comply with Dutch labor law. Alternatively, the spouse can be hired through a Dutch or international payroll company.

The spouse's telework, just like any other gainful economic activity in the Netherlands, will be subject to Dutch income taxation and contributions to a separate mandatory Dutch medial insurance. Tricare coverage is not considered as sufficient to waive this requirement.

Italy

Dependent employment in Italy has been an increasingly important issue for the 13,000+ family members stationed here. It is also a significant factor for service members and their families who are considering future assignments in Italy. Thankfully, 2023 saw positive developments with the new ability of dependents to telework to US employers.

Dependents receive a mission visa in their passport before arrival in Italy. Due to an exchange of letters in August of 2023, dependents can telework for US employers while maintaining their mission visa. Teleworking dependents retain their SOFA status including all on-base privileges. US employers include any US company and private or non-profit organization, as well as federal, state and local governments. Dependents who work for a federal agency may also now apply for DETO status and telework remotely from Italy to their federal job. Their agency and the Embassy must first approve their DETO request per OPM guidelines.

Telework income earned while the teleworker is working from Italy is taxable by Italy. Due to the US – Italy double taxation treaty, income needs to be declared to both Italy and the US. However, taxpayers will pay tax to one country and receive a tax credit from the other country for taxes already paid. Otherwise, no permits or notifications are needed for telework.

To work for an Italian company in Italy or elsewhere in Europe, including telework, dependents need an Italian work visa and would fall under the Italian labor system including the Italian tax system. Dependents with work visas may still utilize on base services such as the commissary, PX, schools, housing, vehicle registration, driver's licensing, etc. The US continues to work with the Italian government on a more comprehensive agreement which would allow for more dependent employment opportunities such as home-based business providing products and services in the local military community, and broader telework or in-person work opportunities to employers outside the US.

Conclusion

Dependent spouses who telework for private companies located either in the United States or the host nation may be subject to various host nation tax and labor laws. Before beginning or continuing such employment, these spouses should inform themselves of the applicable rules. Questions can be directed to your local military legal assistance office.



Germany to Legalize Marijuana: New Law Does Not Change US Forces Prohibitions on Marijuana

By Holger Blug

The German Parliament (Bundestag) recently passed a new law to partially legalize marijuana. The implementation of the law is planned for 1 April 2024.

Under the new German law, cultivation and possession of a limited quantity of marijuana by adults for their own use will no longer be a criminal offense. However, there will be higher penalties for trading and distributing marijuana among children and young people under the age of 18. The minimum penalty will be two years imprisonment.

Each adult will be allowed to possess up to 50 grams of marijuana and three female flowering cannabis plants in their home. In public places, adults will be allowed to possess up to 25 grams of marijuana. Possession in excess of this amount (up to 30 grams in public or 60 grams in the home) can result in an administrative offense (Ordnungswidrigkeit) resulting in a fine. Owning larger quantities can still be charged as a criminal offense (Straftat) with a fine or imprisonment up to three years.

Although the consumption will be generally allowed in public places, it will still be prohibited within a distance of 100 meters of a school, kindergarten, playground or public sports facility. In a pedestrian zone, consumption of marijuana will not be permitted between 0700 and 2000.

Adults will be able to legally obtain marijuana from a non-profit association or club (similar to some regions in Spain or Malta). However, there are still restrictions. A member of the club must be at least 18 years old. The member can only get 50 grams per month and if the member is under the age of 21, they cannot get more than 30 grams of Marijuana with a THC-content of not more than 10%. The long-term plan is to allow the commercial trade of marijuana in pharmacies or licensed shops, but this is not allowed under the new law.



Minors under the age of 18 will still not be allowed to buy, possess, or cultivate marijuana, but they will not be prosecuted. However, the parents will be informed and in difficult cases the youth welfare office will also be involved.

Finally, it is important to know that buying or selling marijuana (except as described at the clubs above) will still be punishable, regardless of whether the perpetrator is an adult or a minor. (continued on next page)

Germany to Legalize Marijuana: New Law Does Not Change US Forces Prohibitions on Marijuana (continued)

Driving under the influence of marijuana will still be an administrative offense under German law, although the plan is to establish a limit for the THC-content (similar to the BAC limit for a DUI). However, until a new law in this area is agreed upon, German law provides for a minimum fine of 500 Euros and a one month's suspension of driving privileges for driving under the influence of marijuana; a revocation of driving privileges is also possible.

DESPITE THE NEW LAW, MARIJUANA IS STILL ILLEGAL UNDER U.S. LAW. U.S. FORCES SERVICE MEMBERS, CIVILIAN EMPLOYEES AND THEIR FAMILY MEMBERS ARE ALL STILL PROHIBITED FROM THE USE AND POSSESSION OF MARIJUANA.

U.S. service members can be punished by court-martial for use or possession of marijuana. The Uniform Code of Military Justice provides for up to two years in prison for any service member who uses, manufactures (which includes growing marijuana plants) or possesses less than 30 grams of marijuana; the penalty jumps to five years confinement for manufacture or possession of 30 grams or more. Fifteen years confinement is authorized for distribution of marijuana and manufacture or possession of marijuana with the intent to distribute.



Civilian employees of the U.S. Forces are also prohibited from use or possession of marijuana by Executive Order 12564, signed by President Reagan in 1986. This order states that "Federal employees are required to refrain from the use of illegal drugs" to include marijuana. The prohibition applies to such employees "whether on duty or off duty." The application of these rules to local national employees of the U.S. Forces is still pending coordination with the Local National Works Council.

Possession and use of marijuana is also prohibited on federal property. 41 Code of Federal Regulations section 102-74.400 provides that "all persons entering in or on

Federal property are prohibited from . . . [b]eing under the influence, using or possessing . . . marijuana . . ."

Family members of U.S. service members and civilian employees can also be disciplined for use or possession of marijuana. Army in Europe and Africa Regulation 600-1 provides that "[p]ersonnel will not knowingly use, buy, sell, possess, deliver, advertise, have custody of, manufacture, store, package, test, or conceal" marijuana or "introduce" marijuana "into a military area, installation, building, or facility." This regulation applies not only to Soldiers, but also to U.S. civilian employees, contractors, and Family Members of Soldiers and civilian employees. This is a punitive regulation, meaning that Family Members are subject to adverse civilian misconduct action, to include being barred from post, loss of logistics support or an early return from Germany.



MARIJUANA

Funded Legal Education Program

Every year the Army Office of The Judge Advocate General in Washington, D.C. accepts applications for the Army's Funded Legal Education Program. Under this program, the Army sends active duty personnel to law school at government expense. Selected personnel will remain on active duty while attending law school.

Those interested in the program should review the Chapter 10 of Army Regulation 27-1 to determine eligibility. Information on the program can be accessed through the Army Judge Advocate Recruiting Office web site at <https://www.jagcnet.army.mil/JARO#>.

The Army Funded Legal Education Program is open to commissioned officers in the rank of second lieutenant through captain with two to six years of Federal service. It is also open to enlisted Soldiers in the grade of E-5 through E-7 with four to eight years of service.

Application procedures are detailed each year through a MILPER message. Interested personnel must complete an application and interview with a Staff Judge Advocate at their installation. Interested personnel should have taken or be scheduled to take the Law School Admission Test at the time of application. The application deadline is normally in the fall.



LTG Risch, The Judge Advocate General of the Army

Interested personnel should contact their local Staff Judge Advocate for further information. The 21st Theater Sustainment Command Office of the Staff Judge Advocate is located in Building 3004 on Panzer Kaserne in Kaiserslautern. You can reach the office at DSN 523-0489 or civilian 0611-143-523-0489.

21st TSC Legal Offices

**Kaiserslautern
Kleber Law Center
Kleber Kaserne, Bldg. 3210**
Legal Assistance: DSN 483-8848/6782
Claims: DSN 483-8968
International Law: DSN 483-7690/8859
Trial Defense Service: DSN 483-8397
(Civilian: +49-631-411-XXXX)

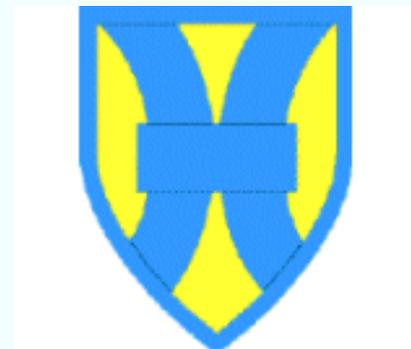
**Main OSJA
Panzer Kaserne, Bldg. 3004**
Administrative Law: DSN 523-0470
Criminal Law: DSN 523-0488
Special Victim Team: 523-0524
(Civilian: +49-0611-143-523-XXXX)

**Baumholder Law Center
Smith Barracks, Bldg. 8680**
Legal Assistance: DSN 531-2445
(Civilian: +49-611-143-531-XXXX)

**Northern Law Center
SHAPE (Mons, Belgium), Bldg. 318**
Legal Assistance: DSN 423-4910 or 4868
(Civilian: +32-65-44-4910 or 4868)

**Netherlands Law Center
USAG Benelux-Brunssum, Bldg 8**
Legal Assistance: DSN 597-4182
(Civilian: +31-45-534-0182)

**Kosovo Law Center
Camp Bondsteel, Bldg 1330C**
Legal Assistance: DSN 781-4575
(Civilian: +383-49-774-628)



21st TSC Attorney Honored



Joerg Modellmog, the 21st TSC Senior German Attorney (on right), was honored on 19 September 2023 with the Judge Advocate General’s Sustained Outstanding Civilian Career Award. The award was presented at a special ceremony in Charlottesville, Virginia, by LTG Stuart Risch, the Army Judge Advocate General (on left). The award was based on a number of accomplishments, including his involvement in ending improper German income taxation of U.S. Forces personnel. Long recognized as the world-wide expert in this subject, Mr. Modellmog spearheaded an effort over the past several decades to prevent the German government from imposing income tax on U.S. Forces personnel in violation of international treaty obligations. During the past year his expertise and persistence bore fruit as the German government agreed to end this practice.

KAISERSLAUTERN LEGAL ASSISTANCE OFFICE

Directions to Kleber Kaserne: From Vogelweh, Ramstein, or Landstuhl take the Autobahn A6 in the direction of Mannheim. On your right you will see a large store called Möbel Martin. Make sure you are in the right lane as you take the Kaiserslautern Ost Ausfahrt (exit). Turn right as you leave the exit ramp and drive downhill until you reach a stop light. Proceed straight ahead at the intersection and follow the priority road as it curves to the right behind the Pfalz Center Mall. Enter Kleber Kaserne by the east gate. Turn right after passing the clinic. Drive north until you reach an intersection with 4 stop signs. Bldg. 3210 sits to the left of that intersection. Parking on Kleber Kaserne is difficult—allow a few extra minutes to circulate until you find an open spot. Enter Bldg. 3210 from the door on the east end of the building.

