

Definitions of place of employment in the Protection against Infection Act (IfSG) and Workplace Regulations (ArbStättV): Are HGVs and ships etc. deemed places of employment?

In the interpretation of the competent Federal Ministry of Labour and Social Affairs (BMAS), the new provisions in section 28b of IfSG also apply to professional drivers. Accordingly, members of this profession are also obliged to provide evidence of their vaccination, serology or test status when accessing their place of employment.

Section 28b of IfSG refers to the definition of the term 'place of employment' in section 2 of ArbStättV, which defines a place of employment as a location on the premises of a company or a construction site to which employees have access as part of their work. Whether these locations are attributable to the employee's own place of employment or not is irrelevant to an employee's obligation to provide evidence and an employer's obligation to verify the appropriate status, in particular considering the IfSG's main protection objective: to prevent the spread of SARS-CoV-2. **For clarification, it should be noted that vehicles or means of transport are not considered places of employment for the purposes of section 28b(1) of IfSG.**

Professional drivers must therefore also carry evidence of their VRT status (vaccinated, recovered, tested [3G]) when entering the places of employment of other employers, and their own employer must verify that the drivers carry the required evidence with them. This can, for example, be implemented on-site by employees instructed to do so, or by having the employee submit the evidence digitally. Employers can also arrange for employees to be checked at the relevant access control point on the premises of the other employer.

Exceptions are only permitted where close physical contact to other persons is ruled out in the place of employment, e.g. if no other persons are present in the place of employment of other employers, or close contact is ruled out based on the respective regime of health and safety precautions. Inquiries on this matter should be directed to the competent authorities designated by the federal states in accordance with section 54 of IfSG. However, section 28(2) of IfSG mandates stricter test obligations for institutions of medical treatment, care or nursing.

The respective health and safety protocols currently in force must always be observed.

For further information, see the FAQ on infection control for businesses (in German only) on the website of the Federal Ministry of Labour and Social Affairs (BMAS) – www.bmas.de.