COVID-19: Supreme Court Ruling on mandatory compensation for use of home office does NOT apply to remote working during COVID-19 pandemic

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This update aims to clarify that the holding of the Ruling of the Swiss Supreme Court of 19 April 2019 (BGer 4A_533/2018 of 23 April 2019) does not entitle employees working from home during the COVID-19 pandemic to special compensation for the use of their home office.

Over the weekend of 23/24 May, the Swiss Sunday press ran articles on mandatory compensation of the use of a home office, referring to a ruling of the Swiss Supreme Court of 19 April 2019 (BGer 4A_533/2018 of 23 April 2019, the "Ruling"). Some commentators omitted to mention that the ruling was handed down last year; this gave the impression that the Swiss Supreme Court's ruling dates from April of this year). As a result, the Ruling suddenly got widely discussed and was picked up by many media outlets. Many commentators argue that the Ruling serves as basis for employers having to reimburse employees working remotely for the use of their home office during COVID-19. This is wrong.

Frist and foremost, the case resulting in the Ruling was brought by an employee who had no place of work at the employer's premises, and had to render all his services from home. The Supreme Court confirmed the lower instance's ruling which held that the employer has to reimburse the employee for rental costs relating to the use of his home office since the employer did not offer the employee a permanent and suitable workplace.

Employees who are currently working remotely from home because of COVID-19 will all have such a workplace with the employer. Of course, they cannot use this workplace for the time being, but are working remotely for their own protection and the protection of their co-workers. They will be able to return to their workplace as soon as the situation allows.

No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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