

Info sheet



Short-time work
and short-time work
compensation during
the Corona crisis

INFO SHEET

Short-time work and short-time work compensation during the Corona crisis

The spread of the corona virus poses major challenges for the economy and the labour market. In order to support employees and companies, the legal basis for easier access to the short-time work compensation has been provided in an accelerated procedure. Short-time work compensation therefore is available immediately as a crisis instrument.

The regulations come into force **retroactively as of 1 March 2020**. However, only those who submit the relevant notification of lack of work to the respective employment agency by **31 March 2020** can benefit from this regulation.

In order to enable you to react without delay, we have compiled the necessary information and documents. The following areas are covered:

- » Employment law requirements and implementation of short-time work in employment contracts
- » Applying for short-time work compensation
- » Payroll accounting during short-time work

I. Employment law requirements

1. What is short-time work?

Short-time work is the temporary reduction of the regular working hours customary in the company (if necessary down to 'zero'), e.g. due to delivery and production bottlenecks or loss of orders as a result of cancellations caused by the corona virus. At the same time the employees' remuneration is reduced and the employer is entitled to claim short-time work compensation from the Federal Employment Agency (*Bundesagentur für Arbeit*).

By introducing short-time work dismissals due to economic reasons can be avoided.

2. Which labour law requirements have to be met to implement short-time work?

The employer is not entitled to introduce short-time work unilaterally; he/she requires special authorization to do so. The authorization can result from:

- » Collective agreement
- » Works agreement
- » Employment contract

a) If there is a collective agreement...

If a collective agreement is applicable, the relevant regulations must be checked. The collective agreements of many industries contain special provisions regarding short-time work, which refer to the introduction and details of short-time work. The collective agreements essentially contain provisions on the following aspects:

- » Right of co-determination of the works council
- » Extent of short-time work
- » Announcement period
- » Salary reduction for minor short-time work
- » Grant and amount of aid
- » Termination during short-time work

Regarding the regulations applying to your company, please check the collective agreement applicable to your company.

b) If there is a works council...

Works agreement for companies with a works council

If there is no collective agreement or if the collective agreement is not applicable in the company, the employer can still not unilaterally introduce short-time work. To do so, he/she requires the participation and consent of the works council, which has a mandatory right of co-determination when short-time work is to be introduced. According to the case law of the Federal Labour Court (*Bundesarbeitsgericht - BAG*), the works council even has a right of initiative and can initiate the introduction of short-time work and, if no agreement is reached, bring about a decision by the conciliation body on this issue.

The works agreement must contain the necessary provisions concerning the introduction, implementation and duration of short-time work. For further details, we refer you to the model works agreement, which can be

obtained from us upon request. Please do not hesitate to ask any questions arising.

c) If there is neither a collective agreement applies nor a works council exists

Employment contract

If neither a collective agreement is applicable nor a works agreement has been concluded due to the absence of a works council, the employer's authorization to order short-time work can only derive from the employment contract. A distinction must be made as to whether the employment contract already contains a provision (anticipatory clause) on short-time work or whether a corresponding supplementary agreement must be concluded.

An anticipatory clause stipulates that the employer may order short-time work if the requisite legal requirements are met. If your employment contracts already contain anticipatory clauses, these should be checked to see whether they comply with the current employment law requirements, otherwise there is a risk that they will be ineffective. We are happy to assist you in this respect.

If the employment contract does not contain an anticipatory clause, the employer must conclude a supplementary agreement with the employees to the respective employment contract. This agreement will then stipulate that the employer is entitled, in view of the currently critical overall economic situation, to order short-time work, which can range from a part-time work obligation to zero work.

There is a wide range of working time models, from zero short-time work to working hours of up to 90%. In principle, it is not necessary to make identical arrangements for all employees. However, please keep in mind that the principle of equal treatment under labour law must be observed. This means that employees who carry out comparable activities must not be arbitrarily treated differently. The corresponding clause is subject to the control of the general terms and conditions (*Allgemeine Geschäftsbedingungen - AGB*) and must therefore be appropriate (Section 307, Subsection 1, No. 1, BGB). This is the case if the introduction of short-time work is linked to the requirements described above and is sufficiently specific. In particular, an appropriate period of notice is necessary in this case. There is no clear limit; as a rule, 3-4 weeks are assumed to be sufficient. Against the background of the aforementioned package of measures, however, a period of one week or immediate announcement should be possible. Otherwise, to our current knowledge, it does not seem to be possible to apply for short-time work compensation retroactively at

1 March 2020. It is to be assumed that clarification will be provided concerning this issue.

Furthermore, it can still be specified whether or not the employee's vacation time is to be used for short-time work or whether the employer pays an extra subsidy for short-time work. The details of the clause are determined by the specific needs of each company.

If the employee does not sign the supplementary agreement, change notice must be given, the so-called amending notice, to enforce the necessary changes to the employment contract. There must be economic reasons for the amending-notice and all milder means including reduction of overtime and short-time work must have been exhausted beforehand. In this case, the notice periods for termination notices must be complied with; furthermore the reduction of working hours and remuneration can come into effect at the earliest at the end of the notice period and will only become effective if the change notice is based on urgent economic needs and other conditions are complied with or the employee does not take legal action against the change notice within 3 weeks.

d) What other labour law aspects need to be considered:

Termination

Short-time work does not exclude the possibility of dismissal for economic reasons if the employer can no longer employ the employee in future. If a dismissal actually takes place, short-time work compensation can no longer be paid.

Secondary employment

If the secondary employment was already taken up before the short-time work, it has no effect on the short-time work compensation. Only if employees start secondary employment while receiving short-time work compensation, the resulting remuneration is credited to the reduced hours compensation. As an employer, you should therefore inform employees in the agreement on reduced hours, or you must oblige them to inform you of any secondary employment in advance.

Employer's contribution to the KuG

If you pay a subsidy for short-time work, for example on the basis of a collectively agreed regulation, it is exempted from social security contributions. However, it must not exceed 80 percent of the lost remuneration plus short-time work compensation in total.

II. Short-time work compensation

1. How much is the short-time work compensation?

- » Employees with children: 67% of the net pay difference in the entitlement period
- » Employees without children: 60% of the net pay difference in the entitlement period
- » The social security contributions that employers normally have to pay for their employees are reimbursed by the employment agency (*Arge*).

The net pay difference that is decisive for determining the short-time work compensation is calculated as the difference between

- » the remuneration that would have been earned without the loss of work during the claim period (maximum EUR 6,900.00 gross) and
- » the remuneration actually earned during short-time working.

In principle, the short-time work compensation is calculated using a specific software.

However, https://www.arbeitsagentur.de/datei/kug050-2016_ba014803.pdf also contains a table for calculating the short-time work compensation (KuG).

The amount of the short-time work compensation is capped; wages and salaries up to a gross monthly amount of EUR 6,900.00 are taken into account.

2. How long is short-time work compensation paid/ Can it be extended, shortened?

Short-time work compensation is paid by the Federal Employment Agency for a maximum period of twelve months. An extension up to 24 months is possible. An extension is possible on request.

3. Who receives short-time work compensation?

a) Requirements concerning the company

At least one employee must be employed in the company or in the company department.

b) Considerable reduction of work with loss of earnings

A reduction of working hours is considerable if

- » it is based, as in the present case, on economic rea-

sons or an unavoidable event (in the present case corona virus),

- » at least 10 % of the employees are affected by absences from work.

When calculating this limit, the number of employees occupying existing jobs on at least one day of the grant period must be determined first. This also includes marginally employed workers and workers on maternity leave. This does not include trainees and employees whose employment relationship is suspended (e.g. due to parental leave) or who are receiving maintenance or transitional payments, or home workers. The 10 % value may not be rounded down.

Furthermore, the reduction of work must be temporary and unavoidable. For this reason, the reduction of overtime and the complete granting of the leave from 2019 is mandatory for the approval of KuG even after the amendment of the law. Only a negative working time account is no longer required.

c) Personal requirements:

Short-time work compensation is paid for each employee whose salary **is subject to social insurance contributions**.

No short-time work compensation is paid, for example to:

- » Shareholder-managing directors who are exempt from social insurance contributions (50% or more shares);
- » mini-jobbers;
- » early retirees in the release phase;
- » recipients of sick pay;
- » regular pensioners;
- » working students;
- » apprentices;
- » employees given notice.

4. How do I get short-time work compensation?

A two-stage procedure must be followed:

Step 1: Notification of work loss

Short-time work compensation is paid at the earliest from the month in which the notification of the loss of work is received by the Agentur für Arbeit. The notification can only be made by the employer or the works council.

These **documents** must now be submitted for notification of short-time work:

- a) Electronic or written notification of the loss of working hours to the employment agency in whose district the company is located <https://www.arbeitsagentur.de/unternehmen/finanziell/kurzarbeitergeld-bei-entgeltausfall>;
- b) A list of the employees affected;
- c) A statement of the reasons why KuG is being applied for (more than the keyword corona), i.e. a credible demonstration of the operational requirements (see above under II. 3.a) and of the considerable reduction of working hours (see above under II. 3.b);
- d) A list of the working time accounts (existing overtime accounts, are there credit balances, etc.) – negative notification required.

The employment agency must immediately issue a written decision as to whether the conditions for granting short-time work compensation are met (so-called '**notice of recognition**').

Step 2: Application for short-time work compensation - benefit application

- a) The company must apply for short-time work compensation for each employee concerned, providing proof of the respective personal requirements (see above under II. 3.b);
- b) The KuG must be applied for the respective calendar month within a cut-off period of three calendar months. The period begins at the end of the month in which the days for which the benefit is requested are part of;
- c) The employer shall pay the reduced remuneration to the employee in accordance with the reduced working hours plus the short-time work compensation (in the case of zero short-time working, the employer shall pay only the short-time work compensation). The reimbursement of the short-time work compensation is made by the employment agency to the employer (for the purpose of passing it on to the employee). The exact calculation is carried out by the payroll accounting software.

III. Payroll accounting during short-time working

Which information does payroll accounting need for the short-time work compensation?

A detailed list of the employees who receive short-time work compensation. The list must contain the following data:

Day-by-day recording of the hours per employee, divided into hours that were worked normally and hours that should be paid according to the hours for which short-time work compensation is paid.

Example:

Mr Meyer: Monday, 2 hours normal 3 hours KuG
 Mr Meyer: Tuesday, Vacation
 Mr Meyer: Wednesday, sick
 Mr Meyer: Easter Sunday, 5 hours normal, etc

PKF Fasselt Schlage provides a corresponding sample list. Please contact us if you need them. Please understand that - should PKF does the payroll accounting for you - only the data you have entered in this list will be used for payroll accounting during the period of short-time work.

IV. What PKF Fasselt Schlage can do for you:

- » Labour law advice in particular on **employment contracts and company agreements**
- » **Formulate notification of short-time work** to employees
- » Prepare **trial calculation** for clients whose payroll we provide
- » Advice on **reporting the lack of work to the employment agency** in order to obtain the **notice of recognition**
- » Advice on the **application for short-time work compensation (KUG)** – Application for benefits
- » Carrying out monthly **short-time compensation accounting** in the course of payroll accounting and bookkeeping; assistance in the process of data collection
- » Advice on the monthly applications for reimbursement of short-time working compensation

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