



Special information on the corona pandemic: Introduction of short-time working

The outbreak of the so-called coronavirus has far-reaching consequences for companies. In the following, we provide an overview of the possibilities of short-time work under German labor law

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Due to the coronavirus pandemic and its consequences, the question of introducing short-time work often gets relevant. The corona-related changes to the previous legal situation were decided by the Federal Government in a fast-track procedure and will come into force at short notice upon publication. The aim of the Federal Government is to achieve comprehensive job security and protection of companies against insolvency in the corona crisis.

1. General principles on short-time working

Short-time work is a temporary reduction of the normal working hours in a company or part of a company. Employees can receive short-time work compensation to compensate for the reduced remuneration resulting from short-time work. Generally, the employer pays the short-time compensations in advance to the employees after notification of the short-time work and examination of the conditions by the responsible employment agency. The employer can then have the reduced hours compensation paid to the employees reimbursed by the employment agency upon request.

2. Legal requirements for short-time working

(1) Considerable loss of working hours with loss of pay

- Since March 2020 **10% of the employees** (excluding trainees) **employed in the plant (“Betrieb”)/part of the plant (“Betriebsenteil”)** are affected by a **loss of earnings of at least 10%** of their monthly salary
- If the loss of working hours is due to economic reasons or an unavoidable event
 - Delivery shortages or loss of work due to corona
 - Decline in orders
 - Official plant closure e.g. due to corona
 - **Short-time allowance also possible for rental companies and their temporary employees.**



(2) Temporary loss of working hours and unavoidable absence

- Loss of work is only temporary
- Employers must in principle take all measures to avoid absenteeism, e.g. granting leave or making use of fluctuations in working time permitted in the company, such as the release of working time credits
- No need to use negative working time balances to avoid short-time working

(3) Operational requirements

- Whole plant or part of a plant affected

(4) Personal requirements

- Employment relationship subject to social insurance contributions (no short-time work possible for marginal part-time employees)
- Non-terminated employment relationship; fixed term is harmless

3. Employment law requirements for short-time working

As a rule, the employer cannot unilaterally order short-time work. The reduction in working hours, which leads to loss of working hours and thus to the entitlement to short-time work compensation, requires a legal basis. This is usually an agreement under collective law. Therefore, in companies with a works council, a specific short-time work works council agreement must be concluded with the works council, including a list of the employees affected. If there is no works council, individual contractual agreements with the employees are required.

4. Immediate notification of short-time work

The loss of working hours must be reported immediately to the regionally responsible employment agency in accordance with § 99 SGB III (German Social Code III) and an application for the granting of short-time work compensation must be made. The employment agency advises the employer and issues a decision pursuant to § 99, Subsection 3, SGB III, as to whether there is a considerable loss of work and whether the operational requirements are met. Currently, an application for 3, 6 or 12 months is possible.



5. Concrete approach

- ⇒ Conclusion of a site works council agreement on short-time working with the local works council or conclusion of individual agreements with the employees.
- ⇒ At the same time, initiating contact with the local employment agency and the local KUG consultant.
- ⇒ "Notification of loss of working hours" at the regional employment agency with the involvement of the local KUG consultant (form available at: https://www.arbeitsagentur.de/datei/anzeige-kug101_ba013134.pdf)
- ⇒ If the operational requirements are met, short-time work can be started before the Federal Employment Agency has received the corresponding notification of the loss of working hours.
- ⇒ However, the notification must be received by the Federal Employment Agency in the month in which short-time work compensation is to be paid for the first time; the notification is then sufficient until the last day of the month.
- ⇒ At the same time, the application for short-time work compensation must be submitted together with an attachment (application form available at: https://www.arbeitsagentur.de/datei/antrag-kug107_ba015344.pdf).
- ⇒ The decision as to whether short-time work compensation is granted is the responsibility of the Federal Employment Agency, i.e. the requirements are checked by the Federal Agency. Applications for short-time working compensation are usually processed within a period of three weeks. An accelerated examination cannot be expected due to the expected rush.
- ⇒ On a certain key date in the month, a notification of loss of working hours is then issued with corresponding payroll accounting for the reduced hours compensation. This currently amounts to 60% or 67% (if at least one child/0.5 sufficient on the income tax card is entered) of the flat-rate net monthly salary. It is transferred to the employer and passed on to the employees concerned, unless it has already been paid in advance by the employer.
- ⇒ Social security contributions for the compensated lost hours are fully reimbursed by the Agentur für Arbeit. Corresponding forms are not yet available.
- ⇒ The recording of data in an SAP system or the payroll processing must be regulated internally.
- ⇒ A decision can then be made from month to month as to whether short-time work compensation will be claimed for the current month. If nothing is claimed for three consecutive months, a new application must be submitted.

6. Further information

You can find all special information here:

<https://www.sonntag-partner.de/kontakt/covid-19-aktuelle-sonderinfos/>



The above statements are only a non-binding compilation according to the current status. No liability is assumed for the correctness and completeness. We would be pleased to support you in checking and, if necessary, implementing the above measures in your company.

The contact persons of our law firm who are known to you are also available here.
In addition, you will find the contact persons who have been particularly involved in the above-mentioned topics.

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Concluding remarks

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