

# SHORT-TERM WORK (KURZARBEIT) AS A CONSEQUENCE OF THE CORONA EPIDEMIC

The current spread of the corona virus is leading to disrupted supply chains and cancelled orders. German companies are therefore introducing short-term work to prevent existential damage and lay-offs.

On 13 March 2020, the German legislator authorized the Federal German Government to significantly alleviate present conditions for short-term work. According to Labor Secretary Hubertus Heil, short-term work allowance (Kurzarbeitergeld) can be applied for retroactively as of 1 March 2020.

## LEGAL BASIS IN GERMAN LABOR LAW

Provided it is correctly agreed upon, short-term work allows for a temporary reduction in the hours worked in exchange for a corresponding reduction in salary claims.

Employers cannot unilaterally decide on this measure, since it does not fall under their discretionary power. Rather, it needs to be based on a separate legal foundation. This may exclusively be established by

- (Collective) trade agreement (Tarifvertrag) with unions - we hold this to be irrelevant in practice
- (Collective) company agreement (Betriebsvereinbarung) with the works council (Betriebsrat)
- (Individual) labor agreement / additional side-letter - we hold a dismissal with the option of altered conditions of (re-)employment to be irrelevant in practice

In the absence of these, employees keep the salary claim in full.

**Please note:** a potential works council has a mandatory say on the introduction of short-term work even if this is operated through individual agreements! In the absence of a works council, short-term work can be introduced

in depth at a staff meeting, allowing the employer to "market" its necessity and introduction by way of individual side-letters.

## CONDITIONS FOR SHORT-TERM WORK ALLOWANCE

The short-term work allowance applies to a significant shortfall of work. This is the case if the following cumulative criteria are met. The shortfall of work must be:

- based on economic factors and / or uncontrollable circumstances,
- temporary in nature (usually up to twelve months),
- unavoidable (e.g. through the reduction of last year's remaining vacation days or overtime; building up negative overtime is reportedly no longer necessary as per the current emergency measures) and
- must affect as least one third (or reportedly 10% as per the current emergency measures) of staff in one establishment by reducing their monthly salary by at least 10%. In principle, single departments of whole establishments may be covered to the exclusion of other departments.

## REIMBURSEMENT

For the employer to be reimbursed, the shortfall of work first has to be notified in writing or by email to the competent Employment Office (Agentur für Arbeit). This is the Employment Office in whose respective district the employer is located. The notification may be made by either the employer or the works council.

**Please note:** a statement by the works council and, if applicable, a copy of the company agreement must be added to the notification.

The employer will then receive a recognition order

(Anerkennungsbescheid) from the Employment Office. Once the employer has calculated and paid the short-term allowance to the employees concerned, he may request reimbursement of it. This request must be made within three months following the respective month of payment. The Employment Office will follow up on the request with a compensation order (Leistungsbescheid), leading to reimbursement at the earliest during the month after the introduction of short-term work.

**Please note:** a request for short-term work allowance reimbursement does not preclude another request for reimbursement of salary paid to quarantined employees.

### AMOUNT AND DURATION OF SHORT-TERM WORK ALLOWANCE

Short-term work allowance does not lead to full compensation. Rather, it covers **60%** of net salary loss (**or 67%** for employees with children). Net salary loss depends on the actual reduction of working hours. If necessary, this reduction can amount to 100%.

Payments can be made for a period of a maximum of **twelve months** in principle.

In case the shortfall of work is reversed, cancellation of short-term work is always possible.

**Example:** An employee who receives a monthly gross salary of 4,000 € will receive a monthly net salary of 2,470 € (based on withholdings in wage tax class I). In case of shortfall of work of 50%, the monthly gross salary would be 2,000 € and the net salary 1,410 €. The net shortfall for the employee of 1,060 € would be compensated at 60% = 636 €.

As a consequence, the employee suffers an effective loss of 20%. The employer, on the other hand, saves 50% of personnel costs.

**Please note:** as per the current emergency measures, the Federal German Government was reportedly empowered to reimburse in total or in part the social security contributions of employees on short-term work allowance.

### SHORT-TERM WORK VS. LAYOFFS

Short-term work is designed to cover temporary shortfalls of work. Layoffs due to redundancy require permanent loss of activity, the two notions being mutually exclusive.

If, in addition to the circumstances of short-time work, other circumstances arise which necessitate a permanent loss of jobs, a new entrepreneurial decision may also result in a reduction in personnel for operational reasons.

In departments not affected by shortfalls, layoffs are in principle possible any time.

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