

COVID-19
Short-time work - All you need to
know now

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COVID-19 and short-time work - All you need to know now

What is short-time work?

Short-time work is a tool by which employers can temporarily reduce the usual working hours of their employees. The temporary complete reduction of working hours, is referred to as "zero short-time work" (*Kurzarbeit Null*).

What conditions must be met for the introduction of short-time work?

As the introduction of short-time work changes the contractually agreed working hours, employment and remuneration, the employer cannot, in principle, unilaterally order short-time work. The introduction of short-time work therefore requires a legal basis. To this extent, collective agreements, works agreements or individual agreements with the individual employees have to be considered. Additionally, there is the possibility of introducing short-time work by means of a so-called termination with an option of altered conditions (*Änderungskündigung*), or on the basis of sec. 19 of the German Dismissal Protection Act (*Kündigungsschutzgesetz*) in the case of mass dismissals.

Which requirements must currently be met in order to receive short-time work compensation?

In order for employees to be entitled to short-time work compensation, the requirements described in sec. 95 et seq. of the Third Book of the German Social Security Code (*SGB III*) must generally be met. However, against the background of the current crisis situation and the spread of COVID-19, these requirements have been temporarily relaxed. In this respect, the "**Act on the Temporary Crisis-Related Improvement of the Regulations for the Short-Time Worker**" is intended to make it easier to draw short-time work compensation to support employees in staying with the company and to secure the liquidity of companies. The regulations came into force retroactively as of 1 March 2020.

The following currently applies to the receipt of short-time working compensation:

- **There must be a significant loss of working hours with a loss of salary payments**
According to the regulations of the *SGB III*,

a loss of working hours is only significant if it is temporary and due to economic reasons or an unavoidable event. In addition, at least 10% of the employees must be affected by a salary reduction of more than 10% during the entitlement period (calendar month).

- **The operational requirements must be fulfilled**
This means that at least one employee must be employed in Germany.
- **The personal requirements must be fulfilled**
In this respect, the continuation of employment subject to compulsory social security insurance is particularly relevant and employees must not be terminated.
- **The loss of work must have been reported to the employment agency and reimbursement of short-time work must be applied for**

The reduced working hours and absences must be recorded in appropriate time sheets and must be reported to the responsible local employment agency in the month in which the short-time work begins. The application for reimbursement of short-time work compensation must be submitted within a cut-off period of 3 months. Please also note that in order to be entitled to receive the reimbursement of the paid short-time work compensation, the affected employees should have used all remaining vacation days of the prior year (if any) and also some of the current's year vacation days before short time work is introduced.

What do the changes of the legal requirements to receive short-time work compensation look like?

- The threshold for receiving short-time work compensation was lowered. An entitlement to receive short-time work compensation will now exist if 10% of the employees employed in the operation (*Betrieb*) receive a reduced monthly gross salary of more than 10% due to the loss of work. Before the legal changes, the threshold was one third.

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- It shall generally now not be necessary to build up negative working time balances before being eligible to receive short-time work compensation. Please note that any remaining leave from the previous year must be used before short-time work compensation is paid.
- The Federal Employment Agency will fully reimburse employers' for the social security contributions paid for short-time work compensation.
- Employers shall be reimbursed half of the social security contributions they pay for short-time work compensation for employees who take part in training programmes.

Amount of the short-time work compensation

If short-time work compensation is granted, the Federal Employment Agency will pay 60% of the net difference in pay during the entitlement period (67% if the employee has a child in the household).

However, it should be noted that short-time working compensation is a reimbursement benefit that is paid retrospectively to the employer (i.e. the employer is obliged to make advance payments to its employees).

Duration of entitlement to short-time work compensation

The statutory period of entitlement to short-time work compensation is generally 12 months. However, it may be extended to up to 24 months by statutory order of the Federal Ministry of Labour and Social Affairs due to exceptional conditions in the labour market. Such an extension is currently being discussed.

If you have any more in-depth questions on the subject of short-time work, our labour law experts are happy to assist you. We have also summarized further information on the topic of labour law in times of COVID-19 in our Client Alert: Labour Law in Times of COVID-19.



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Your contact persons for questions regarding short-time work in times of COVID-19



Dr. Marcus Iske

Partner | Dusseldorf

+49 (0)211 950 749 33

+49 (0)173 597 6959

marcus.iske@fieldfisher.com



Marcus Kamp

Partner | Dusseldorf

+49 (0)211 950 749 34

+49 (0)173 597 6210

marcus.kamp@fieldfisher.com



Dr. Fabian Reissinger

Partner | Munich

+49 (0)89 620 306 214

+49 (0)177 317 34 47

fabian.reissinger@fieldfisher.com