

Coronavirus - consequences for employers and employees -

March 13 2020

The spread of the coronavirus poses major challenges for the economy and the labour market. We have summarized for you the consequences for employers and employees.

- 1. Regulations on short-time work are facilitated**
- 2. Employees sick or in quarantine - employer's obligation to continue to pay wages**
- 3. Wage replacement benefits are subject to the progression proviso**
- 4. Deferral of social security contributions**

1. Regulations on short-time work are facilitated

On 10 March 10 2020 the Federal Cabinet decided on the following changes to the short-time working allowance in particular due to the accelerated spread of the coronavirus:

- The threshold of employees employed in the company and affected by short-time work is to be reduced from 1/3 to 10%.
- The social security contributions attributable to the short-time working allowance will be fully reimbursed by the Federal Employment Agency.
- Temporary workers will also be able to draw short-time working compensation in the future.

The legislative package is to be submitted to the Bundestag and Bundesrat in a fast-track procedure. The legislative package is expected to be passed in the first half of April.

Short-time work compensation is granted by the Federal Employment Agency if there is a significant loss of working hours that

- is based on economic reasons or an unavoidable event,
- is temporary,
- is unavoidable and
- according to the current legal situation in the respective calendar month at least one third of the employees employed in the company is affected by a loss of earnings of more than 10% of their gross salary in each case.

Economic difficulties can be caused by a short-term change in market conditions (e.g. slump in orders, sales difficulties, shortage of raw materials). An unavoidable event exists in particular if the loss of work is due to unusual circumstances for which the employer is not responsible.

The loss of work is temporary if full-time employment in the company can be expected again in the foreseeable future.

Loss of working hours is unavoidable if the company has taken all reasonable precautions to prevent the loss of working hours. Loss of working hours is considered avoidable in particular if it is due to seasonal, industry or business reasons.

Furthermore, employees affected by short-time working must be in an employment relationship which has not been terminated and which is subject to social security contributions after the beginning of the absence from work.

The short-time working allowance is paid for a maximum of 12 months. The responsible ministry can extend this period to up to 24 months by statutory order.

The short-time working allowance amounts to

- 67% of the flat-rate net loss of earnings for employees who have at least one child for whom they receive child benefit, or
- 60% of the flat-rate net loss of earnings for all other employees.

The Federal Employment Agency reimburses short-time allowance paid upon request. The application must be submitted to the responsible employment agency within 3 months of the end of the respective calendar month.

2. Employees sick or in quarantine - employer's obligation to continue to pay wages

A distinction must be made between whether the worker is only in quarantine or whether he is actually ill.

Within the framework of a medically diagnosed illness, the employee is entitled to continued payment of wages according to the Continued Remuneration Act for a period of 6 weeks against the employer. From the 7th week of the illness, the entitlement to continued pay ceases. From this point on, the employee is entitled to sick pay from his health insurance fund. The prerequisite for the claim to continued remuneration from the employer is that the employee submits a corresponding certificate of incapacity to work.

Employers that belong to the pay-as-you-go system U1 are partially reimbursed by the health insurance funds for continued pay in the case of illness.

However, an officially ordered quarantine does not constitute an illness within the meaning of the Continued Remuneration Act. In such case, if the employee is not actually ill, the continued payment of wages is not based on the standards of the Continued Remuneration Act. If the employee is prevented from performing his/her work for a certain period of time through no fault of his/her own, he/she does not lose his/her right to remuneration from the employer. Such prevention is given in the case of a ban on work due to official measures, which includes the order of a domestic quarantine.

The employer can apply for compensation under the Protection against Infection Act for continued remuneration from the authority responsible for this. Compensation is paid from the 1st to the 6th week of quarantine in the amount of net pay, and from the 7th week of quarantine in the amount of sick pay. The compensation must be applied for within 3 months of the start of quarantine.

In case of illness of their own child, employees are entitled to unpaid leave from work. The period of entitlement is up to 10 working days per child in a calendar year and increases to up to 20 working days per calendar year for single parents. In this case, the entitlement to payment of remuneration ceases to apply, and the employee is entitled to payment of child care sick pay from his or her health insurance fund.

If the employer temporarily ceases his activity, the following cases must be distinguished:

- If the employer closes the business of his or her own accord (for example, to protect the workforce), the employer bears the sole risk of remuneration. In this case, the employees have an unrestricted claim to remuneration. The employer has no reimbursement claims against third parties.
- If the competent authority orders the closure of the establishment, the employee is released from the obligation to perform work. In this case, he loses the right to remuneration from the employer. In this case, the employee is entitled to compensation from the competent authority. This is paid in the 1st to 6th week of the closure of the business in the amount of the net remuneration and from the 7th week onwards in the amount of the sickness benefit.

3. Wage replacement benefits are subject to the progression clause

The short-time working allowance, the sickness benefit and compensation under the Infection Protection Act are tax-free, but are subject to the tax-increasing progression

proviso. Wage replacement benefits remain tax-free, but the tax rate on the remaining income of the employee increases. This may result in tax payments.

In this case, the employee is obliged to submit an income tax return to the tax office.

4. Deferral of social security contributions

If social security contributions cannot be paid on time due to liquidity bottlenecks, it is possible to defer payment. Health insurance companies may defer claims for social security contributions if immediate collection would entail considerable hardship for the company.

Considerable hardship is given if a company is temporarily in considerable financial difficulties due to unfavorable economic conditions or would get into such difficulties if social security contributions were collected immediately.

The deferral is subject to an application by the company, in which the existence of the aforementioned conditions must be demonstrated.

The GKK PARTNERS team will be happy to answer any questions you may have.

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