

## Employment and Corona – Short-Time Work et al. – An Overview

### INTRODUCTION

In light of the required adjustments of normal business operations, not only the new [Short-Time Work Compensation Act \(Gesetz zum Kurzarbeitergeld \(“KuG”\)\)](#) provides opportunities for dealing with this. Additionally, several other solutions are conceivable, which we would like to summarize in this short overview.

### SHORT-TIME WORK AND THE “KUG”

Covid-19 is currently presenting virtually everyone with unpredictable challenges, and this is no exception for many businesses. At its core, the issue is how to master the difficult economic situation over the coming months, particularly by adjusting working time volumes, and by doing this as socially compatible as possible. The core element here is surely **short-time work**, which was again modified last Friday at short notice to facilitate the reduction of work volumes and to offset this with compensatory government payments. In addition, to some other (marginal) requirements such as the notification of short work to the Federal Employment Agency – it is sufficient that there is a “significant loss of work” that is, **loss of wages of at least 10 per cent of the gross monthly wages of now only 10 per cent of the total workforce (previously still 1/3)** for a government compensatory payment of 60 % or 67 % of the so-called “net compensation difference”.

### PRACTICAL IMPLEMENTATION: SHOP/COMPANY AGREEMENT AND/OR INDIVIDUAL SOLUTIONS

A loss of wages will only occur, of course, if the employer may justifiably reduce the working time of his workforce (otherwise, he owes the workforce, as a rule, the undiminished, continued payment of compensation under the aspect of default in acceptance of performance). Thus, the issue here is that this reduction of working time volumes must be implemented accordingly in all of the companies “affected” by Covid-19.

In businesses with a works council, this will only work with a respective **works agreement** (cf. the codetermination right pursuant to Sec. 87 (1) No.3 Works Constitution Act), however, which also forms the most appropriate legal instrument as such uniform business rules

regarding reduce working time will have precedence for the selected period over other (longer) working times in the individual employment contracts.

In addition, solutions under individual contracts, these being either mutually agreed or unilaterally executed on the basis of (valid) **short work clauses in employment contracts** and/or the applicable **collective bargaining agreements** containing clauses to this effect, are conceivable. The latter plays a major role in businesses bound by collective bargaining.

### THE CONSEQUENCE: SHORT WORK COMPENSATION AND FURTHER LAYOFFS

The incentives for such activities and a corresponding consent of the works council and/or employees are clear and certainly considerable: **government compensation in the amount of 60 % or 67 % of the so-called net wage difference!** This means, specifically, that each employee whose working time is reduced, for instance by 40 % to 60 %, receives from the employer the 60 % that duly continues, upon equivalent shortened working time, and additionally 60 % or 67 % of the remaining 40 % of net wages under the government compensation. Additionally, and that is new under the package of legislation, businesses will be receiving additional support inasmuch as **employer contributions to social security will be suspended.**

### OTHER MEASURES

In addition, numerous other measures to reduce working time are conceivable. One example is tapping extra working time accounts, agreeing on vacation time or – where possible – giving unilateral directives in exceptional cases or finding mutual solutions of many kinds such as unpaid special leave or the mutual agreement to reduce working time.

**OUTLOOK**

In a nutshell: The KuG is, indeed, a vehicle the government means in earnest which is worth implementing. Where there is a works council, it should be possible to do this quickly and efficiently, but, even without a works council, individual solutions with the workforce are conceivable.

We look forward to assisting you in your further questions surrounding a fast implementation, as well as regarding the application procedure of the Federal Employment Agency, efficient communication with the works council and/or workforce and all other questions surrounding employment law in these times of Covid-19!

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