

## **FAQ on short-time working (Kurzarbeit)**

### **1. What does “short-time working” mean?**

Short-time working refers to a temporary reduction in normal working hours in an establishment under a government-subsidised scheme. If the reduced working hours result in a temporary complete suspension of work, this is referred to as “short-time working zero”. The introduction of short-time working can be limited to parts of the business and does not necessarily need to extend to the entire company.

The purpose of the short-time working scheme is therefore

- to keep trained employees in the company and
- to preserve the employees' jobs in an economic crisis as well as
- to compensate employees for part of their loss of remuneration caused by short-time working.

### **2. How can short-time working be introduced?**

If there is a works council, short-time working must be introduced by means of a works agreement. The works council has an enforceable codetermination right in this respect.

In establishments without a works council, the consent of the individual employees is required. Short-time working can be introduced either for a specific reason or as a precautionary measure, e.g. when an employment contract is concluded. If employment contracts are currently being offered, it will in many cases be advisable to include contractual short-time working clauses. The stipulation in the employment contract is subject to review for compliance with sections 305 to 310 of the German Civil Code (BGB) and may be invalid pursuant to section 307 of the German Civil Code, for example, if it does not provide for a notice period or is too vague in content, for instance with regard to the scope and extent of short-time working, the definition of the group of affected persons, etc.

### **3. How long can short-time working be implemented for?**

It is generally possible to apply for short-time working for a maximum of 12 months, which means that the forecast must basically be that the economic situation will improve over the next 12 months. Short-time working for more than 12 months will not be considered a “temporary” reduction of normal working hours.

However, the Federal Government is authorised by the “Arbeit-von-morgen-Gesetz” (“Work of Tomorrow Act”, Gesetz zur Förderung der beruflichen Weiterbildung im Strukturwandel und zur Weiterentwicklung der Ausbildungsförderung) to extend payment of short-time allowance to up to 24 months for a limited period by statutory order, i.e. without requiring the consent of the Bundesrat (section 109 (1a) of the German Social Security Code III (SGB III)). On 25 August 2020, the Coalition exercised this right and agreed to extend short-time working until 31 December 2021. However, the extended payments only apply to establishments that have introduced short-time working by 31 December 2020.<sup>1</sup>

#### **4. What are the legal consequences of short-time working?**

Short-time working leads to partial suspension of the main obligations arising from the employment relationship. Employees are released to a certain extent from the obligation to perform work, but at the same time – and to the same extent – lose their entitlement to remuneration. However, this is largely compensated for by payment of a “short-time allowance” (Kurzarbeitergeld) by the Federal Employment Agency. Payroll accounting and actual delivery of the short-time allowance is carried out by the employer.

#### **5. What are the requirements for receiving short-time allowance?**

The requirements for receiving short-time allowance are set out in sections 95 ff. of the German Social Security Code III (SGB III). According to these provisions, an employee is entitled to short-time allowance if

- a) there is a significant but temporary loss of work with loss of earnings (see 6. and 7. below),
- b) operational requirements are met (section 97 sentence 1, German Social Security Code III (SGB III): employment of at least one employee); “establishment” in this context also means “operational department” (section 97 sentence 2, German Social Security Code III (SGB III),
- c) the personal requirements are fulfilled (see 8.) and
- d) the loss of work has been reported to the Employment Agency (with regard to the procedure, see 9. below).

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<sup>1</sup> Please see the second regulation on the period of entitlement to short-time working allowance (Zweite Verordnung über die Bezugsdauer für das Kurzarbeitergeld, 2. KugBeV) dated 12 October 2020.

## 6. What constitutes a significant loss of work with loss of earnings?

According to section 96 (1) of the German Social Security Code III (SGB III), a loss of work is significant if

- it is due to economic reasons or an unavoidable event,
- it is temporary,
- it cannot be prevented and
- the loss rate (Ausfallquote) has been reached (see 7. below).

A typical unavoidable event is when the loss of work is due to unusual weather conditions. An unavoidable event also exists if a loss of work is caused by official or officially recognised measures for which the employer is not responsible (section 96 (3), German Social Security Code III (SGB III)).

 **TO DO for companies:**  
How can the significant loss of work be demonstrated, what figures have to be compiled for this and how?

Stringent requirements must be satisfied with regard to whether the loss of work can be avoided, in order to prevent abuses and deadweight effects. The employer must have taken all reasonable precautions in the affected establishment or operational department to prevent a loss of work. Accordingly, under the current legal regime, the Employment Agency can demand the following before granting compensation for reduced working hours:

- Reduction of time credits in working time accounts
- As a result of the current coronavirus pandemic, the [Federal Employment Agency](#) is waiving its right to insist on leave being used up in order to avoid a loss of working hours. However, this only applies to leave entitlement for the current calendar year.

Remaining leave must be used up where possible, as previously, in order to avoid a loss of working hours. This means that employees with leave entitlement from the previous year should be asked by their employers to take the old leave during the time when there is a lack of work. Nobody can be forced to do this, however.

- The option of building up negative hours (minus hours) is currently not being taken advantage of. The basis here is the German Act on the Temporary Crisis-Induced Improvement of the Regulations for Compensation for Reduced Working Hours of 13 March 2020 as well as the corresponding government regulation to simplify short-time working as of 25 March 2020. According to the resolution of the coalition committee of 25 August 2020 and the first regulation amending the short-time working allowance regulation of 21 October 2020, this continues to apply until 31 December 2021 for companies that have introduced short-time working by 31 March 2021.



**TO DO for companies:**

Reduce overtime and outstanding leave entitlements, where available and possible.

**7. When is the loss rate that indicates a significant loss of work reached?**

Pursuant to section 96 (1), no. 4 of the German Social Security Code III (SGB III), the loss of working hours must reach a certain minimum level (loss rate) in order for it to count as a “significant loss of work with loss of earnings”. The relevant loss rate is reached when

- in the respective calendar month (entitlement period)
- at least 10%<sup>2</sup> of the employees (excluding trainees) working at the establishment at the time in question
- are affected by a loss of earnings of more than 10% of their monthly gross pay in each case.

It is therefore sufficient if at least 10% of the employees in an operational department are affected by short-time working with an individual loss of earnings of more than 10% for the company to be able to submit an application for short-time working. The loss rate is calculated on the basis of all employees working in the department (except trainees).

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<sup>2</sup> This is the new legal position since the government regulation to simplify short-time working as of 25 March 2020 reduced the actual statutory minimum number of employees working in the establishment or department affected by short-time working from 1/3 to 10%. In accordance with the first regulation amending the short-time working allowance regulation of 21 October 2020, this rule will now be extended until 31 December 2021 for all companies that have introduced short-time working by 31 March 2021.



**TO DO for companies:**

Clarify operational structures: which organisational units exist and how many of them need to be affected by the loss of work to fulfil the requirements for short-time working?

**8. Who is eligible for short-time working and who is not?**

Fundamentally, all employees who pay social security contributions are eligible for short-time working and can receive short-time allowance where the loss of earnings is due to the reduction in working hours. The following groups of people, for example, are not eligible for short-time working:

- Employees whose employment ends due to notice of termination or a settlement agreement during the period of short-time working (section 98 (1) no. 2, German Social Security Code III (SGB III))
- Staff on vocational training courses receiving unemployment benefit (section 98 (3), German Social Security Code III (SGB III))
- Staff on long-term sick leave receiving sickness benefit from their health insurance company (section 98 (3), German Social Security Code III (SGB III))
- “Minijobbers” (because they are not subject to social security contributions).

**9. What is the procedure with regard to the Employment Agency?**

The Employment Agency procedure is a two-stage process whereby the employer must calculate the short-time allowance itself and pay it to employees (the Employment Agency merely reimburses the benefit):

- a) **Reporting loss of work:** First, the temporary loss of work must be reported in writing to the Employment Agency office of the district in which the company is located. In the case of companies operating nationwide, a “key customer adviser” can be provided by the Employment Agency to coordinate matters around short-time working between the Employment Agency offices and sites involved. The reporting form can be found here:

[https://www.arbeitsagentur.de/datei/anzeige-kug101\\_ba013134.pdf](https://www.arbeitsagentur.de/datei/anzeige-kug101_ba013134.pdf)

The conditions for receiving short-time allowance must be set out in detail and substantiated/verified (e.g. by submitting the announcement made to the

employees and short-time working agreements). This applies in particular to the following:

- reasons for loss of work; comparative data showing that capacities cannot be fully utilised;
- information on products/services; main customers or main contractors;
- information on the temporary nature of the loss of work.

Here again, official practice is generous, quick and pragmatic in crisis situations and not aimed at preventing applications.

The Employment Agency issues a notice of recognition after checking the requirements (at present, the response may be delayed due to the high number of applications). Short-time allowance is granted at the earliest from the calendar month in which the report of the loss of work is received by the responsible Employment Agency office (section 99 (2), German Social Security Code III (SGB III)).



**TO DO for companies:**

Is all the necessary data available at short notice to report short-time working? Can the form be filled in at short notice?

- b) **Application for short-time allowance:** After the notice of recognition has been issued (in practice, often even before then because there is no time to lose), the employer must calculate the short-time allowance free of charge and also pay it directly to employees. A monthly application for short-time allowance is submitted to the Employment Agency via the Employment Agency's application form and a settlement list. An application covering several months is not possible. The application must be submitted at the latest within a deadline of three months, otherwise no short-time allowance will be granted. The period begins at the end of the month for which short-time allowance is being requested.

The application for short-time allowance, the calculation list and associated instructions can be found here:

[https://www.arbeitsagentur.de/datei/antrag-kug107\\_ba015344.pdf](https://www.arbeitsagentur.de/datei/antrag-kug107_ba015344.pdf)

[https://www.arbeitsagentur.de/datei/kug108\\_ba013010.pdf](https://www.arbeitsagentur.de/datei/kug108_ba013010.pdf)

[https://www.arbeitsagentur.de/datei/hinweise-kurzarbeitergeld\\_ba014273.pdf](https://www.arbeitsagentur.de/datei/hinweise-kurzarbeitergeld_ba014273.pdf)

It is also possible to apply online:

<https://www.arbeitsagentur.de/unternehmen/finanziell/kurzarbeitergeld-bei-entgeltausfall>



**TO DO for companies:**

- Who will calculate the short-time allowance? Are all necessary programs available, do employees need training to do this?
- Is all the necessary data available at short notice to apply for short-time allowance? Can the forms be filled in at short notice?

**10. How does the employer calculate short-time allowance?**

Short-time allowance is calculated on a lump-sum basis in accordance with the table published by the Federal Employment Agency and essentially corresponds to unemployment benefit (60% or 67% of standard net remuneration). However, only the net salary up to the income threshold for social security contributions is eligible for calculating the short-time allowance (2020: up to EUR 6,900.00 gross per month). If actual remuneration during short-time working (i.e. the remuneration for the reduced working hours during short-time working) is higher than the income threshold, no short-time allowance will be paid.

As of January 2020, the following table applies for calculating the short-time allowance:

[https://www.arbeitsagentur.de/datei/kug050-2016\\_ba014803.pdf](https://www.arbeitsagentur.de/datei/kug050-2016_ba014803.pdf)

It must first be determined whether the employee is to be assigned to benefit rate 1 (requirement: at least 0.5 child tax allowance on the wage tax card and special cases = short-time allowance is 67% of standard net remuneration) or benefit rate 2 (all other employees = short-time allowance is 60% of the difference between the employee's standard and reduced remuneration). The standard net remuneration for the current gross salary and the reduced gross salary after introduction of short-time working are then taken from the table and the difference is calculated. The difference represents the short-time allowance.

**Example:**

Short-time working is introduced with a 50% reduction in working hours;

employees, wage tax class III;

child tax allowance 1.0 = wage tax class III, benefit rate 1

|                                   |   |              |                       |   |              |
|-----------------------------------|---|--------------|-----------------------|---|--------------|
| Normal earnings in calendar month | = | EUR 2,500.00 | Notional benefit rate | = | EUR 1,295.11 |
| Actual earnings in calendar month | = | EUR 1,250.00 | Notional benefit rate | = | EUR 675.36   |
| Short-time allowance              |   |              |                       | = | EUR 619.75   |

Under the Act of 29 May 2020, however, improved benefits for employees who have reduced their working hours by at least 50% during short-time working and have been put on short-time working for a particularly long period entered into force. For employees without children, the short-time work allowance will be increased in stages from 60% to up to 80% and for employees with children from 67% to up to 87%.

This means specifically:

- In the first three months, the previous short-time allowance rates of 60% and 67% will apply.
- As of the fourth month of short-time working, allowances of 70% or 77% (for employees with children) of the net pay difference according to sections 105, 106 of the German Social Security Code III (SGB III) will be paid.
- From the seventh month onwards, 80% or 87% (for employees with children) of the net pay difference according to sections 105, 106 of the German Social Security Code III (SGB III) will be paid.

In line with the German Act to Secure Employment During the COVID-19 Pandemic, which comes into force on 1 January 2021, the improved benefits will now be available until

31 December 2021, provided that the entitlement to short-time allowance arises before 31 March 2021 (please see section 421c (2) sentence 1, German Social Security Code III (SGB III))

**11. What costs remain with the company (= residual overhead costs)?**

Even during short-time working, certain remuneration components must be calculated and paid by the employer as if normal working hours were in force, e.g. holiday pay and any summer bonus during holidays.



The total social security payment (= employee and employer contribution) for the part of the remuneration lost, which normally represents part of the residual costs – a significant cost item for the employer during short-time working – will also be reimbursed by the Federal Employment Agency for a limited period until 30 June 2021. This was clarified by the government decree of 25 March 2020 and extended by the coalition resolution of 25 August 2020. From 1 July 2021 to 31 December 2021 at the latest, half of social security contributions will be reimbursed for all companies that have introduced short-time working by 30 June 2021. Companies that adopt short-time working from 1 July 2021 onwards will no longer have social security contributions reimbursed.<sup>3</sup> If employees train towards qualifications during short-time working, 50% of social security contributions can be reimbursed until 31 July 2023. In addition, the incentive to use periods of absence from work for continuing vocational training is further increased by removing the requirement for reimbursement of half of social security contributions in such cases that training should take up at least 50% of the period of absence from work.<sup>4</sup>

## **12. How can the company cushion the reduction in employees' salaries, if it wants to?**

In addition to the remuneration for part-time work and the short-time allowance, the company can pay a top-up amount/supplement to the short-time allowance to employees to compensate for the reduction in salary. In practice, it is usual to top up to 80% of the last net salary, or during the current coronavirus pandemic also to 90% or 95%.

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|---|---|
|  | <p><b>TO DO for companies:</b></p> <ul style="list-style-type: none"> <li>– Calculate scenarios with a top-up to 80%, for example.</li> </ul> |
|---|---|

## **13. Are there other ways for the employee to compensate for loss of salary?**

If permitted by the employment contract or other provisions applicable to the employment relationship, the employee may take a second job during short-time working. A distinction must be made here as to whether the part-time job was taken up before or after the start of short-time working. In the former case, income is usually not offset against short-time working allowance, in the latter case it normally is.

Under section 421c of the German Social Security Code III (SGB III), however, employees may pursue any secondary employment in the period from 1 May 2020 until 31 December 2020. The sum of

<sup>3</sup> See the first regulation amending the short-time working allowance regulation of 21 October 2020.

<sup>4</sup> See German Act to Secure Employment During the COVID-19 Pandemic, section 106a of the German Social Security Code III (SGB III), which comes into force on 1 January 2021..

- the residual income from the existing employer,
- short-time working allowance and
- the additional income from secondary employment

must not exceed the gross remuneration which the employee would have earned in the calendar month without the loss caused by short-time working.

The German Act to Secure Employment During the COVID-19 Pandemic will extend the existing time-limited additional income regulations until 31 December 2021 such that remuneration from a low-paid job taken up during short-time working will remain exempted (section 421a (1) of the German Social Security Code III (SGB III).

#### **14. How flexible can the company be during short-time working?**

Working hours do not have to be reduced by the same amount for all employees.

- The requirements for short-time working (see no. 6 and no. 7 above) must be met for the establishment or the department. In particular, the requirements concerning the loss of work (10% of employees affected by short-time working with a reduction in remuneration of more than 10%) must be met. The loss must remain the same for the entire month across the entire division or establishment (i.e. it is not possible to switch between establishment and department within a month). The reference period is always the respective full calendar month, whereby an average must be calculated if there are increases and decreases during a month.
- If these basic conditions are met, the employees can work different hours. It is important that the employer only ever applies for short-time allowance for the working hours actually lost.

#### **15. What if short-time working coincides with leave?**

Short-time working and leave are mutually exclusive. If the short-time working falls within a period of recreational leave that has already been granted to an employee, the company is required to grant the leave again at a later date (German Federal Labor Court (BAG), 16 December 2008 – 9 AZR 164/08).

This only does not apply if short-time working is contractually suspended during the leave and the employee therefore receives their “normal” remuneration while on leave.

(Last updated: 27 November 2020)