

A detailed 3D rendering of several coronavirus particles. Each particle is roughly spherical with a textured, bumpy surface. Numerous small, rounded protrusions, representing spike proteins, are distributed across the surface of each particle. The particles are set against a soft, out-of-focus background with a color gradient from light blue to pale yellow.

Coronavirus Regulations on Short-Time Work

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Labor Law Questions

- Overview -

Prerequisites for short-time work

- What conditions have to be fulfilled before employers can order short-time work?
- On what basis can short-time work be ordered by employers?
- Can short-time work also be ordered just for individual departments/areas?
- Can individual employees be exempted from a general short-time work regulation?

Peculiarities in times of the corona pandemic

- As of when does coronavirus constitute a situation in which employers can apply for short-time work compensation from the employment agency?
- How many employees have to be affected by the pandemic and how severely?
- Which changes in the law are coming into force and when?

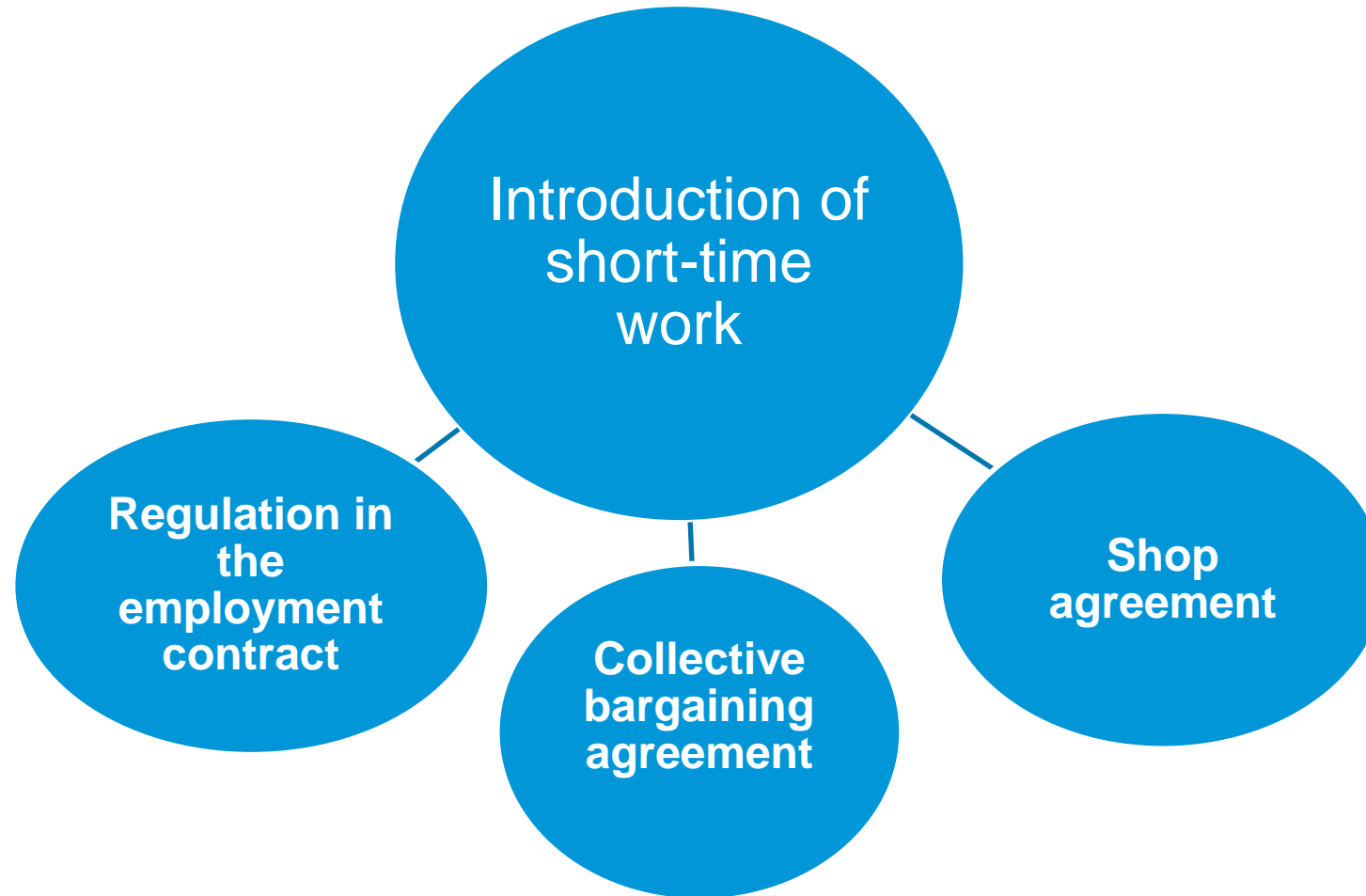
Short-time work compensation

- How high is the short-time work compensation?
- How high is the continued remuneration in the event of illness in case of short-time work?
- How long can short-time work compensation be paid?
- What costs have to be borne by the employer?
- Who pays the short-time work compensation?
- Who pays the social security contributions?

When will the new regulations on short-time work compensation come into force?

- On 13 March 2020, the Bundestag and Bundesrat passed a draft bill on a temporary improvement of the regulations governing short-time work compensation ("short-time work due to corona") in summary proceedings. The law was also signed by the German Federal President last Friday. It was published in the Federal Law Gazette [*Bundesgesetzblatt*] on 14 March 2020 and has come into force. (The text of the law is in the back-up)
- In addition, the Federal Ministry of Labor and Social Affairs [*Bundesministerium für Arbeit und Soziales, BMAS*] is issuing an ordinance. According to the latest information, the adopted changes will take effect retroactively from 1 March 2020 and short-time work compensation will also be paid out retroactively. Source: <https://www.bmas.de/DE/Presse/Meldungen/2020/mit-kurzarbeit-gemeinsam-beschaeftigung-sichern.html>).
- According to the current status (17 March 2020), the draft of the ordinance is currently being voted on and will not be published before 18 March 2020.
- The special regulations (short-time work due to corona) are initially limited until the end of the year, but until 31 December 2021 at most.
- The Bundesrat has also passed a further law regulating short-time work, which includes qualification subsidies; this should already come into force in the first half of April 2020.

Labor law basis for short-time work



Conditions for claiming short-time work compensation

Considerable loss of work

- There must be a **considerable loss of work**,
- this must be based on **economic reasons** or an **unavoidable event**,
- it must be **temporary**,
- it must be **unavoidable**.

Operational prerequisites

- Short-time work compensation is granted in businesses regardless of their size and legal form, provided that they have at least one employee.
- **A business department is also** considered to be a **business**. This makes it possible to grant short-time work compensation ("KUG") in only parts of a business, e.g. in case of a loss of work in just one department of a business (e.g. administration, production).
- New: **Temporary employment agencies** can with immediate effect now also notify a loss of work to the employment agency.

Personal prerequisites

- This includes that the employee continues to be employed in work that is subject to compulsory insurance after the start of the loss of work or that the employment relationship has not been terminated.
- New: **also for temporary employees** (§ 11 (4) sentence 3 German Temporary Employment Act [*Arbeitnehmerüberlassungsgesetz, AÜG*] repealed)

Notification to the employment agency

- To the employment agency in whose district the business is located
- By the employer or works council
- In writing or electronically, preferably using the forms provided
- With the statement of the works council, if such exists

Considerable loss of work in times of the corona pandemic

Economic reasons

- Considerable loss of work due to the pandemic, e.g. collapsing supply chains, drastic decline in orders

Inevitable event

- Closure of a business or business division due to an official order or due to a measure recognised by the authorities
- Quarantine measures

Up to 10% of the employees at the business suffering a loss of pay of more than 10% of their gross monthly salary

- The approval of KUG is conditional on a *minimum number* of employees being affected by a *minimum amount* of the loss of pay.
- Now: Reduction of the **quorum** of employees in the business who have to be affected by the loss of work to up to **10%** and no longer at least 1/3 of the workforce as before
- Below these limits: no KUG

Unavoidable

- The loss of work is only *unavoidable* if all *reasonable precautions* have been taken at the business to prevent its occurrence.
- To date: working time fluctuations permissible at the business to be utilised first of all
- Now: **Abstention from building up negative working time balances**

Calculation of the quorum and loss of pay

How is the quorum of 10% of the workforce calculated?

- **All staff** employed at the business or business division during the entitlement period
- **Also:** employees who are incapable of working due to illness, employees on vacation and employees sent on training courses as well as employees who have already been dismissed and released from their work duties (even if they do not receive KUG)
- **Not:** trainees
- In the calculation of the quorum, figures are always **rounded up**.
- The **reduction in working time** may also **vary** depending on the employee.

How is the loss of pay calculated?

- The difference between regular pay and actual pay must be **greater than 10%** in the entitlement period.
- There is no loss of pay if, for example, short-time work has been introduced in disregard of the provisions of labor law and the ordered short-time work is consequently invalid, with the result that the employee does not lose his pay claim (§ 615 German Civil Code [*Bürgerliches Gesetzbuch, BGB*]).
- The loss of pay must exist *when accounts are settled for the calendar month* (entitlement period): this is also the case if there has been no loss of pay in individual weeks of the month due to changing workloads.
- If the quorum is met, even employees for whom the personal loss of pay is less than 10% are also entitled to short-time work compensation.

Entitlement period for short-time work compensation

■ Compensation payment period:

- The maximum statutory compensation payment period is **twelve months** (§ 104 (1) German Social Code, Book Three [*Sozialgesetzbuch III, SGB III*])
- At the earliest from the calendar month in which the notification of the loss of work has been received by the employment agency; only in the **case of an inevitable event** will **short-time work compensation** be granted **from the first day of this event**, if the notification was made without undue delay
- The standard compensation payment period can be **extended** by ordinance **up to a period of 24 months** (§ 109 (1) No. 2 SGB III). This has not yet happened in the course of the corona pandemic, but cannot be ruled out.

Amount of the short-time work compensation

Case groups	Amount
Regular amount	<p>60% of the net pay difference 67% of the net pay difference: for employees who meet the conditions for the increased benefit rate of unemployment benefit (if they have a child or a child of their spouse/life partner living in the household registered on the tax card)</p>
Amount of continued remuneration in the event of illness	<p>Through this, the employee receives the same remuneration as he would receive if he were able to work; this in turn also applies in the case of "zero short-time work". For the duration of the entitlement to continued remuneration in the event of illness, the employee receives short-time work compensation. As a result, a claim to sickness benefit according to §§ 44 et seqq. of the German Social Code, Book V, then exists.</p>
Amount of remuneration on public holidays	<p>The employee does not receive short-time work compensation, but a claim against his employer in the amount of the short-time work compensation that he would have received had it not been a public holiday. If the employee falls ill on a public holiday during the short-time work period, he is entitled to remuneration for the public holiday in the amount of the short-time work compensation.</p>
Amount of vacation pay	<p>The amount of vacation pay during the short-time work period is calculated according to § 11 (1) sentence 1, 3 German Vacation Entitlement Act [<i>Bundesurlaubsgesetz, BUrlG</i>]. Accordingly, reductions in pay that occur in the calculation period as a result of short-time work are not taken into account for the calculation of vacation pay. If "zero short-time work" and the already granted vacation of an employee coincide with each other, the employer does not owe vacation pay. Rather, an obligation exists to alternatively grant the vacation at a later date.</p>

Obligations and costs to be borne by the employer

■ Calculation and disbursement obligation

- The employer must calculate the amount of the short-time work compensation (free of charge) and disburse it (§ 320 (1) sentence 2, SGB III).
- The short-time work compensation is disbursed retroactively for the period for which it was applied.
- There is no obligation on the employer's part to advance the short-time work compensation; however, it is obliged to pass it on to employees without undue delay.

■ Costs to be borne by the employer:

The employer continues to pay work remuneration for the remaining work time, together with the corresponding social security contributions, as long as there is no zero short-time work.

■ Social security contributions

- During the period in which short-time work compensation is granted, the employee remains a member of the statutory health, nursing care and pension insurance schemes.
- According to § 1 (1) No. 8 German Ordinance on the Assessment of Employers' Contributions as Work Remuneration under Social Security Law [*Verordnung über die sozialversicherungsrechtliche Beurteilung von Zuwendungen des Arbeitgebers als Arbeitsentgelt, SvEV*]), contributions by employers towards the short-time work compensation are not part of the remuneration upon which social security contributions have to be paid, provided that - together with the short-time work compensation - they do not exceed 80 % of the difference between the regular pay and the actual pay according to § 106 SGB III.
- The parts of the contributions that are attributable to lost hours are fundamentally borne solely by the employer, cf. §§ 249 (2) SGB V, § 58 (1) sentence 2 SGB XI, § 168 (1) No. 1a SGB VI. **Now: full reimbursement** by the Federal Employment Agency [*Bundesagentur für Arbeit*] of the social security contributions to be borne solely by employers.

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