

# Corona crisis - Labour Law information

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# Information on reduced working hours

## 1. Can employers unilaterally order reduced work hours?

Yes, if there is a legal basis for doing so, e.g. in a collective agreement, a works agreement or in the employment contract. Otherwise, an individual agreement with the employees is required.

## 2. Is the approval of a works council required?

Yes, if a works council exists. If reduced working hours are negotiated in a works agreement, this should also constitute approval.

## 3. Does the reduced working hours have to be reported to the responsible employment agency or applied for at the agency?

Yes, first the loss of working hours must be reported to the responsible employment agency:

- In writing or by e-mail by the employer or works council
- Responsible is the employment agency (Agentur für Arbeit), in whose district the company is located
- With substantiation of the considerable loss of working hours and the operational requirements for reduced hours compensation benefit
- By the end of the month in which reduced working hours compensation benefit should begin, immediately in the event of an unavoidable event

The employment agency (Agentur für Arbeit) must immediately inform the employer in writing whether, on the basis of the facts presented and substantiated by plausible evidence, there has been a considerable

loss of working hours and whether the operational requirements have been met. If this is the case, the application for reduced working hours compensation benefit can be submitted, see 4.5.

## 4. What conditions must be met for granting reduced hours compensation benefit according to SGB III?

These adjustments are effective retroactively as of March, 1st 2020 and are also paid retroactively. This means that employers can already apply for improved reduced working hours.

### 4.1 Significant loss of work with loss of earnings

- Based on economic reasons or unavoidable event: "A loss of working hours due to or as a consequence of the coronavirus and/or the associated safety measures is usually based on an unavoidable event or on economic reasons within the meaning of § 96, Subsection 1, No. 1, SGB III. Compensation for the loss of working hours with the help of the cyclical short-time work allowance is thus generally possible." (press release no. 8 of the Regionaldirektion Baden-Württemberg of the Agentur für Arbeit of 6.2.2020)
- Temporary (duration currently up to 12 months)
- Unavoidable (previously remaining leave, planned leave, use of permissible working time fluctuations, in particular reduction of time credits within certain limits ≠ Leave with conflicting priority holiday wishes of the employee)

**NEW: Employees' working time accounts need not be run down to minus hours!**

- In the respective calendar month (entitlement period), **at least 10%** (NEW, previously 1/3) of the Contractors employed in the company are affected by loss of remuneration of more than 10% of the gross monthly remuneration

#### 4.2 Corporate requirements

- at least one employee employed in the company
- also an operating department counts as company in this sense

#### 4.3 Individual requirements

- employment subject to compulsory social security to continue or to take up for compelling reasons or to take up employment following vocational training after the beginning of the period of loss of work
- Employment is not terminated / cancelled by termination agreement
- Employees are not excluded from receiving **reduced hours compensation benefit** (Caution for pensioners because of age): Suspension of the entitlement to **reduced hours compensation benefit** during periods of entitlement to a full old-age pension.

#### 4.4 Notification of loss of working hours to the employment agency (Agentur für Arbeit) with a positive decision

- see section 3

#### 4.5 Application for reduced hours compensation benefit

- Limitation period of three calendar months, beginning after the month for which reduced hours compensation benefit is applied for, to be applied for every single calendar month

### Legal consequences

#### 1. What are the consequences of ordering reduced working hours for employees?

Employees work less for less income. As partial financial compensation, they receive reduced hours compensation benefit.

#### 2. How is the reduced hours compensation benefit paid out?

The reduced hours compensation benefit is paid net by the employer. The employer receives reimbursement for the reduced hours compensation benefit on request by the employment agency („Agentur für Arbeit“).

#### 3. When will the reduced hours compensation benefit be paid?

Reduced hours compensation benefit is paid no sooner than the calendar month in which the notification is received by the Agentur für Arbeit. Exceptions are possible but not common.

#### 4. How high is the reduced hours compensation benefit?

The reduced hours compensation benefit is 60 % of the difference in net income (general benefit rate). Employees with at least one child to be taken into account for tax purposes are entitled to an increased reduced hours compensation benefit of 67 % of the net income difference (increased benefit rate). The net remuneration difference is the difference between flat-rate net remuneration from planned remuneration and flat-rate net remuneration from actual remuneration.

**NEW:** Social security contributions to be paid by employers for reduced working hours will be fully refunded by the Federal Employment Agency.

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