

BRIEF OVERVIEW SHORT TIME WORK UNEMPLOYMENT BENEFIT

Please find below a brief overview of the subject of short time work unemployment benefit, in which the important points are summarised.

KBHT will be pleased to support you in the legal preparation of the necessary documents, take over the communication with the appropriate institutions and submit the application to the responsible employment agency. Please feel free to contact us on this matter.

SHORT-TIME WORKING

TERM

Temporary reduction of normal working hours with a corresponding reduction in remuneration

LEGAL BASIS

- The imposition of short-time working by the employer is only possible on a corresponding legal basis,
- by law, a collective agreement, works agreement, employment contract or separate agreement with the employee,
- the order of precedence of legal provisions must be considered: Reference is made to the applicable collective agreement. Otherwise, the order of precedence according to works agreements and separate agreements applies. If none of the contractual agreements exist, an individual agreement must be concluded with the employee. We will be pleased to provide you with the corresponding template.

WORKS COUNCIL

exists

- Right of initiative: The works council can apply for the introduction of short-time working from the employer and, if necessary, force it through the conciliation committee.
- Right of co-determination in the case of the early termination of short-time working by the employer.
- No right of co-determination on remuneration issues: the works council is not entitled to make its approval of the introduction of short-time working dependent on the granting of short time work unemployment benefit by the Employment Office.

does not exist

- Introduction of short-time working regardless of the right of co-determination.
- However, the employer then has to conclude a corresponding individual employment agreement with each employee; if employees do not agree to this, dismissal with the option of altered conditions of employment must be issued – at least in theory. Please contact us in this case, as the legal implications have to be examined for each employee on an individual contract basis.

SHORT TIME WORK UNEMPLOYMENT BENEFIT

TERM

Employee's entitlement to compensation for loss of the claim to remuneration

PRECONDITIONS/APPLICATION

Short time work unemployment benefit is granted if the conditions specified in **Sections 95 to 99 of Book III of the German Social Code** are satisfied.

economic causes

- economic causes are all influences that arise directly or indirectly from the economic process and result in a change to the operational structure

unavoidable occurrences

- unavoidable occurrences are exceptional circumstances in the working environment which are officially imposed on the one hand, and result from force majeure on the other

temporary nature

- this is of a temporary nature when the transition from the actual state to the target state can be expected with a certain level of probability

Such an occurrence includes, for example, delivery failures or plant closures due to protective measures imposed by the state.

operational preconditions

(Section 97, Book III of the German Social Code)

- Short time work unemployment benefit is only permitted in companies where there is at least one employee. Such failures can also affect only one department of a company, for example

personal requirements

(Section 98, Book III of the German Social Code)

- The employment is continued as employment which is subject to social insurance contributions after work stoppages
- The employment relationship is not terminated or subject to a cancellation agreement

are fulfilled and

- notification of the work stoppage is reported (Section 99 of Book III of the German Social Code)
 - in writing to the Employment Agency in whose district the company is located
 - plus a statement of the company representative on the work stoppage (loss of working hours). It remains to be seen to what extent the Employment Office needs information. For plant

closures which are officially imposed it should be possible to reduce this to a minimum.

- Search for an administrative office via the Federal Employment Agency:
<https://con.arbeitsagentur.de/prod/apok/metasuche/suche/dienststellen>
- Signed notification sent by email or fax satisfies the legal requirements. Alternatively, it is possible to register on the Internet portal of the Federal Employment Agency and submit the application online.
- Reference is made to the Federal Employment Agency application:
https://www.arbeitsagentur.de/datei/anzeige-kug101_ba013134.pdf
- The application must be accompanied accordingly by the documents relating to the works agreement or the individual contractual agreements with the employee.
- The ongoing application is made in the form of an application for benefit, which is usually prepared by us within the framework of the payroll accounting system. The application must then be forwarded to the Employment Agency responsible after it has been signed. The follow-up period for the current monthly application is 3 months. After that, the claim to short time work unemployment benefit expires without replacement.

SPECIFIC FEATURES IN PARTICULAR HOLIDAY / OVERTIME / ILLNESS

- The employee must use up his or her holiday entitlement (which is also based on overtime) before claiming short-time working
 - This can only be avoided if there is a complete annual holiday plan for each individual employee.
- Priority must always be given to using up existing overtime or credit from the working time account. Using up working time credit can be demanded from the employee pursuant to Section 96 IV, Subsection 4, Sentence 2 of Book III of the German Social Code only in the following cases:
 - where it is contractually stipulated to be intended exclusively for the bridging of work stoppages outside bad weather periods (Section 101, Subsection 1) and does not exceed 50 hours,
 - where it is intended exclusively for the purposes specified in Section 7c, Subsection 1 of Book 4 (family care, parental leave, reduction of the working time on the basis of Section 8 or Section 9a of the Part-Time and Fixed-Term Contracts Act),
 - has been saved to avoid the avilment of seasonal short-time working unemployment benefit and does not exceed 150 hours,
 - exceeds 10 per cent of the annual working time of an employee without overtime or
 - has existed unchanged for more than one year.
- The company must show in a credible manner that the loss of working hours is unavoidable and cannot be prevented by working time arrangements that are permitted at the company
- During the period covered by the short time work unemployment benefit, the company must make a sustained effort to reduce or bring to an end the work stoppage

- The minimum requirements for determining a work stoppage are stipulated in Section 96, Subsection 1, Part 4 of Book III of the German Social Code. We will certainly have to support the client in verifying the loss of working hours.
- The employment agency can demand that recipients of short time work unemployment benefit conclude other reasonable employment contracts. In the event that the employee refuses to do so without good reason, the provisions applicable to unemployment benefit shall apply (cf. unemployment benefit blocking period).
- In the case of absence due to illness, only the reduced remuneration shall be payable.
- In the case of absence due to a holiday, the full remuneration is to be paid without any reduction due to the short time work unemployment benefit.

SPECIAL REGULATION ON SHORT-TIME UNEMPLOYMENT BENEFIT DUE TO CORONA

- Reference is made to the changes introduced by the Federal Government on March 12, 2020:
 - If orders are not received due to difficult economic developments, a company can apply for short-time working if at least 10 per cent of the employees have a loss of earnings of at least 10 per cent. This threshold has been the case *up to now for 30 per cent* of the workforce.
 - Temporary employees will also be able to draw short time work unemployment benefit in the future, to which they have an entitlement.
 - Social security contributions for lost working hours are reimbursed to the level of 100 per cent.
 - The regulation is currently limited to December 31, 2021.

START / DURATION

- Start: Short time work unemployment benefit is paid at a company at the earliest from the calendar month in which the notification of the loss of work is received by the Federal Employment Agency (Section 99, Subsection 2 of Book III of the German Social Code).

If an application for short time work unemployment benefit therefore still to be submitted for the month of March, the notification of loss of working hours would have to be submitted to the agency responsible by **March 31, 2020** at the latest. We will be pleased to support you in preparing this. Please contact us in good time.

- Normally 12 months
- In the case of exceptional circumstances on the overall labour market, the Federal Ministry of Economics and Labour may, by means of a statutory order, extend the period of entitlement to up to 24 months.
- No such special regulation currently exists.

LEVEL

- 67% of the net pay difference during the entitlement period (for employees with children) or 60% (for individuals without children)
- Net pay difference:
The difference between the flat-rate net remuneration from target remuneration (what the employee would have earned without the loss of work, reduced by remuneration for overtime in the entitlement period) and the flat-rate net remuneration from the actual remuneration (the gross remuneration actually earned by the employee in the entitlement period)

Example 1:

Gross target remuneration: EUR 2,500.00
Gross actual remuneration: EUR 1,250.00
Income tax class: 3
Benefit class: 1

Calculation according to the flat-rate net remuneration as specified in the table of the Federal Employment Agency

Target - Calculated income	EUR 1,295.11
Actual - Calculated income	<u>EUR 675.36</u>
Short time work unemployment benefit	EUR 619.75

Plus 100% reimbursement of the social security contributions if these are attributable to short-time working.

Example 2:

Gross actual remuneration: EUR 0.00

Target - Calculated income	EUR 1,295.11
Actual - Calculated income	<u>EUR 0.00</u>
Short time work unemployment benefit	EUR 1,295.11

Plus 100% reimbursement of the social security contributions if these are attributable to short-time working.