

EFFECTS OF CORONAVIRUS ON REMUNERATION – INFORMATION FOR EMPLOYERS* (MARCH 2020)

In the context of the appearance of COVID-19, various questions arise for the employer, especially concerning **remuneration**. We have summarized the most relevant ones for you here.

Further information can be found on the following pages, among others:

- ✓ **Federal Ministry of Labour and Social Affairs:**
<https://www.bmas.de/DE/Presse/Meldungen/2020/corona-virus-arbeitsrechtliche-auswirkungen.html>.
- ✓ **Robert Koch Institute:** https://www.rki.de/SharedDocs/FAQ/NCOV2019/FAQ_Liste.html
- ✓ **Local health authorities:**
https://www.lzq.nrw.de/service/links/gesundheitsaemter_nrw/index.html

I. AN EMPLOYEE IS UNABLE TO WORK DUE TO ILLNESS RELATED TO COVID-19

- The employee suffering from the coronavirus is entitled to continued **remuneration in the case of illness** for a period of six weeks [Section 3 EFZG (Continued Payment of Remuneration Act)]. After this period, people with statutory health insurance are entitled to sickness benefit.
- If quarantine is ordered at the same time, the claim for continued remuneration competes with the **claim for compensation** under Section 56 InfSchG (Infection Protection Act). Here, the employer makes advance payments in the form of continued remuneration and can submit an application for reimbursement of the amounts paid out to the Landschaftsverband (Regional Council) (in NRW Landschaftsverband Rheinland or Westfalen-Lippe). The application must be submitted within 3 months after cessation of work or after the end of quarantine. You will find a sample application form from the Rhineland Regional Council in the appendix.
- The health authority can ask the affected person to provide a list of **contacts** (people with whom they have had contact). The health authority may order that these contacts remain **in quarantine**. The health authority will also decide whether contacts should be tested.
- Contacts in quarantine are entitled to **claim compensation** equal to the loss of earnings. For employees this is provided by the employer for a maximum of 6 weeks. The employer can have this compensation payment reimbursed by the Landschaftsverband (Regional Council) under Section 56 IfSG (Infection Protection Act). The application must be submitted within 3 months after cessation of work or after the end of quarantine.
- From week 7 onwards, the employee applies for compensation to the Landschaftsverband himself and receives it directly from this office. The **compensation from the 7th week** corresponds to the amount of statutory sickness benefit under Section 47 (1) SGB V (German Social Code V).
- The employer can demand an **advance payment** for remuneration from the Landschaftsverband (Section 56 (12) IfSG)

*For reasons of better readability, the simultaneous use of different language forms (m/f/d) is avoided. All references to persons apply equally to all genders.

II. AN EMPLOYEE HAS FLU-LIKE OR CORONA-LIKE SYMPTOMS

- The employee should be sent **home**.
- Employers outside the healthcare and food sectors cannot order employees to undergo **medical treatment**, including a test.
- In this case, regular **remuneration** is initially to be **continued**. If quarantine is ordered and/or the suspicion is confirmed, the employer can submit an application for reimbursement to the Landschaftsverband.
- **Healthy employees** continue to work as usual. If employers release healthy employees, they are obliged to pay these employees a default salary because they will not accept the offered performance of work by the employees.
- It can be mutually agreed that **working from home** is appropriate. In this case, only the location of the provision of services changes and all other obligations remain unchanged.

III. CONSEQUENCES OF SCHOOL AND DAYCARE CENTRE CLOSURES

- The employee must arrange for the care of his child himself. He is still obliged to perform his work.
- Employers must only release their employees if they or their young children are ill or quarantined.
- For parents who work in indispensable functional areas - especially in the health sector - daycare centres and schools should offer childcare (up to grade 6).

IV. ARE EMPLOYEES ALLOWED TO STAY AT HOME FOR FEAR OF CONTAGION?

- No, because in this case the employees are absent without authorisation if there is no agreement with the employer to work from home, for example.
- The unauthorised absence can be subject to a warning. In the case of recurrence, termination is also possible.
- If, at the employee's request, the employer and employee mutually agree that the employee will be absent and will not work from home, the absence will be subject to the reduction of holiday entitlements or, if applicable, alternative time credits.

V. WORKING FROM HOME

- Employees are not entitled to work from home. If employees stay at home without agreement, this is a breach of their obligation to work. There is no entitlement to continued remuneration.
- Conversely, employers may not unilaterally order work from home either.
- Employers and employees should mutually agree on working from home.

VI. YOUR BUSINESS IS AFFECTED BY CLOSURE DUE TO A MEASURE UNDER THE LAW ON PROTECTION AGAINST INFECTION

- In this case, short-time working must first be agreed with the employees (if necessary, enforced with change notices) and registered with the Employment Agency. On March 16, 2020, the German federal government eased the conditions for receiving the short-time working allowance:
 - It is sufficient if 10 percent of a company's employees are affected by loss of working hours for a company to apply for short-time work. Otherwise, at least one third of the employees must be affected.
 - Social security contributions are fully reimbursed by the Federal Employment Agency in the event of short-time work.
 - The short-time working allowance is also possible for employees in temporary employment.
 - In companies where agreements on fluctuations in working hours are used, no negative working time accounts are created.
- In addition, self-employed persons and entrepreneurs who are affected by a measure under the Infection Protection Act are entitled to compensation for ongoing uncovered business expenses under Section 56 (4) of the Infection Protection Act if their livelihood is threatened. Here too, the time limit of 3 months after completion of the measure applies.
- A substantiation of the coordination and interlinking of measures to support entrepreneurs in the current situation can still be expected. We will keep you informed.