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# Germany

## Company

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### **Tax measures (deferrals, reductions)**

- Payment of income tax, corporate tax and VAT may be deferred if such taxes are an undue burden on the relevant company. Advance tax payments for commercial tax and VAT might be reduced to up to zero. The loss of revenues due to a temporary company shutdown is generally considered an undue burden. Effective from 1 July 2020, VAT will be reduced from 19% to 7% for restaurants until 30 June 2021.
- Financial authorities will generally refrain from enforcement measures in connection with taxes and will not apply penalty surcharges for late payments until 31 December 2020, provided that taxes have not been paid due to an undue burden to the relevant company.
- Special bonus payments and allowances of up to €1,500 are tax-free, provided that they are paid in addition to already agreed remuneration and paid out by 31 December 2020.
- Several Government-sponsored loan programmes are available, generally aimed at providing companies with easy and quick access to loans and securities. Self-employed persons and small companies with up to 10 employees that are affected by the crisis are eligible for a one-off payment of up to €15,000.

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### **Social Security measures (deferrals, reductions)**

- To the extent employees are on “short-time work” or ordered to stay at home under quarantine (see “Temporary layoffs” and “Reduction in pay and/or hours” sections below), the employer will be fully reimbursed for Social Security contributions.
  - The payment of Social Security contributions may be deferred upon application if it constitutes an undue burden and later payment is ensured. The Social Security authorities provided new guidelines to ease applications for deferred payment of contributions for the periods from March 2020 until May 2020.
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# Germany

## Employer

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### **Sick pay (eligibility, obligations to pay, recovery from Government)**

- Employees who are unable to work due to sickness (e.g. employees suffering from COVID-19) are entitled by law to full sick pay from their employer for up to six weeks or longer if agreed in the employment contract. Following this period, health insurance steps in and continues to provide reduced payments. In general, only employers with small businesses (no more than 30 employees) are entitled to recovery from public health insurance, but this is limited to 80% of the sick pay payments.
- If an employee who is suffering from COVID-19 is ordered by a competent health authority to stop working or to remain in quarantine without being sick (e.g. because the employee was in close contact with an infected person or spent time in a high risk area), the employer is eligible under the German Infection Protection Act (“IFSG”) for a full reimbursement from the Government of the relevant remuneration (including Social Security contributions). An employer will no longer be eligible for full reimbursement under the IFSG once the employee in quarantine gets sick from COVID-19 (i.e. in this case the general recovery rules apply (see above)).

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### **Enforced leave / use of holiday (paid vs unpaid)**

- In principle, employers may instruct employees individually to take unused holiday if required for urgent operational reasons. This includes circumstances which arise from the operational organisation, technical workflow, or similar circumstances. Employees can object to enforced use of holidays to the extent the enforced holiday conflicts with their personal holiday planning.
- However, employers can introduce company holidays to bridge times of reduced workload. Before ordering company holidays, the works council (if elected) must give its consent. Some portion of holiday (about two fifths of the remaining holiday) should, however, be left at the employee’s disposal.
- Unpaid enforced leave can only be ordered if a corresponding provision has been included in the employment agreement, which is not typically the case.

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### **Temporary layoffs**

- As a general rule, employees remain eligible for full pay even if the employer cannot provide sufficient work. This is generally true even if the employer is forced to shut down the company by the authorities. However, in specific circumstances, the employer may apply subsidised “short-time work”, which results in a reduction of pay and hours (see below).
  - It is currently being discussed whether a forced shutdown will result in the employer being eligible for a full reimbursement of salaries. As this is an open issue, currently the concept of “short-time work” is recommended for
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reducing personnel costs and keeping qualified staff at the same time (see below).

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### Reduction in pay and/or hours

- As a general rule, employees remain eligible for full pay even if the employer cannot provide sufficient work (the so-called employer's risk sphere, "*Betriebs-/Wirtschaftsrisiko*"). This is generally true even if the employer is forced to shut down the company by the authorities.
- By applying the special German scheme "short-time work" ("*Kurzarbeit*"), employers can reduce costs caused by limited workload due to the COVID-19 pandemic and avoid termination of employment relationships. Under short-time work, employers reduce the working time of employees, which results in a corresponding reduction of the employees' remuneration. The Unemployment Agency compensates 60%/67% (no children / with children) of the reduced net remuneration (capped at €6,900 (West Germany) or €6,450 (East Germany) gross per month) by paying short-time work benefits ("*Kurzarbeitergeld*" or "*KUG*"). During the COVID-19 pandemic until 31 December 2020 at the latest, the Unemployment Agency has increased the short-time work benefit payments for employees who have reduced their working time by at least 50% as follows: (i) from the fourth month of short-time work, short-time work benefits are increased by 10 percentage points (to 70%/77% of the reduced net remuneration); and (ii) from the seventh month of short-time work, short-time work benefits are increased by another 10 percentage points (to 80%/87% of the reduced net remuneration). Short-time work benefits from the Unemployment Agency are regularly paid for up to 12 months, but this period can be prolonged to up to 24 months. In addition, due to recent COVID-19 legislation, the Unemployment Agency will reimburse 100% of the Social Security contributions paid by the employer.
- Many employers decide to pay an extra payment on top of the short-time work benefits paid by the Unemployment Agency to reduce the income loss gap of the employees. Employers often supplement the Unemployment Agency payments to a level of 80% or even 90% of the former employee net income.
- Introducing short-time work requires the employer to have contractual authorisation to reduce the working time and the remuneration which is regularly provided by collective bargaining agreements, works council agreements, employment contract terms or individual ad hoc agreements.
- Besides short-time work, an employer and employee can mutually agree on a reduction of working time / remuneration, deferred payments, and waivers of extra allowances etc.

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## Terminations

- Employers and employees can agree on a termination of their employment relationship in writing at any time. To avoid disadvantages in terms of unemployment benefits, employees usually only agree to a termination where the applicable notice period is worked in full (as opposed to a payment in lieu of notice).
  - Employers can unilaterally terminate employment relationships by giving notice due to operational reasons to the extent workplaces are made redundant. However, applicable notice periods have to be observed, the works council (if any) has to be involved, and employees can challenge terminations before court, contesting the operational reasons. Depending on the number of dismissals in relation to the size of the relevant operational unit, negotiations with the works council (if any) and a mass dismissal procedure with the public authorities may have to be completed prior to the execution of the dismissals.
  - During the period from May 2020 until December 2020, the maximum term for receiving unemployment benefits is extended by three months. For unemployed persons older than 50 years of age, the period for which unemployment benefits are paid increases in several steps up to 24 months.
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# Germany

## Workforce

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### Teleworking

- Teleworking or home working cannot be unilaterally required by the employer without a contractual or operational legal basis, nor is there a general right for the employee to work from home.
- If there is no contractual basis or, for example, no agreement with the works council, an amicable solution must be reached to establish teleworking.
- The employer should consider and, if necessary, check whether home working is technically and organisationally possible and, where necessary, provide for it. Data security must also be ensured and double-checked.

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### Travel (business and personal)

- Even though official restrictions on traveling have been eased, it is still strongly recommended that business trips be restricted as far as possible. The Federal Foreign Office (“*Auswärtiges Amt*”) has issued a worldwide travel warning for general tourist travel and special travel warnings for countries with a high risk of COVID-19 infection. Accordingly, it is likely that the vast majority of trips will have to be cancelled. This also applies to business trips. If there is a corresponding travel warning for the destination country, the employer’s order for such a trip will most likely be inadmissible.
- Where a business trip is deemed indispensable, it must be ensured in advance that it can be carried out at all (i.e. all travel instructions and restrictions must be checked and monitored during the trip). Furthermore, the employee must be informed of any necessary precautionary measures or guidelines that they must observe during the trip. Some federal states require employees who have travelled abroad to go into quarantine for two weeks on their return to Germany.
- If the employee needs to travel privately, it must be verified that they comply with any subsequent obligations resulting from this, (e.g. that they observe an ordered isolation period afterwards or similar).

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### Preventive actions (reception policy, public interactions, management of infected employees)

- According to occupational health and safety law, the employer is obliged to take necessary protective measures for its employees. At present, this is likely to mean that social distancing must be observed at work and premises must be cleaned more frequently and in a virus-relevant manner (especially toilets, entrances and public areas). Disinfectants should be provided, and efforts must be made to ensure that hygiene standards are observed. New detailed occupational health and safety standards under the current COVID-19 pandemic have been published by the German Ministry of Labour and are also available in an English translation [here](#).
  - Public interactions should be reduced as far as possible. Meetings in person and in larger groups should be avoided. Employees should be
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encouraged to use video call and online based facilities to set up meetings, share information etc.

- Employees should be instructed to contact their manager immediately by telephone if typical COVID-19 symptoms occur. The employee should then immediately be prohibited from contacting other employees. The employee concerned should be instructed to go home immediately. The release of other employees who have been in contact with the employee concerned should be decided at short notice, if necessary, after consultation with the company doctor or a competent health authority.

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### **Employees with children or older dependants**

- In the present situation, employees may (temporarily) no longer be able to perform their work due to the closure of schools or childcare facilities.
- In this event, under certain circumstances, the employer may be obliged to continue to pay remuneration in accordance with the German Civil Code ("BGB") "for a relatively insignificant period of time" (a range between 10 days and six weeks). This continued payment provision of the BGB can however be waived in employment contracts or collective agreements.
- Following a term of continued remuneration pursuant to the above, employees are, in principle, not entitled to further remuneration. However, due to wide-ranging closure of schools and childcare facilities during the COVID-19 pandemic, parents can be compensated for losses of income they suffer as a result of the closure of schools or childcare facilities. Employees are only entitled to this compensation if they are forced to look after the children themselves and there are no other reasonable alternatives available (i.e. no partner or other relatives are available) and if working from home is not a reasonable option. The compensation amounts to 67% of the income losses (capped at €2,016 per full month) and will be paid for up to six weeks (although increasing this for up to 20 weeks is currently under discussion).

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