

# Germany

## Company

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### Tax measures (deferrals, reductions)

- Payment of 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 can be reduced, at a maximum, to zero. The loss of revenues due to a temporary company shutdown is generally considered an undue burden. In relation to an employer's monthly obligation to withhold and transfer income tax payments from their employees' gross salary, employers can apply for a suspension for up to two months, but only where they have experienced serious operational trouble due to the COVID-19 pandemic. This will be granted on a case-by-case basis.
- From 1 July 2020 until 31 December 2020, the regular VAT rate has been reduced from 19% to 16%. The "reduced VAT rate" (which applies in relation to a defined list of goods and services) has also been lowered from 7% to 5%. For restaurants, VAT has been reduced from 19% to 7% from 1 July 2020 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.
- In order to reduce the income loss of employees, employers can choose to supplement the short-time work benefits paid by the Unemployment Agency ("Supplements") (see "Reduction in pay and/or hours" section below). Supplements are tax-free, provided that they do not bring the employee's salary to more than 80% of their former net income.

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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 to public health insurance companies may generally be deferred upon application, following a case-by-case review, if it constitutes an undue burden and later payment is ensured. Between March 2020 and May 2020, the criteria for applications to defer the payment of Social Security contributions were relaxed. However, since June 2020, applications have been assessed on a case-
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by-case basis as normal, but many public health insurance companies have now established procedures to make deferrals of Social Security contributions easier. Additionally, public health insurance companies have recently agreed to grant a deferral for the payment of Social Security contributions for the month of November 2020 for employers affected by the lockdown.

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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 their employment contract). Following this period, any health insurance can continue to provide reduced payments. In general, only employers with small businesses (i.e. no more than 30 employees) are entitled to payments from public health insurance, but this is capped at an amount equal 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 (because 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 that the enforced holiday conflicts with their personal holiday planning.
- Employers can also introduce company holidays to bridge periods of reduced workload. Before doing this, the works council (if elected) must give its consent. However, approximately two fifths of the remaining holiday should 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. This is rare in practice.

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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 for subsidised “short-time work”, which results in a reduction of pay and hours (see “Reduction in pay” section 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 reducing personnel costs and keeping qualified staff at the same time (see “Reduction in pay” section 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 for 2020) by paying short-time work benefits ("*Kurzarbeitergeld*" or "*KUG*").
- During the COVID-19 pandemic, 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). The increased short-time work benefits rates (up to 80/87%) shall apply until 31 December 2021, provided that the short-time work started no later than 31 March 2021.
- During the COVID-19 pandemic, short-time work benefits from the Unemployment Agency can be paid for a period of up to 24 months (but until no later than 31 December 2021), if the employer introduced short-time work before 31 December 2020.
- In addition, the Unemployment Agency will reimburse 100% of Social Security contributions paid by the employer until 30 June 2021. For the period from 1 July 2021 until 31 December 2021, 50% of the employer's Social Security contributions will be reimbursed, and the employer may be reimbursed for the remaining 50% if the employees receive "job-qualification measures" (training provided at the employer's expense, although employers can apply for co-financing with the Unemployment Agency) during the short-time work. "Job-qualification measures" have the meaning as defined in Sec. 82, 180, 181 Social Code III and include training measures operated by certified job training providers.
- In addition to the short-time work benefits paid by the Unemployment Agency, many employers decide to pay employees additional Supplements, tax-free, to reduce the income loss of the employees (see "Tax measures" section above). In practice, employers often supplement the Unemployment Agency payments so that the employee is receiving 80% or 90% of their former net income. Provided that the salary of the employee does not exceed 80% of their former gross salary, the employer will not have to pay Social Security contributions on the Supplements.
- Until 31 December 2021, an employee on short-time work is allowed to receive additional income from other employers without having to deduct this from the amount they receive in short-time work benefits. This applies provided that the short-time work benefits and the additional income do not exceed the employee's former regular salary.
- Introducing short-time work requires the employer to have contractual authorisation to reduce the working time and the remuneration which is

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regularly provided by collective bargaining agreements, works council agreements, employment contract terms or individual ad hoc agreements.

- In addition to short-time work arrangements, 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 they will work throughout the applicable notice period (as opposed to receiving 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 a 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.
  - From May 2020 until December 2020, the maximum term for receiving unemployment benefits is extended by three months. For those that are aged over 50 and unemployed, the period for which unemployment benefits are paid increases incrementally up to a maximum of 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 German Ministry of Labour recently announced a new legislative initiative to grant employees an enforceable right to 24 days of remote working per year, provided that their work can be done remotely. However, it is currently unclear when and to what extent the parliament will pass the new law.
- During the latest lockdown, the German Ministry of Labour encourages every employer to facilitate teleworking for employees. Every employer should consider and, if necessary, check whether home working is technically and organisationally possible and, where necessary, provide for it. Data security and occupational health & safety (“*Arbeitsschutzrecht*”) compliance must also be ensured and double-checked.

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### Travel (business and personal)

- With travelling currently being restricted due to high infection rates, it is strongly recommended that business trips be restricted as much as possible. The Federal Foreign Office (“*Auswärtiges Amt*”) has issued 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 that it is logistically possible (i.e. all travel guidance and restrictions must be checked prior to the trip 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 comply with any quarantine requirements).

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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. Detailed occupational health and safety standards (“*Arbeitsschutzstandard*”) under the current COVID-19 pandemic have been published by the German Ministry of Labour and can be found [here](#) (German). These general standards have recently been added to by more detailed occupational
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health and safety rules which can be found [here](#) (German). Additional occupational health and safety standards with details for different industries are also available from the German Statutory Accident Insurance ("*Deutsche Gesetzliche Unfallversicherung*", or the "DGUV") and can be found [here](#).

- Safety measures must be explained to employees. Employers must publish written instructions and signs outlining such measures on business premises.
- Subject to any updates to the regulations published by the public authorities and the general COVID-19 prevention rules applicable for the relevant federal state, the following rules apply:
  - contact must be limited as much as possible and premises must be cleaned more frequently and in a way which targets COVID-19 specifically. This particularly applies to toilets, entrances and public areas. Efforts must be made to ensure that hygiene standards are observed. Employees must therefore be able to wash their hands and, if this is not possible, hand sanitiser must be provided. It is not permitted for towels to be used by more than one person;
  - employees must be able to keep a distance of at least 1.5 metres at their place of work. If this is not possible, partition walls must be installed. The employer must also provide filtering face-masks, if close interaction cannot be prevented. Places of work, meeting rooms and staff rooms must also be sufficiently ventilated. A CO<sub>2</sub>-concentration of 1.000 ppm would be acceptable. Social distancing must also be observed in elevators;
  - public interactions should be reduced as much as possible. Gatherings of more than 10 people in public areas must be avoided, but federal states have the discretion to impose more stringent restrictions. The minimum social distance of 1.5 metres must be observed, and employees must wear masks which cover both their mouth and nose during public interactions. Employees should be encouraged to use video calls and online-based facilities to set up meetings, share information etc; and
  - employees should be instructed to contact their manager immediately by telephone if COVID-19 symptoms occur. The employee should then immediately be prohibited from having any contact with 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" (i.e. for a period of between 10 days and six weeks). This continued payment provision of the BGB can however be waived in employment contracts or collective agreements.

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- 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 their 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 (an increase of this period of up to 10 weeks for parents and up to 20 weeks for single parents is expected to become effective in June 2020).
  - Mandatory public health insurance benefits paid for days when parents have to take care of sick children and therefore cannot work are extended by another five days for couples and 10 days for single parents.
  - Employees who, due to the COVID-19 pandemic, have to provide care for relatives or who have to arrange care for their relatives can claim up to 20 days' unpaid leave from their employer. If care at home is required due to the COVID-19 pandemic-related nursing home shortage, employees can apply for nursing support benefits for up to 20 days.
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