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# Germany

## Company

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

- Employers that are “directly and significantly” affected by tax payments can apply for a deferral of tax payments due by 31 March 2021 until 30 June 2021. Likewise, employers may apply to reduce their “advance tax payments” on 2021 corporate tax, meaning they will pay a smaller proportion of their total tax bill until 31 December 2021.
- Financial authorities will generally continue to refrain from enforcement measures until 30 September 2021 in connection with taxes due by 30 June 2021 and will not apply penalty surcharges for late payments due by 30 June 2021, provided that taxes have not been paid due to an undue burden on the relevant company.
- Special bonus payments and extra allowances of up to €1,500 paid out to employees between 1 March 2020 and 31 March 2022 continue to be tax exempt, provided that they are paid due to COVID-19 and in addition to already agreed remuneration.
- Several Government-sponsored loan and financial support programmes are available, generally aimed at providing companies with easy and quick access to financial support, loans and securities.
- In order to reduce the income loss of employees, employers can choose to supplement 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 and are paid between 29 February 2020 and 1 January 2022.
- There is an option of a tax loss carry-back (*steuerlicher Verlustrücktrag*) for 2020 and 2021 of up to €10 million, in the case of a single tax assessment or €20 million, in the case of a joint tax assessment.

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

- The full reimbursement of Social Security contributions for employees under short-time work has been extended until 30 September 2021 (see “Reduction in pay” below).
  - Employers affected by the COVID-19 crisis can also apply for a deferral of payment of Social Security contributions payable for the months up to June 2021.
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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 is infected but without symptoms, 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). Applications have to be submitted online (<https://www.ifsg-online.de/index.html>). 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
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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 €7,100 (West Germany) or €6,700 (East Germany) gross per month for 2021) by paying short-time work benefits (“*Kurzarbeitergeld*” or “*KUG*”).
  - The special COVID-19 exemption issued by the Unemployment Agency, which meant that employees were not required to use holiday entitlements before being eligible to receive short-time work benefits, expired on 31 December 2020. From 1 January 2021, employees who receive short-time work benefits should first make use of existing holiday entitlements for 2021 in order to receive short-time benefits. Pursuant to the most recent regulation issued by the Unemployment Agency, this shall not apply where employees have already recorded their holiday requests in customary holiday plans or similar records.
  - 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.
  - For Social Security contributions, the following rules apply during short-time work:
    - until 30 September 2021, the Unemployment Agency will reimburse 100% of Social Security contributions paid by the employer; and
    - for employers that have introduced short-time work by this date, 50% of these Social Security contributions will be reimbursed by the Unemployment Agency for the period from 1 October 2021 until 31 December 2021. In addition, during this period these employers may be reimbursed for the remaining 50% of their Social Security contributions if their employees receive further training during the short-time work.
  - In addition to the short-time work benefits paid by the Unemployment Agency, many employers decide to pay employees additional
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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 earn additional income from a “Mini-job” (maximum income of €450 per month) without having to deduct this additional income from received short-time work benefits. Additionally, income of more than €450 per month can generally be exempted from deduction from short-time work benefits if this additional income stems from a second employment already existing before the short-time work scheme was introduced.
- 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.
- 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.
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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.
- If there is no contractual basis or, for example, no agreement with the works council, an amicable solution must be reached to establish teleworking.
- Initiatives by the Government to introduce legal rights to employee teleworking are still pending and under discussion. However, under the current legislation, employers, employees and Works Councils can mutually agree on the introduction of teleworking.
- The obligation for employers to enable work from home for their employees and the corresponding obligation for employees to work from home no longer applies as of 1 July 2021. However, employers can continue to allow their employees to work from home on a voluntary basis.

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### Travel (business and personal)

- In view of an increasing spread of the COVID-19 delta variant, it is recommended by the local Chambers of Industry and Commerce that business travel should be restricted as much as possible.
- 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.
- Employees returning from abroad to Germany have to comply with the entry ordinance, as amended from time to time (which currently involves electronic registration, testing, and post-entry quarantine requirements). There are exceptions from the requirements for fully vaccinated persons or persons who have recovered from COVID-19 (subject to evidence requirements). 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 been added to by more detailed occupational health and safety rules which can be found [here](#) (English). 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](#).
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- Safety measures must be explained to employees. Employers must publish written instructions and signs outlining such measures on business premises.
  - In Germany, there is no legal obligation to receive a COVID-19 vaccination. Similarly, employers cannot mandate that employees get vaccinated.
  - 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 people in public areas must be avoided. The maximum number of people who can be legally gathered varies from state to state, in accordance with local regulations. 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.;
    - 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; and
    - if the employer becomes aware that an employee belongs to a risk group, the employer must take protective measures in respect of that employee.
  - Additionally, the German Government enacted an ordinance on occupational safety and health at the beginning of the year and has amended the ordinance since that time. The following rules continue to remain in force until 10 September 2021:
    - operational contact and the use of rooms by several persons at a time must be reduced to the necessary minimum;
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- employers must provide medical masks (standard surgical masks or masks with protection class KN95 or FFP2) to employees;
  - employers must create and implement a hygiene policy, summarising measures to avoid infection which also provide protection during break times and in break areas; and
  - employers must offer all employees who are not working from home a COVID-19 antigen test twice per week, unless they have already been fully vaccinated or recovered from COVID-19 and informed their employer of this fact.
- Employees must comply with all occupational safety and health rules regardless of whether have already been vaccinated or tested negative for COVID-19.

### **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.
- 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 10 weeks per parent. Single parents receive compensation for up to 20 weeks. This will apply for so long as the German Parliament declares an “epidemic situation of national significance” (recently, the German Parliament declared that this will continue until 30 September 2021).
- On 13 January 2021, the German Government adopted a resolution extending access to salary payments for parents who are insured under public health insurance schemes and who have children who are unwell (“*Kinderkrankengeld*”). In 2021, payments will be available in scenarios where children require care at home when childcare facilities and schools are closed due to COVID-19. Each parent will now be entitled to up to 30 days’ paid leave (formerly 20 days’) for each child under the age of 12 (unless the child has a disability, in which case the child can be of any age). Under the same measure, single parents can claim up to 60 days’ paid leave (formerly 40 days) for each child. Generally, parents will be entitled to 90% of their net remuneration loss.
- The Government is supporting families during the pandemic with a one-time special payment (child bonus). The child bonus for 2021, of €150 per child, is paid in respect of every child for whom there is or was an entitlement to child benefit for at least one month in 2021. It was paid out in May 2021 for all children who were entitled to child benefit in May

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2021. For children who are or were entitled to child benefit in another month in 2021, the child bonus will be paid at a later date.

- There has also been an extension to special regulations in parental allowance until 31 December 2021, to compensate for income losses due to the COVID-19 pandemic. For example, any income replacement benefits such as short-time working allowance and unemployment benefits do not reduce parental allowance. In addition, any month in which any employee receives a lower income can be excluded from the parental allowance calculation.
  - 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. The German Parliament has recently approved a renewed extension of this benefit until 31 December 2021.
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