
Germany

Company

Tax measures (deferrals, reductions)

- Employers “directly and significantly” affected by tax payments may apply until 31 January 2022 for a deferral of tax payments due by this date. For those who applied on time, such payments are deferred until 31 March 2022. Further tax deferrals until 30 June 2022 are possible if payment of an instalment is agreed.
- Special bonus payments and extra allowances of up to EUR 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.
- There is an option of a tax loss carry-back (“*steuerlicher Verlustrücktrag*”) for the 2020 and 2021 financial years of up to EUR 10 million, in the case of a single tax assessment or EUR 20 million, in the case of a joint tax assessment. For the 2022 financial year (1 January to 31 December 2022), the tax loss carry-back option will only be available up to a maximum amount of EUR 1 million (single tax assessments) and EUR 2 million (joint tax assessments).

Social Security measures (deferrals, reductions)

- Employers will be reimbursed for 50% of social security contributions relating to employees who are on short-time work between 1 January 2022 and 31 March 2022.
 - Employers will be reimbursed a further 50% of the social security contributions if their employees take part in subsidised professional training in accordance with Section 106a SGB III (the German social security act) during their short-time work (see the “Reduction in pay” section below).
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Germany

Employer

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 employee is entitled to continued remuneration payments. This only applies to employees who are fully vaccinated against COVID-19, or for whom there was no public recommendation for vaccination against COVID-19 within a period of up to eight weeks prior to the quarantine order (e.g., pregnant women in the first trimester of their pregnancy), or for whom the COVID-19 vaccination has been medically contraindicated as confirmed by medical certificate. Other employees will no longer be entitled to continued remuneration payments. 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)).

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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- Special regulations apply for paid enforced leave if the employee is on short-time work. Outstanding holiday must be deducted to a certain extent before the employer can use short-time work.

Temporary layoffs

- With the end of general lockdowns due to the development of vaccination, temporary layoffs no longer play a practical role in Germany. Employers that cannot employ employees due to the pandemic, can still rely on “short-time work” for reducing personnel costs while keeping qualified staff (see “Reduction in pay” section below). During the pandemic, this model was used broadly by almost all affected employers, making this tool still highly recommended for avoiding temporary layoffs.

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*”).
- 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 EUR 7,050 (West Germany) or EUR 6,750 (East Germany) gross per month for 2022) by paying short-time work benefits (“*Kurzarbeitergeld*” or “*KUG*”).
- Employees who receive short-time work benefits should first make use of existing holiday entitlements for 2021 and 2022 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 ten 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 ten 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 March 2022; 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 March 2022), if the employer introduced short-time work before 31 March 2021.
- For Social Security contributions, the following rules apply during short-time work:

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- until 31 March 2022, the Unemployment Agency reimbursed 50% of Social Security contributions paid by the employer;
 - during this period, employers may be reimbursed for the remaining 50% of their Social Security contributions if their employees receive further training during the short-time work; and
 - employers can submit an application to the Unemployment Agency for a lump-sum reimbursement of these training costs covering the period in which the employee participated in the training. The amount of the reimbursement depends on the number of employees in the company: (i) for employers with fewer than ten employees, 100%; (ii) for employers with ten to 249 employees, 50%; (iii) for employers with 250 and fewer than 2,500 employees, 25%; and (iv) for employers with 2,500 or more employees, 15%.
- Until 31 March 2022, an employee on short-time work is allowed to earn additional income from a “Mini-job” (maximum income of EUR 450 per month) without having to deduct this additional income from received short-time work benefits. Additionally, income of more than EUR 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 that 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.

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

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.
- Employers are obliged to allow their employees to work from home where possible. The employees are obliged to work from home if there are no limitations such as technical issues, lack of space or distractions from other persons. This regulation applies until 19 March 2022.

Travel (business and personal)

- In view of an increasing spread of the COVID-19 Omicron variant, it is recommended that international business travel should be restricted.
- 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).
- Special regulations apply if the employee travels to a country declared as a “high risk area” by the public authorities for a private holiday. The employer has a right to ask employees where they are traveling to or from. When traveling from high-risk areas, the employer may insist on quarantine or, if possible, teleworking for the quarantine period.

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
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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.
- In Germany, there is no legal obligation to receive a COVID-19 vaccination. Similarly, employers can neither mandate that employees get vaccinated nor ask for the vaccination status of their employees. However only employees who are:
 - vaccinated against COVID-19;
 - recovered within the last 90 days; or
 - tested negative via a professional antigen-test in the last 24 hours,are allowed to enter the workplace. The employer is obliged to check the relevant evidence before employees are allowed to enter the workplace. This is stipulated by the new Infection Protection Act ("**IfSG**"), which came into force on 24 November 2021.
- As of 16 March 2022, a vaccination requirement for special industries and branches will be introduced. By this date, employees working in hospitals, nursing homes, doctors' offices and emergency medical services, must provide their employer with proof of vaccination, proof of recovery, or a doctor's certificate stating that they cannot be vaccinated. If the proof is not submitted by 15 March 2022, or if there are doubts with regard to the authenticity or correctness of the proof submitted, the relevant health authority will issue a ban on entering into, or operating within, these facilities and companies. In this case, the employee will no longer be entitled to remuneration the employer may consider terminating the employee's employment contract.
- 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 that 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 CO²-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 that 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 remain in force until 19 March 2022:
- operational contact and the use of rooms by several persons at a time must be reduced to the necessary minimum;
 - 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;
 - employers must offer all employees who are not working from home a COVID-19 antigen test twice per week;
 - employers must inform their employees about COVID-19 risks, where applicable, and vaccination opportunities; and
 - employers are obliged to support company medical officers with vaccination campaigns and grant employees time off work to get vaccinated.
- 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 ten days and six weeks). This continued payment provision of
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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 EUR 2,016 per full month) and will be paid for up to ten weeks per parent. Single parents receive compensation for up to 20 weeks. This right to compensation under the IfSG applies until 19 March 2022.
 - 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*”). Until 19 March 2022, payments are 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 their 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 their child. If there are several children, each parent is entitled to a maximum of 65 working days. For single parents, this entitlement increases to a maximum of 130 working days. Generally, parents will be entitled to 90% of their net remuneration loss. From 20 March 2022, there will only be an entitlement to salary payments if the child is ill and needs care.
 - 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 approved an extension of this benefit until 31 March 2022.
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