



ACCONSIS Corona Task Force

Safe through the Corona crisis - What you as an entrepreneur should now pay attention to

Dear client,

after Ebola, bird flu and SARS, now comes the corona epidemic. After masses of people were initially infected in China, the SARS-CoV-2 virus has now reached Germany.

Most borders are already closed, cinemas, discos and bars have to close; public life has been shut down. The economic consequences are already clearly felt. But also the labour and tax law sector is massively affected. As an employer, how do you now deal with sick employees? How can you react to frightened employees and how far does your right to direct business trips and home office regula-

tions actually go? What do you have to consider when ordering short-time work or overtime and what tax assistance can you expect from the federal government?

This client information provides you with important answers to these and other questions. This is not only "corona-specific" information. In future you will also be able to access this information in similar crisis situations.

1 Rights and obligations of workers

The rights of the employees, which are decisive for you here, mainly concern questions regarding continued remuneration. Here, however, it depends decisively on the individual case.

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1.1 Own illness

If an employee falls ill with COVID-19, he or she is unfit for work. The employee is entitled to continued remuneration for a period of six weeks (§ 3 paragraph 1 of the Continued Remuneration Act).

Note: According to R 3.11 (2) of the Wage Tax Guidelines, allowances in cases of sickness or death or support in special emergencies to employees of corporations, institutions or foundations under public law are tax-exempt on the basis of state aid regulations (aid principles) or support regulations (support principles) of the Federal Government or the Länder or corresponding regulations.

1.2 Illness of a relative

If your employee's child is ill or needs to be cared for, § 616 of the German Civil Code (BGB) provides for continued payment of remuneration in the event of temporary disability.

Note: § 616 BGB does not define a specific period of time as temporary prevention. In a ruling of the Federal Labour Court, up to five working days can be regarded as proportionate.

However, if you have excluded the application of this standard in the employment contract, the claim does not exist.

If an employee reports a suspected case of COVID-19 or a disease in his or her immediate environment, you must, out of your duty of care, advise colleagues to have themselves tested to prevent further spread of the virus.

1.3 Lack of childcare

If kindergartens and schools are closed due to illness or as a precaution against the spread of pathogens, employees may not be able to have their children looked after, so that they are forced to stay at home.

In these cases, too, there is an entitlement to continued payment of remuneration in accordance with § 616 BGB for a relatively short period of time until another care option can be found. The concrete number of days is to be decided on a case-by-case basis. If it is a longer period, the employees concerned must take either leave or an existing time credit.

1.4 Ordered quarantine

Officially ordered quarantine measures can affect the place of residence of your employee, but also your company. In these cases, even if your employee is not ill, you must continue to pay your salary for six weeks. However, you are entitled to reimbursement of the amount of the continued payment from the authority that ordered the quarantine. You can make this claim in accordance with § 56 of the German Protection against Infection Act (IfSG).

However, the corresponding application must be submitted within three months of the cessation of activities or the end of the secondment. After the end of continued remuneration, the employee can apply for regular sickness benefit.

1.5 Home Office

Due to the fears of employees of being infected, there is now a growing desire among employees to be allowed to work from home. In Germany, however, there is no entitlement to a home office workstation. For this reason, you may refuse your employees' requests for the establishment of such a workplace.

If an employee refuses to appear in the company for fear of infection, this is a refusal to work, which you can take action against under employment law, which may even culminate in the termination of the employment relationship.

1.6 Way to work

If your employee is dependent on public transport and there is a breakdown, this does not relieve him or her of his or her duty to work. The so-called travel risk is on his side, so he must make an effort to arrive at work on time. If this is not possible, he may lose his right to remuneration for the absence.

1.7 Missions and field service

Many companies are dependent on the field service, so that the employees are not working in the company, but visit customer companies, for example. Since there is a risk of infection when in contact with other people, cases have now become known in which employees have refused to work in the field.

Note: If the employment contract also includes the employee's work in the field, you can also demand this service from him. An employee's decision to do so may have consequences under labor law, for example, a warning letter may be issued.

The refusal to take a business trip is justified if there is a travel warning from the Federal Foreign Office. Only the employee's fear of infection does not constitute a sufficient reason for refusal.

Note: If you or one of your employees has to go on a business trip abroad, you should keep up to date with travel warnings on the website of the Federal Foreign Office:
www.auswaertiges-amt.de/de/ReiseUndSicherheit/10.2.8Reisewarnungen

2 Quarantine of the whole company

The competent health authority may also order a quarantine for your company as a necessary protective measure if this appears necessary. This may be the case if your company poses a corresponding danger.

Example: You have a hotel business where corona cases have increased. The responsible health authority can order the closure of the establishment and quarantine.

If this happens, you should seek a discussion with the authorities to clarify your obligations.

Note: Violations of the quarantine regulations can even be punished with a prison sentence of up to five years or with fines according to § 74 IfSG.

The quarantine measures can also be enforced by force. If, for example, you refuse to close your business, the public health department can carry out the closure with the help of the police, if necessary, as part of a substitute measure. If in this context the authority destroys, damages or otherwise reduces the value of objects, you are entitled to compensation (§ 65 para. 1 IfSG). This does not apply to objects that were contaminated with pathogens or suspected of being contaminated.

Compensation claims of your employees

If your company is quarantined due to an official order, the employees' entitlement to remuneration continues to exist. This risk is therefore your responsibility.

Note: If it makes sense from a business point of view, you can arrange for the employees to continue working from home, provided the conditions are met.

Therefore, you should already check now in which areas a home office regulation can be made possible. Also consider the technical requirements, especially with regard to IT security and data protection.

3 Protective measures

As an employer, you are responsible, within the scope of your duty of care, for taking appropriate protective measures in your company against the spread of pathogens such as the corona virus SARS-CoV-2. For example, you can give general hygiene instructions at the workplace, provide disinfectants and prohibit physical contact (e.g. shaking hands).

You can take further protective measures within the framework of organizational procedures, for example by replacing business trips with telephone or video conferences wherever possible. This also includes setting up a home office workstation as mentioned above.

To avoid large accumulations of employees, for example in the company canteen, you can also set time limits for the use of social facilities.

Note: With regard to preventive measures, please also refer to the recommendations of the health authorities and the Robert Koch Institute at www.rki.de/covid-19.

If you have a works council in your enterprise, these measures are subject to co-determination. You should also consult the works council to agree on joint action to prevent further spread of the disease. The works council often has the "better contact" with the workforce.

Whether you can unilaterally order the above-mentioned measures within the framework of your right of direction is controversial. For example, an employee is not obliged to wear a respiratory mask without being ill himself.

Note: As a matter of principle, you do not have the right to know whether your employee is ill with Corona or where he or she spent their holiday.

On the whole, moderate behaviour is recommended, which should be characterised by mutual consideration. If your employees wish to wear a mouthguard, you should not prohibit this.

4 Employment opportunities for employees

Pathogens such as SARS-CoV-2 can have a massive impact on employees' job opportunities. Either there is a lack of work or there is too much, so that employees' working hours must either be shortened or extended.

Note: In principle, the operational risk is your responsibility, so that you must pay the remuneration if there is no work to be done and, on the other hand, if there is an increased workload, you must engage enough employees for the tasks to be performed.

4.1 Arrangement of short-time work

The number of orders is declining not only in trade fair construction due to SARS-CoV-2, but also in many other areas. If you can no longer provide sufficient work, you may have to apply for short-time work. The purpose of short-time work is to ensure that the employer is not forced to dismiss the affected employee immediately.

Note: The reduction of working hours is also subject to co-determination, so you must consult the works council.

If there is no works council in your company, you may not unilaterally order short-time working. You must reach agreements with the employees concerned.

Note: It may also be that you only have to order short-time work for a certain area of the company, as this area is particularly hard hit by the corona crisis.

In some cases, the possibility of short-time working is already provided for in the employment contract. It should be noted that this clause provides for a period of notice, as the introduction of short-time work without notice can disproportionately disadvantage the employee. If your company is subject to a collective agreement, the collective agreement may also provide for such options.

If the economic situation in your company is so dramatic that you have to order short-time working, you must notify the Federal Employment Agency in **writing**. As part of this notification, you must explain the reasons why short-time work is necessary. If you have a works council, it must be involved in the application.

In the course of short-time work, the employee no longer has to offer his work performance and you as an employer are released from the obligation to pay remuneration. In return, the employees affected are entitled to reduced hours compensation.

Note: As an employer, you are legally obliged to cooperate in this area. If you provide incorrect information, this can lead to fines.

4.2 Current innovations regarding short-time working

In response to the spread of SARS-CoV-2, the German government has decided on changes to the short-time working allowance, which are to be passed by the Bundestag by the beginning of April and will initially be valid until the end of 2020.

More specifically, the new law provides for the following measures:

If orders fail to materialize due to difficult economic developments, a company can apply for short-time work in the future if at least ten percent of the employees are affected by the loss of work. This threshold is currently 30 percent of the workforce.

It should be possible to waive the accumulation of negative working time balances in full or in part before payment of the short-time allowance. The applicable law requires that in companies where agreements on working time fluctuations are used, these are also used to avoid short-time work and are driven into the red. Furthermore, temporary workers will also be able to receive short-time compensation in the future.

The social security contributions that you as an employer normally have to pay for your employees will be fully reimbursed by the Federal Employment Agency in future. This is intended to create an incentive to make greater use of periods of short-time work for the further training of employees.

The amount of the short-time work compensation is based on the previous remuneration. The labor administration differentiates between employees who have at least a child allowance of 0.5 on their income tax card and other employees.

Employees who have a child allowance receive 67% of the net pay difference, all others receive a rate of 60%.

Example: An employee (1 child) receives a gross remuneration of 3,000 € in full-time, which corresponds to approx. 1,900 € net. The working time is reduced by 50%, so that the gross income is 1,500 € (approx. 1,100 € net). The **net difference in remuneration** is thus € 800. Of this 800 € the employee receives 67 % (=536 €).

The employee in the example thus receives only €264 net less.

4.3 authorization of overtime

Due to the expected increase in sick leave and quarantine absences, it may be necessary for employees to work more hours in the company. In this case, you can order overtime if this is stipulated in the employment contract.

Note: In the absence of appropriate regulations, overtime can only be ordered if there is a risk of serious economic damage.

If there is a works council in your enterprise, the ordering of overtime is subject to co-determination. This means that you may not order overtime without the works council's consent. If you cannot reach an agreement with the

works council, you can request the establishment of a conciliation committee, which can then replace the missing consent.

4.4 Terminations

If the ordering of short-time work alone is no longer sufficient, in the worst case, dismissals can be pronounced. In this case, the termination is for operational reasons, so that you must take social considerations into account when selecting the employees to be terminated.

According to the Dismissal Protection Act, these social aspects are: length of service, age, maintenance obligations and severe disability. If there is a works council in your company, you must inform it when terminations are to be pronounced.

5 Tax law outlook

Not only from a health point of view, but also from a legal point of view, extreme waves of illness present us with great challenges. How strong the economic and thus also fiscal effects of the SARS CoV 2 pandemic will be will probably only become apparent in the coming weeks and months.

The Federal Government reacted on 13.03.2020 with a package of measures for affected companies and employees. In addition to the adjustment of the short-time working arrangements until the beginning of April, there are to be tax liquidity aids for companies. In detail, these are as follows:

- Deferral of tax payments
- Reduction of advance payments
- Waiver of enforcement measures (e.g. account seizures) or late payment surcharges until 31.12.2020

In addition, the General Directorate of Customs has been instructed to meet the taxpayers' needs for taxes administered by the customs administration (e.g. energy and air transport taxes). The same applies to the Federal Central Tax Office, which is to proceed in the same way for insurance tax and value added tax.

In addition, companies and employees are to be supported by the expansion of existing programs for liquidity support should they experience declines in sales through no fault of their own due to the corona crisis.

Note: The measures adopted by the Federal Government are unlimited in volume and include the Entrepreneur Loan from the Kreditanstalt für Wiederaufbau (KfW), the ERP-Gründerkredit Universell and the KfW Kredit für Wachstum.

In addition, further special programmes are to be set up at KfW. These have been notified to the EU Commission for approval. We will keep you informed about further developments in tax law.

If the (financial) situation of your company changes due to the SARS-CoV-2 pandemic or other acute disease waves, **please contact us. Our "ACCONISIS Corona Task Force" will be happy to advise you.**

In case of doubt, always consult your legal advisor for advice on employment law issues.

Yours sincerely,
Your ACCONSIS Team