

COVID-19 in Germany – General Information and FAQs

The coronavirus (COVID-19) pandemic continues to present significant concerns globally, both in civilian life, as well as the workplace. In most European countries businesses and life in general have come (almost) to a standstill and employers and employees alike find themselves forced to navigate novel situations with uncertainty and apprehension.

The following information provides insight on the situation in Germany and answers to the most frequently asked questions. Please note that this information is for general guidance and does not constitute and is not intended to replace legal advice from your employment lawyers. More so considering the changes constantly taking place to keep up with developments.

Policies/action Germany is taking in response to the COVID-19 pandemic:

Germany currently has the sixth highest number of confirmed cases of COVID-19 in Europe (after Spain, Italy, the UK, France and Russia), totalling 184,543 as of June 9, 2020. While the outbreak has claimed 8,711 lives, so far, the death rate is still among the lowest in Europe.

The Robert Koch Institute (RKI) currently assesses the risk to the health of the German population overall as high and as very high for risk groups. All 16 federal states are affected. The incidence (cases per 100,000) of COVID-19 is highest in Bavaria (353), Baden-Wuerttemberg (311), Hamburg (275) and Saarland (274). Most cases (67%) are between 15 and 59 years old; men (48%) and women (52%) are almost equally affected. 86% of deaths, but only 19% of all cases, occurred in persons aged 70 years or older.

Germany will be carrying out antibody tests in the coming weeks. According to the Minister of Health, the antibody tests will help establish who has already had a corona infection and thus provide insight into the actual outbreak.

Testing and Treatment

There are specific hotlines available and people should not go to the doctor to avoid infecting other people, in the waiting room for instance.

- Anyone concerned that they have been infected with the coronavirus, they should call their GP or 116117 - the emergency medical services number.

Other numbers include:

- Independent patient advice service Germany - 0800 011 77 22
- Federal Ministry of Health (telephone service for the public) - 030 346 465 100
- General initial information and contact placement - authority number 115 (www.115.de)
- Consultation for the deaf and hearing impaired - Fax: 030/340 60 66 – 07
info.deaf@bmg.bund.de / info.gehoerlos@bmg.bund.de
- Sign language telephone (video telephony) - <https://www.gebaerdentelefon.de/bmg/>

How are health insurance carriers treating cases in relation with COVID-19?

When a person in Germany contracts coronavirus, the health insurance companies (statutory and private) cover the medical treatment costs. This health insurance is mandatory for all German citizens and residents. In terms of cost coverage by health insurance companies, there is no difference to other viral diseases (e.g., influenza).

Both private and public health insurance companies bear the costs for coronavirus testing to the extent that a doctor determines the test to be a medical necessity or that the person concerned belongs to the risk group, i.e., either was recently in a high-risk country or symptoms of the virus have been detected.

A new "Protection of the Population in an Epidemic Situation of National Scope Act" was passed by Parliament on May 15, 2020, and according to which, the Ministry of Health is authorised to oblige the statutory health insurers, by decree, to pay for coronavirus or antibody tests, even if someone does not show symptoms.

New Also included is the introduction of a fee to cover the costs of testing for COVID-19 infection of patients undergoing inpatient treatment in hospitals.

Furthermore, privately insured persons facing temporary financial difficulties and as a result switch to the less expensive basic tariff can revert to their original tariff without difficulties, such as new health checks.

When travelling abroad, it is usual and recommended in Germany to take out private health/travel insurance. This covers the costs of treatment abroad that is not covered by the statutory health insurance. This also includes medical treatment for COVID-19 infections.

Social Distancing Measures

In view of the rapid spread of the coronavirus, the federal and state governments introduced a light version of a lockdown characterised by social restrictions. German residents were not be permitted to leave their homes without good reason, i.e., to go to work, grocery shopping, to the doctor or pharmacy, and providing help to others, non-essential service shops, schools, universities, restaurants were closed. Commuting to work, emergency care, shopping, doctor visits, participation in meetings, necessary appointments and exams, providing help to others or individual sports and exercise as well as other necessary activities, was however, possible.

- From May 6, the government embarked on a visibly more relaxed approach towards the lockdown. In the future, the federal states will largely be able to independently decide, among other things, on contact restrictions, university lectures, adult education centres, music schools, restaurants, hotels, guest houses and holiday apartments, service companies in the field of personal care, gyms and small public or private events. Regulations will consequently differ from state to state.
- Social distancing will remain in place till June 5, 2020, however, members of two different households will also be able to meet, as will two families, two couples or members from two different residences. Nevertheless, people should still maintain a distance of 1.5m from each other. It is still prohibited to form groups, as are parties but the contact ban among immediate family members was lifted and children, parents, grandparents or siblings may meet again from May 6 and visit each other.
- As of May 9, 2020, patients in hospitals and nursing homes may have a specific contact person who can visit them regularly.
- Playgrounds, museums, exhibitions, memorials, zoos and botanical gardens also reopened in May under certain conditions. Church services and prayer meetings are also permitted again however, due to the very different levels of infections in the varying states, the federal government has left it to the states to implement measures corresponding to the situation in each state.
- With effect from May 11, 2020, all shops, regardless of size, were allowed to open again provided they meet the requirements for hygiene, access control and the avoidance of queues.
- The hospitality industry starts reopening on May 15. A prerequisite is strict compliance with hygiene regulations, distancing rules and the submission of a plan to protect employees. Tourist accommodation is expected to reopen at the end of May.

- Schools are opening gradually, and all pupils are expected to return to school step by step by the summer holidays.
- Extended emergency day care for children with special needs is now possible with effect from May 11, 2020, while pre-schoolers will resume on May 25.
- No public events, including the Oktoberfest, Germany's largest festival and tourist attraction will be held till August 31, 2020.
- The German Bundesliga is set to resume on May 15, 2020, however, behind closed doors.
- As of April 20, 2020, it is now mandatory to wear a mask in shops and on public transport from age 7 in Germany. However, there are inconsistencies among the states remain: for instance, in Berlin, a mask in shops is only recommended and not obligatory, whereas not wearing a mask on public transport in Mecklenburg-Western Pomerania can result in a fine of €25 and non-compliance in Bayern, a fine of up to €150.
- Previously landlords could terminate lease agreements if a tenant was unable to pay their rent for at least 2 consecutive months. If, during the period of 1 April through 30 September, a tenant fails to pay rent and such non-payment is caused by the effects of the COVID-19 pandemic, the lease agreement may not be terminated. Nevertheless, the obligation is not expunged.

Travel Restrictions

On March 17, 2020, Germany closed its borders to all non-EU nationals, until May 15, 2020. Only long-term residents, family members of EU nationals and diplomats, cross-border and healthcare workers and people transporting goods are being permitted entry. There is also a worldwide travel warning issued by the Ministry of Foreign Affairs currently valid until June 14, 2020.

Additional measures included temporary border checks at the borders with Austria, Switzerland, France, Luxembourg and Denmark. Borders will reopen gradually and while controls at the Austrian, French and Swiss borders are scheduled to end on June 15, 2020, controls at the German-Luxembourg border will not be extended and ended on May 15, 2020. A similar regulation is planned for Denmark, but a date has not yet been set. Travel, however, remains possible only with a good reason therefor.

Pursuant to Article 14(2) of Regulation (EC) No 561/2006, the enforcement of driving and rest times for the drivers of vehicles transporting essential goods such as food, medicine, medical protective equipment and fuels was temporarily relaxed for a limited period from March 18, 2020 until May 31, 2020.

Fiscal Measures

The federal government adopted a supplementary budget of €156 billion (4.9 percent of GDP) include: (i) spending on healthcare equipment, hospital capacity and R&D (vaccine), (ii) expanded access to short-term work ("Kurzarbeit") subsidy to preserve jobs and workers' incomes, expanded childcare benefits for low-income parents and easier access to basic income support for the self-employed, (iii) €50 billion in grants to small business owners and self-employed persons severely affected by the Covid-19 outbreak in addition to interest-free tax deferrals until year-end.

- At the same time, through the new economic stabilization fund (WSF) and the public development bank KfW, expanded the volume and access to public loan guarantees for firms of different sizes, with an allocation of at least €757 billion (23 percent of GDP).
- In addition to the federal government's fiscal package, many state governments (Länder) announced their own measures to support their economies, amounting to €48 billion in direct support and €63 billion in state-level loan guarantees.
- In order to prevent the insolvency of companies experiencing economic hardship due to COVID-19, the German Insolvency Code was amended to remove the requirement for companies in financial hardship to file for insolvency within 3 weeks of the event leading to the insolvency. Instead, in so far as the reason for the insolvency is due to COVID-19 and "as long as those required to file an application are engaged in serious financing or restructuring negotiations and there are reasonable prospects of

restructuring as a result here are reasonable prospects of recovery”, the filing period will be suspended until September 30, 2020.

New

- Companies with up to 249 employees and from all economic sectors, including the self-employed and freelancers, whose sales in April and May fell below 60% of the same months last year can benefit from the Corona emergency aid of up to €50,000 per month over the next 6 months to avoid their closure. Companies that had already received emergency aid from the federal government or the federal states, but still have lost sales, may submit new applications. This federal program will be administered by the states.
- Taxpayers able to demonstrate they are directly and significantly affected by COVID-19 can apply for a deferral of tax payments. Tax payments that can be deferred under the relief regime include corporate/income tax, trade tax as well as VAT, while excluding withholding taxes, e.g., wage tax.
- No enforcement shall be made for outstanding tax payments and tax payments becoming due in the period up to December 31, 2020, if the taxpayer is directly and significantly affected by COVID-19. The late payment fees in 2020 will also be waived.
- In the same manner, applications can be made for reduction of the trade tax base, i.e., the amount used to determine trade tax prepayments. Applications cannot be denied merely for the failure to demonstrate or assess, in detail, the economic impact caused by Covid-19.
- According to tax estimates, revenue will decrease by €81.5 billion compared to 2019 – a decrease of more than 10%, also as a result of the economic measures in response to the COVID-19 crisis. However, German Finance Minister, Olaf Scholz says the drop was expected and the government is adequately prepared, thanks to a very solid budgetary policy. Currently and according to Angela Merkel, "... no increases in duties and taxes are planned...".

- The coalition government has agreed on an extensive package of measures worth € 130 billion to revive the economy and equip Germany for the future. The key elements are a cuts in value added tax, assistance for local authorities, a financial allowance for families, and steps to promote the technologies of the future. The package is geared to climate change mitigation and to promoting the technologies that will be important in future, alongside social-policy components.

These are some of the main points hammered out by the coalition government:

New

- **A cut in value added tax (VAT):** From 1 July to 31 December 2020, VAT is to be reduced from 19% to 16%, while the reduced rate will be cut from 7% to 5%. This should stimulate private consumption and is socially equitable.
- **Per-child allowance for families:** Parents will receive a one-off payment of € 300 per child. The tax-free allowance will be doubled for single parents.
- **Support for local authorities:** Federal government will increase the share it pays of the costs of accommodation for people in need, will compensate half of the drop in company tax levied by local authorities, and will strengthen both public transport and the health sector.
- **Reduction in electricity costs:** As of 2021 the Renewable Energies Act levy on electricity is to be reduced through subsidies from the national budget.
- **Package for the future:** A total of € 50 billion under the programme is earmarked for a package for the future with tax breaks for research into the development of quantum computing and artificial intelligence. Stepping up the use of hydrogen power and better promoting electric vehicles are also part of the package.

Employment & Labour

On April 16, 2020, the Federal Ministry of Labour and Social Affairs released the SARS-CoV-2 Occupational Safety and Health Standard for occupational safety and health to protect employees against coronavirus infections, particularly when resuming operations. Although the Standard itself is not formally law, it does concretise the employer's obligation to take necessary occupational health and safety measures, which in turn stems from the Occupational Health and Safety Act.

Measures include:

- Except for critical infrastructure employees and in line with guidance from the RKI, all employees with respiratory symptoms or fever should stay at home.
- Employers are required to have an infection emergency plan for dealing with suspected cases.
- Irrespective of the company policy on temporary additional measures, in case of doubt where the minimum distance cannot be reliably maintained, mouth-and-nose covering must be provided and worn.
- Implementation of smart working to maintain the distance of at least 1.5m between employees. This means restructuring, shift work and fixing maximum numbers of employees, breaks and meal times in canteens or common rooms.
- Work tools and equipment should not be shared, i.e., as little as possible.
- Office work should, as much as possible, be performed from home. Otherwise, workspaces shall be used, and work shall be organized, in a way that avoids multiple occupancy of spaces by different groups of employees or that ensures the required minimum distance.
- Business trips and face-to-face meetings should be reduced to the minimum or replaced with telephone or video conferences.
- Non-irritating liquid soap and towel dispensers for hand-cleaning must be made available to employees, particularly in restrooms and communal spaces.
- Regular disinfection of door handles and handrails.
- Regular ventilation of work spaces where no air conditioning is available.
- Working hours and breaks should be staggered to reduce personal contact between employees.
- Visitor access should be reduced to a minimum.
- Employers must consider the additional psychological stress on employees as a result of the current extreme circumstances and this stress should be taken into account in the assessment of risks and implementation of appropriate occupational safety measures.
- Visitors to company premises should be kept to a minimum and contact data as well as the time of arrival and departure should, if possible, be documented if possible. Visitors must also be informed about the measures to protect against infection that are currently applicable in the company.
- Employers should establish processes to quickly investigate suspected infections and should provide for – ideally contactless – temperature measurement of employees and visitors.
- Following an amendment of the Working Hours Act on March 28, 2020, the Federal Ministry of Labour and Social Affairs issued a Working Hours Ordinance, which from April 10, 2020 onwards allows exceptions to the provisions of the Working Hours Act for certain activities and for a limited period until June 30, 2020, in particular, in epidemic situations of national scope according to Section 5 (1) of the Infection Protection Act.
- Until June 30, 2020, and to ensure public security and order, in health and nursing care, general services sectors and those supplying the population with existential goods:
 - Employees may work longer than eight or ten hours a day and on Sundays/public holidays if the work cannot be carried out on working days.
 - The replacement rest day for Sunday employment may be granted within eight weeks, but no later than July 31, 2020.
 - Breaks can be reduced to 15 (from 30) minutes for over six hours of work and 30 (from 45) minutes for more than 9 hours of work.
 - The minimum period of rest of 11 hours can be reduced by up to two hours.
 - Nevertheless, the employer's duty of care persists, as do the works councils' co-determination rights.
 - The weekly hours may not exceed an average of 48 hours over a period of six months.

New

- The coalition parties agreed to a new law regulating parental allowance to support employees in essential service occupations/affected by short-term work. Parental allowance is generally paid for 12 months (14 if both parents take at least 2 months) after the child's birth. The amount is based on the average income in the 12 calendar months before the child's birth. The regulation is intended to prevent the reduction of the parental allowance or having to pay back part of the allowance if employees have to work more or less than planned due to the crisis.
- Parents in system relevant occupations and who have to work full time because of the crisis can postpone the parental allowance until after the child's 14th month but not later than June 30, 2021, and without reducing the parental allowance for another child.
- Parental allowance is not diminished by income replacement benefits granted to parents due to the COVID-19 pandemic (e.g., short-time allowance or unemployment benefit I) are not considered in the calculation of the parental allowance.
- Parents on the partnership bonus variant of the parental allowance should not lose their entitlement if they work more or less due to the crisis. Currently, in order to qualify for the partnership bonus, a partner must work at least 25 but no more than 30 hours a week.
- If agreed to by parliament, changes will apply retrospectively from March 1, 2020.
- The Protection of the Population in an Epidemic Situation of National Scope Act increases not only number of days the care support allowance is paid from 10 to 20 days, but also the right to stay away from work because of an acute care situation in one's own family increases from 10 to 20 days until September 30, 2020. In addition, a care support benefit will be paid to cover breaks in the provision of home care.
- A draft amendment to the German Labour Courts Act may herald the digitalisation of the courts in Germany. While hearings by video are already currently possible, these require the consent of the parties. The new law does away with such consent and the courts are empowered, during epidemics, to order that the parties, legal representatives, witnesses and experts to attend the trial from another location if they can reasonably meet the technical and data protection requirements. In addition, the Federal Labour Court will be able to make a decision without a hearing and without the consent of the parties.
- To encourage employees nearing retirement to carry on working and pensioners to come out of retirement, the annual additional earnings limit is to be raised from €6,300 to €44,590 so that income up to this level does not result in a reduction in pension. The increase is limited until December 31, 2020.
- Seasonal workers are permitted to work on short term contracts without social security for 115 instead of just 70 days until October 31, 2020. This reduces mobility and thus the risk of infection. Furthermore, seasonal workers already in Germany and who are willing to do so can work here longer.
- To encourage the take up of part time work as seasonal workers, income from a secondary job, up to the amount of the net salary from the main employment relationship, will not be deducted from short-time pay until the end of October 2020.
- In order to allow the flexibility required by the crisis, including the swapping of employees between economic sectors, temporary employment during the COVID-19 pandemic is now possible without permission from the employment office, regardless of company size where:
 - The employees concerned have consented thereto.
 - The employee is not a permanent employee and may not be hired and employed for the purpose of being leased.
 - Temporary employment is limited to the current crisis, i.e., due to an unforeseen shortage of personnel at the hirer or loss of work at the hirer must have occurred.
- Temporary employees must still be afforded the same treatment, i.e., working conditions as permanent employees. Furthermore, the restrictions to temporary employment in the construction industry still apply.

New

- Provided the bonus/benefit is paid in addition to and not as part of the salary, employers may grant their employees bonuses or benefits in kind up to a tax-free amount of €1,500 between March 1 to December 31, 2020.
- The Protection of the Population in an Epidemic Situation of National Scope Act also provides for employees in elderly care to receive a graduated entitlement to a one-off special benefit (coronavirus premium) of up to €1,000 in 2020. The aforementioned tax-free bonus of €1,500 may be paid in addition to the coronavirus premium.
- There will be an extension of 3 months for those whose unemployment Benefit I entitlement ordinarily ends between May 1 and December 31, 2020.

Specific insight for employers:

What are my obligations towards employees?

While employers have the right to issue instructions relating to the employee's duties, the place and time of their discharge and these remain the same, employers equally have a duty of care towards their employees and should not expose them unnecessarily to risk.

Is there specific action an employer is required to take?

The duty of care towards employees increases during a pandemic and depending on the specific situation, employers are generally required to carry out a risk assessment and prepare a corresponding plan including preventive measures.

Employers are also required to educate and inform employees about correct hygiene habits, such as the proper washing of hands, sneezing and coughing etiquette, discourage shaking hands and the provision of hand sanitizer. Every situation must be treated on a case by case basis, but a mask is not usually necessary unless employees work in the health or food industries, for instance.

Can employers still instruct an employee to travel on business?

Employers are required to exercise reason and care; employees should not unnecessarily be exposed to any risk of infection. The employer should not endanger employees, and this includes prohibiting business trips where necessary.

Can employees refuse to go on business trips?

Business trips are also considered "work" in terms of the employment contract and the employee is thus required to comply with an employer's instruction to travel for business purposes. However, although the employee does not have a general right to refuse travel, if the Federal Foreign Office has warned against travel to certain areas, employees may refuse to travel to those areas. The burden is on the employee to show that they would be at risk.

Can employers ask where employees have travelled to on holiday?

Such information ordinarily falls within the scope of protected data, however, in order to comply with their duty of care and to enable the employer to take protective and preventive measures, employers may now ask employees where they were on holiday and to report any such trips and to contact the employer by phone or email prior to returning from a high-risk area.

Can an employer measure an employee's temperature?

In individual cases, the employers can check employee's body temperature and prohibit those with a temperature above 37.5° from entering the premises.

Can an employee be released from their duties or instructed to stay at home?

Where the employer has reason to believe that an employee may endanger other employees, the employer may unilaterally release the employee concerned from their duties or deny them access to the premises. In such cases, the employee retains their right to remuneration.

Since March 9, 2020 and until May 18, 2020 employees with mild upper respiratory tract infections can receive a sick note for up to seven days after consulting their doctor over the phone. It is not necessary to go to the doctor's office for this and the sick note is sent to the employee by post.

What action should be taken in the case of a suspected infection in the workplace?

Where there is a strong suspicion of a corona infection, employers should notify the public health department and any cases are to be reported to the competent health authority.

- An employee suspected to be infected should remain separated from other persons until a suitable corona testing site can be reached.
- The employee should be released from work on paid leave until they have been tested. Additionally, the people who were in direct contact with the employee should be determined through appropriate interviews and ideally also be tested.
- Employers must protect all other employees in the event of a specific danger situation. If the employment contract permits, the employer may order work to be performed from a home office and if not, both parties may simply agree that work be done from home during this time.

COVID-19 General Overview of Leave Scenarios

	STD	State Sick Leave	State Disability Programs
EE Diagnosed with COVID-19	Yes. Employer required to continue full salary for 6 weeks	After 6 weeks, the employee’s health insurer pays the sickness benefit for a further 72 weeks.	Likely approved if employee does not recover and unable to work for at least 3 hours a day.
EE Family Member Diagnosed with COVID-19	No.	Home Care Leave Act allows employees time off to care for sick relatives.	May apply.
EE quarantined for suspected COVID-19 infection by employer or health authorities	Yes. Either employer or authorities to continue pay.	N/A if employee is not sick.	N/A
EE self-quarantine for suspected COVID-19 infection	No	No	No
EE refuses to work due to fear of infection	No	No	No
Employee is well but worksite is closed due to COVID-19	Depending on who closes the worksite, either the employer or the state is required to continue full pay for 6 weeks. After that employee receives the sickness benefit amount.	Likely not approved	If closure ordered by the state, employer can request a refund of salaries paid from the state.

What if an employee decides to stay away from work?

The presence of the COVID-19 pandemic does not relinquish the employee’s duty to perform their work. In terms of employment law, employees may not unilaterally decide not to go to work due to fear of an infection. The employee must either take paid or unpaid time off. Any time off must be taken with the employer’s approval unless there is a clear and foreseeable risk to the employee’s health.

Should employees inform their employer if they have been infected with COVID-19?

Although the employee is normally not required to inform the employer of the details of an illness, employees also have a duty of care towards their employer. Therefore, should an employee become infected with the coronavirus, they have a duty to notify their employer of this fact, especially given its highly contagious nature and the employer’s duty to protect other employees and/or clients.

What happens if an employee is unable to work due to an infection with COVID-19?

An employee who is unable to work due to illness arising from a coronavirus infection is entitled to continued remuneration for 6 weeks as with any other illness. That said, while an employer may not prohibit an employee from travelling for private purposes, an employee who, for instance, ignores a travel ban and travels to high risk area (privately) and consequently contracts the virus would not be entitled to a continuation of remuneration as the law requires that the illness is not a result of the employee’s own fault. After 6 weeks, the employee’s health insurance fund takes over and pays the sickness benefit.

What if an employee does not attend work due to a suspected infection?

Mere suspicion does not give rise to a claim for continued remuneration as with illness itself, especially if the suspicion is based solely on the employee's fear. If an employee is under observation, quarantined or not permitted to work by the authorities, a claim for compensation for loss of earnings from the relevant competent authorities may exist. However, the employer is required to continue pay and then request reimbursement from the relevant authorities.

Can or should employees be made to work from home?

While employees do not have any general legal entitlement to work from home and employers may not unilaterally impose the obligation to do so on employees if this was never contractually agreed on; working from home/remotely is certainly an option available to both parties at present. Depending on the circumstances, if an employee is unable to work from home, they must either take paid or unpaid time off.

What happens when schools and childcare facilities are closed?

If schools, kindergartens and nurseries are closed as a precautionary measure, employees are entitled to time off with remuneration according to Section 616 of the Civil Code. However, this entitlement is limited to a few days, usually 1-5 and remuneration is only continued if this has not been excluded in the employment contract. Employees must therefore take paid or unpaid time off, with the employer's approval to look after their children. If it is possible for employees to work at home, this would also be an alternative in such cases.

- Parents who have to take care of children under the age of 12 or who are disabled themselves due to the officially ordered closure of schools and day care centres are protected against a loss of income if there is no other reasonable option for childcare during the closure.
- The Protection Against Infection Act was amended to enable parents, including foster parents and those in insignificant employment to receive compensation of 67% of their monthly net income (maximum €2,016) for up to six weeks. The payment is made by the employer, who can then submit a reimbursement request to the responsible state authority.
- The new right to compensation is linked to the same conditions as the right to child sickness benefit and the conditions for eligibility are as follows:
 - The official closure or an official prohibition to enter a day care or school
 - The closure is due to an infection or to prevent it
 - The applicant is employed
 - The applicant must have custody of at least one child who is under the age of twelve or is disabled
 - The applicant must now care for the child resulting in a loss of earnings
 - There are no other reasonable alternatives for childcare
 - The period must be outside school holidays
 - Vacation, flex and overtime must have been exhausted

However, if a child is unwell and under 12 during the closure, the employee is entitled to continued remuneration or unpaid off as with any other illness.

What if the public transport stops operating and employees cannot get to work?

A stoppage of public transport also does not relinquish the employee's duty to get to work. If the public transport system is also shut down, the employee is still required to get to work and employers are not required to continue remuneration for failure to work as a result. However, both parties can agree that work be done at home, where possible.

Can employees be forced to go on vacation?

Generally, and under normal circumstances, vacation or paid time off is based on the employee's request, which is to be taken into consideration unless there are significant operational reasons require otherwise.

Forced vacation can be ordered:

- for seasonal operations
- closure due to the owner's absence (e.g. doctor's offices)
- when a company falls into an unforeseen operational crisis that would not normally be considered an operational risk.
- if it is regulated and permitted by an employment contract, collective or a company agreement

Consequently, forced vacation should be preceded by other measures, such as reduced working time, reduction of overtime, etc., where possible.

What happens if the employer closes the company?

Should a company be closed by the employer as a precautionary measure and the employees cannot work although they wish to, they are to be released from work with pay during the period of closure. Employers may not require employees to make up for this time later on.

What if the company is closed on government orders?

If an official quarantine or ban from work is ordered by the competent authorities, the employer is required to continue pay but may apply for reimbursement of salaries paid to affected employees. The reimbursement is not automatic and must be applied for.

New

The application period for this is extended considerably from three to 12 months by the Protection of the Population in an Epidemic Situation of National Scope Act.

Can employers implement short time work due to COVID-19?

Closure or a reduction in working hours due to a shortage of work, e.g., delivery problems or a reduction in production does not relinquish the employer from their duty to continue pay and fall under the so-called operational risk. However, with short-time work, which is a complete or partial temporary reduction of regular working hours coupled with a corresponding reduction of pay due to a significant but temporary shortage of work, employers may reduce work and apply for short time work compensation from their relevant employment agency.

A loss of productivity due to coronavirus and/or its effects, may thus give rise to a claim for compensation for reduced hours or reduced productivity. Employers must note the following:

- The employer may not declare a unilateral reduction and either a collective or an individual agreement is necessary. Therefore, if there is no works agreement or the employment contract does not permit short time work, the employee's consent must be obtained prior to its introduction.
- The application is made by the employer and the requirements, all of which must be fulfilled, are that:
 - it is due to economic reasons or an inevitable event
 - it is temporary and
 - unavoidable and
 - at least one third of the employees employed in the company are affected by a loss of remuneration of more than 10% of their gross monthly salary in the respective claim period.

From April 1, 2020 and valid till December 31, 2020:

- Only 10% and not 1/3 of the employees must be affected by the loss of working hours
- Partial or complete waiver of the need to build up a negative balance in working hours;
- Reduced hours compensation benefit will also be available to temporary/agency workers;
- Complete reimbursement of social security contributions by the Federal Labour Office.

How much and for how long is short time work compensation granted?

Short-time work compensation is granted for a maximum of 12 months and comprises 67% of the net pay difference for employees with at least one child and 60% of the net pay difference for childless employees.

On April 22, 2020, the government agreed to a temporary and graduated increase of the short-time working allowance, which is valid till December 31, 2020. The increase only applies where working hours are reduced by less than 50%. In the case of a reduction of less than 50%, the short-time allowance remains at 60% or 67% of the standard net remuneration.

If the working time is reduced by at least 50%, the allowance will be increased in stages. From the 4th month up to the 6th month, the allowance will increase to 70% or 77% of the standard net remuneration if at least one child lives in the household. From the 7th month of short-time work onwards, the short-time working allowance is increased to 80% or 87% of the standard net remuneration if there is at least one child living in the employee's household.

Does short-time work also affect holiday pay?

No. Holiday pay is based on the average earnings of the employee in the last 13 weeks prior to the vacation. However, reductions in earnings occurring in the previous 13 weeks as a result of short-time work are not taken into account.

Can employees be requested to work overtime in times of bulk absences?

Yes. If a majority of the employees are unable to work, employers may require the remaining employees to work overtime for the completion of necessary and/or urgent tasks/projects.

Do occupational disability and life insurance plans cover COVID-19?

This depends on the terms and conditions, however, most plans covering pandemics will, under normal circumstances, also cover disability and/or death due to COVID-19.

Can the Works Council be involved after the fact due to a need to act quickly in the current circumstances?

No. The current situation does not permit a derogation of the rights of works councils.

In order to enable Works Councils to meet, i.e., reach a quorum during this time of social distancing and when most employees are working from home, the government is working on an amendment to the Works Council Constitution Act (BetrVG) to enable the passing of resolutions by video or telephone conference. The prerequisite is that third parties must not have access to the contents of the meeting. The temporary provision is valid until December 31, 2020, and for resolutions already passed in this manner to remain effective, the regulations will apply retroactively from March 1, 2020.

Further resources:

- Federal Ministry of Health: <https://www.bundesgesundheitsministerium.de/en/en/press/2020/coronavirus.html>
https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/Merkblatt-Bildungseinrichtungen-Coronavirus_EN.pdf
- Robert Koch Institute: https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Risikobewertung.html
- Federal Foreign Office: <https://www.auswaertiges-amt.de/de/ReiseUndSicherheit/covid-19/2296762>
- Federal Office for Health Education: <https://www.bzga.de/aktuelles/2020-03-03-bzga-informationen-zum-neuartigen-coronavirus-fuer-bildungseinrichtungen/>
https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Transport/Poster_Information_Reisende_china.pdf?blob=publicationFile
- European Centre for Disease Prevention and Control: <https://www.ecdc.europa.eu/en/coronavirus>
- International Monetary Fund: <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#G>
- World Health Organisation: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
- European Commission: https://ec.europa.eu/transport/coronavirus-response_en

Munich, June 9, 2020