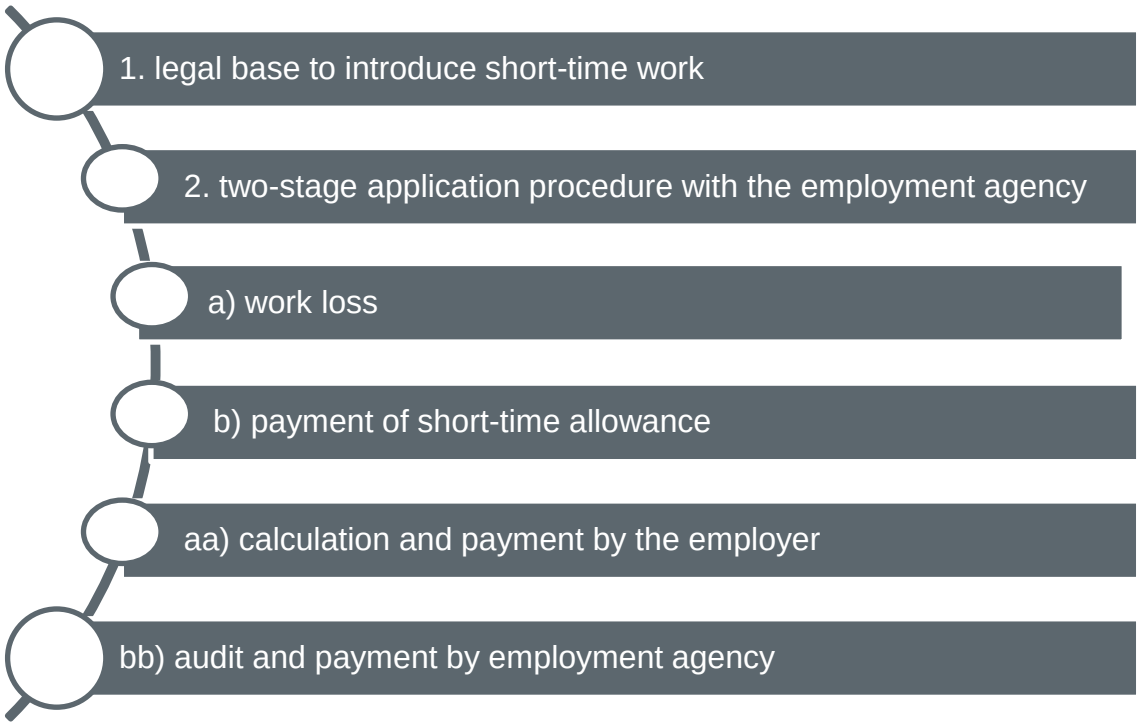
Short-time work

GÖRG
YOUR BUSINESS LAW FIRM

Dear Madam, dear Sir,

in view of the current situation, in the following we provide an overview on the introduction of short-time work and other instruments to help companies financially in the current crisis.

Short-time work and short-time allowance



1. Overview

Short-time work is the temporary reduction in working hours, which is accompanied by a corresponding reduction in salary. The resulting loss of salary is compensated proportionately by the payment of short-time work allowance.

The amount of the short-time work allowance corresponds to the unemployment benefit, i.e. 60% or, in the case of employees with children, 67% of the net remuneration. The employer can also make top-up contributions.

Example:
Due to the Corona crisis, the working hours for employees will be reduced by 50%. Employees will continue to receive 50% of their previous salary. The remaining 50% will be compensated by short-time work allowance. The short-time allowance amounts to 60 or 67% of the net salary of 50% of the gross salary.

2. Legal base to introduce short time

- **Co-determination of the works council**
  The works council must consent to the introduction of short-time work. The right of co-determination is directed at the specific individual case; a general agreement according to which the employer may introduce short-time work is not sufficient! If the right of co-determination is not exercised correctly, the desired discharge does not occur and the employer must continue to bear the full amount of the remuneration claims.

- **Legal basis**
  Short-time work can only be introduced effectively if there is a specific legal basis under collective law or individual contracts. The mere announcement of short-time work on the basis of the Directorate Law is not sufficient for the granting of short-time work compensation. Depending on the type of legal basis (collective bargaining agreement, works agreement or individual contractual agreement), case law has made different and sometimes extensive legal requirements. If these requirements are not complied with, companies run the risk of having to pay the full salary despite the introduction of short-time work. This has happened many times during the financial crisis of 2008/2009 and has caused additional financial problems for companies.

  Practical tip: The legal basis for the introduction of short-time work must meet current requirements! Take advantage of the opportunity to reduce the holiday entitlement exceeding the legal minimum claim for the period of "zero" short-time work.

- **Monthly view**
  Short-time work for the employee concerned must always be introduced for an entire month.

3. Two-stage application procedure at the employment agency / calculation and payment by the employer

- **Notification of the introduction of short time to the local employment agency**
  Short-time allowance is paid at the earliest from the month in which the notification is given.
  - The employer makes a written notification of short time work to the employment agency in whose district payroll accounting is carried out (fax or signed notification sent by e-mail is sufficient). A statement of the works council needs be attached to the notification.

- In the case of companies operating nationwide, "key customer consultants" can be provided for co-ordination by the employment agency.
- The employer must submit or provide credible evidence of the conditions for granting short-time work compensation by means of appropriate documents (e.g. agreement on the introduction of short-time work with the works council or the employees, change notices). In particular, it must provide credible evidence that a loss of work has occurred,
  - based on economic reasons or an unavoidable event,
  - is temporary and unavoidable (e.g. currently by reducing working time credits) and
  - at least 1/10 of the employees employed in the company suffer a gross loss of earnings of 10%..

  In addition, he must provide evidence of the operational and personal requirements.

- On the basis of the notified facts, the employment agency issues a decision as to whether there has been a considerable loss of work and whether the operational requirements for the short-time working allowance are met.

- The employer needs to submit an application for benefits to the employment agency for the respective month, consisting of a form application and a payroll list. The application needs to be submitted within a cut-off period of three months, otherwise the receipt of short-time work benefits is excluded. The period begins at the end of the month for which the short-time work allowance is requested. Within this framework, the employer needs to calculate and receive the short-time working allowance himself and pay it out to the employees. He can also make advance payments. Payment by the employment agency is based on a preliminary decision. After seven months, a final settlement is determined.

4. Further instruments to cope with the crisis

Other labour law instruments to cope with the crisis are working time accounts and flexible remuneration systems.

For companies there are, among other things, the granting of KFW loans, deferral of tax debts or compensation claims under the Infection Protection Act.

Your contact

We would be happy to support you in all questions that may arise during the crisis for your company and your employees.

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Burkhard Fabritius, MBA, has been advising and representing companies and corporations under public law in all aspects of collective and individual labour law, as well as social security law and corporate pension law, for over 10 years. He is a labour law lecturer and associate lecturer for social security law.

Burkhard Fabritius advises boards, managing directors, heads of authorities and HR managers on personnel strategies and the correct use of labour law instruments to achieve the desired personnel objectives. He is particularly experienced in conducting complex negotiations with works councils, employee organisations and trade unions, and has practical experience of working in corporate groups and management situations.

Burkhard Fabritius is extremely experienced in managing court processes, for which his previous role as a judge is a great benefit.

He publishes regularly on labour law and social security law topics, and also gives regular in-house workshops and seminars.

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Dr Frank Wilke advises national and international companies on all matters of individual and collective labour law, in particular labour law advice associated with operational changes and transactions, as well as drafting and negotiation of company agreements and collective agreements. He also specialises in insolvency labour law, and representation in litigation before labour courts. Frank Wilke also has expertise in the law of supplementary benefits.