



## Short-time work Navigator

Examination of the prerequisites for applying for short-time work compensation in COVID-19 periods

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The successful application for short-time work compensation is only considered if certain conditions are met.

This clickable PDF will help you to find out whether the requirements for reporting a considerable loss of working hours to the responsible employment agency are (already) met and will show you which measures may still have to be implemented.

# Quick guide

## Click instead of scroll



Our clickable PDF leads you interactively through the topic. Navigate through the PDF by clicking on the green buttons at the bottom of the pages.

Avoid reading the PDF in chronological order page by page.

The three navigation buttons at the top right will take you to the Deloitte Legal website, to your contacts on the subject of short-time work and COVID-19 and to this homepage.

Begin the self-assessment by clicking on "Start".

Reply buttons

Navigation buttons

The screenshot shows a PDF page titled "Labour law basis" with the subtitle "There must be a labour law basis for short-time work". The page contains a paragraph of text explaining that employers cannot unilaterally introduce short-time work and that a legal basis is required, such as an employment contract, works agreement, or collective bargaining agreement. Below the text is a question: "Does your company have such a legal basis under labour law?". At the bottom of the page, there are two green buttons labeled "Yes" and "No". The page number "4" is visible in the bottom right corner. Three navigation icons (globe, @, house) are in the top right corner. Green arrows point from the text labels "Navigation buttons" and "Reply buttons" to the respective icons and buttons in the screenshot.

Start

## Labour law basis

There must be a labour law basis for short-time work



The employer is not entitled to introduce short-time work unilaterally with respect to the employees; this requires a **basis under labour law**. Such a basis may result from the **employment contract**, a **works agreement** or a **collective bargaining agreement**.

Does your company have such a legal basis under labour law?

Yes

No

# Labour law basis

## Works council



Is there a works council in your operation?

**Yes**

**No**

# Existence of a considerable loss of working hours with loss of remuneration

## Legal requirements



§§ 95 sentence 1 no. 1 and 96 of the Third Book of the Code of Social Law (SGB III) presuppose that there is a considerable loss of working hours with loss of remuneration. According to § 98 para. 1 sentence 1 SGB III, a loss of working hours is substantial if

1. it is based on economic reasons or an unavoidable event
2. it is temporary,
3. it is unavoidable and
4. in the respective calendar month at least 10% of the employees employed in the operation or part of the operation are affected by a loss of earnings of more than 10% of their monthly gross salary.

**Continue**

# Considerable loss of working hours

## Economic reasons or unavoidable event



The loss of working hours must be due to economic reasons or an unavoidable event:

### Economic reasons

A loss of working hours is based on economic reasons if it is caused by a change in the operational structures caused by the general economic development. This includes, for example, cyclically induced declines in orders and shortages of liquid funds, disruptions in the division of labour in the economy and in the economic infrastructure or bottlenecks in the supply of raw materials, supplies and accessories.

An economic reason can also be, for example, the cancellation of events, lack of orders or a shortage of raw materials for production due to the COVID-19 pandemic.

### Unavoidable event

An unavoidable event shall be deemed to have occurred in particular if a loss of working hours is due to unusual weather conditions that deviate from the usual course of weather. An unavoidable event shall also be deemed to have occurred if a loss of working hours is caused by official or officially recognised measures for which the employer is not responsible.

An unavoidable event can also be an accident (pandemic, fires, explosions, etc.). As a rule, this also applies to illnesses of employees as a result of the COVID-19 pandemic, which result in a (partial) shutdown of the company, as well as to quarantines or bans on activities imposed by the authorities as a result of the COVID-19 pandemic, which result in loss of work.

Does your operation have a loss of working hours due to economic reasons or an unavoidable event?

Yes

No

# Considerable loss of working hours

## Temporary loss of working hours



The loss of working hours must be temporary. This condition is fulfilled if the transition to full-time work can be expected again in the foreseeable future. In view of the possibly long periods of short-time work, the foreseeability can only be demanded with a certain probability. If, however, it is already highly probable that a plant closure is foreseeable, no short-time work compensation can be granted.

Is the loss of working hours in your operation temporary?

**Yes**

**No**



# Considerable loss of working hours

## Unavoidability of loss of working hours



According to § 96 para. 4 sentence 1 SGB III, a loss of working hours is unavoidable if all reasonable precautions have been taken in an operation to prevent the occurrence of the loss of working hours. Thus, for example, priority must be given to examining transfers of employees affected by the loss of working hours to other departments or the transfer of other tasks.

Further examples of avoidability are regulated in § 96 para. 4 sentence 2 SGB III.

**Continue**

# Considerable loss of working hours

## Unavoidability of loss of working hours | Common risk



Loss of working hours is considered avoidable if it is predominantly customary in the industry, customary in the business or seasonal or is based exclusively on business organisation reasons and thus represents a regularly recurring risk for the employer (§ 96 para. 4 sentence 1 no. 1 SGB III).

Is the loss of working hours customary in the industry, customary in the business or seasonal or is it due solely to organisational reasons?

**Yes**

**No**

# Considerable loss of working hours

## Unavoidability of loss of working hours | Vacation



Loss of working hours which can be wholly or partly prevented by granting paid vacation is deemed to be avoidable, provided that employees' priority vacation wishes do not prevent the granting of vacation (§ 96 para. 4 sentence 1 no. 2 SGB III).

However, the employment agencies do not burden the employers with the task of discussing conflicting vacation wishes with each individual employee, but generally only assume unavoidability, at least for the holiday entitlement of the current calendar year, if already existing holiday plans are modified. Remaining vacation from the previous year, however, should be used as far as this is possible under labour law.

Can the loss of working hours be prevented in whole or in part by the granting of paid vacation, which does not conflict with the priority vacation wishes of employees?

**Yes**

**No**

# Considerable loss of working hours

## Unavoidability of loss of working hours | Working time credits



Loss of working hours which can be avoided in whole or in part by taking advantage of fluctuations in working hours permitted in the operation (§ 96 para. 4 sentence 1 no. 3 SGB III) is deemed to be avoidable. This means that the use of working time credits, insofar as permissible under labour law, is basically given priority over short-time working, unless the working time credit is specially protected (e.g. value credit). As a result of the amendment of the law in connection with the COVID-19 pandemic, the accumulation of negative working time balances prior to payment of the short-time work compensation is waived.

Can the loss of working hours be prevented by the introduction of working time credits?

**Yes**

**No**



## Loss of remuneration

### Exceeding the materiality threshold

According to § 96 para 1 sentence 1 no. 4, SGB III, a materiality threshold must be observed: At least 10% of the employees employed in the operation or in a department of the operation must be affected by a loss of earnings of more than 10% of their monthly gross salary.

Are at least 10% of the employees employed in your operation or in a department of the operation affected by a loss of earnings of more than 10% of their monthly gross salary?

**Yes**

**No**

## Result



### Basic conditions fulfilled after first summary examination

The basic requirements for the introduction of short-time work or the application for short-time work compensation are probably met after an initial summary review.

According to § 99 SGB III, the employer must report the considerable loss of working hours to the employment agency in whose district the business is located, in writing or electronically. In particular, the notification must substantiate that there is a considerable loss of working hours and that the operational requirements are fulfilled.

As a rule, the short-time allowance is paid at the earliest from the calendar month in which the notification of the loss of working hours is received by the respective competent employment agency.

**Continue**

# Display of the considerable work loss Application form



The relevant form for notifying the loss of working hours can be found on the homepage of the employment agency (<https://www.arbeitsagentur.de/unternehmen/finanziell/kurzarbeitergeld-arbeitgeber-unternehmen>).

**Feel free to contact us at any time if we can assist you in reporting the loss of work to the relevant employment agency.**

Payment of the short-time allowance must be requested separately after notification of the loss of work. Would you like to find out more about the personal requirements that an employee must meet to be entitled to short-time work compensation, the amount of short-time work compensation and the further processing (application, payment, etc.)?

Yes

No

## Result

### Works agreement required



A works agreement must be concluded with the works council on the introduction of short-time work.

**Feel free to contact us if we can support you in drafting or negotiating such a works agreement.**

**Your contact persons**



## Result

### Supplementary agreement required



In order to introduce short-time work, a supplementary agreement to the employment contract must be concluded with the employees.

If no agreement is reached with individual employees, a notice of termination (for variation) may have to be given.

**Feel free to contact us if we can support you in the drafting of such a supplementary agreement or its further implementation.**

**Your contact persons**

## Result

Conditions for short-time work are currently not met



The introduction of short-time work or the application for short-time work compensation is probably out of the question at present.

**Please contact us at any time for a detailed analysis.**

**Your contact persons**

## Result

Conditions for short-time work are currently not met



The introduction of short-time work or the application for short-time work compensation is probably out of the question at present.

**Feel free to contact us at any time for a detailed analysis or a discussion of any necessary restructuring measures.**

**Your contact persons**

## Result

Conditions for short-time work are currently not met



The introduction of short-time work or the application for short-time work compensation is probably out of the question at present.

**Please contact us at any time for a detailed analysis.**

**Your contact persons**

## Result

### Further examination recommended



The introduction of short-time work or the application for short-time work compensation may not (yet) be considered at present.

**Please contact us at any time for assistance on how existing (remaining) holidays can be reduced.**

**Your contact persons**

# Result

## Further examination recommended



The introduction of short-time work or the application for short-time work compensation may not (yet) be considered at present.

**Please contact us at any time for assistance on how existing working time credits can be reduced.**

**Your contact persons**

## Result

### Further examination recommended



The introduction of short-time work or the application for short-time work compensation is probably out of the question at present.

**Please contact us at any time for a precise analysis of the materiality threshold.**

**Your contact persons**

# Result



**Feel free to contact us at any time. We and our colleagues from the Business Process Solutions department will be happy to support you at any time.**

**Your contact persons**





**Thank you very much for using our tool. If you have any further questions, please do not hesitate to contact us at any time.**

**Your contact persons**

# Contacts Employment law

You are welcome to contact us on the subject of short-time working



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# Contacts COVID-19 Task Force

Feel free to contact our other Task Force members with any other questions you may have on how to deal with the COVID 19 pandemic



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