

Info

Possibilities of employment

Possibilities of employing employees during Corona measures (information is based on status from 01.04.2020)

I. Short time working („Kurzarbeit“) – special case: Corona

“Kurzarbeit“ in Austria is a temporary, time-limited reduction of normal working time based on an “economic disruption“. The aim of this solution is to reduce the costs of the employer, while being able to continue employing the employee.

Following prerequisites have to be met in order for the Unemployment Agency (“AMS“) to grant support during “Kurzarbeit“ to the employer:

- The employer has to partially pay – not only the reduced working time salary – but also parts of the free time (“Kurzarbeitsunterstützung“). Details will be explained below
- A signed agreement between the Chamber of Commerce and the Trade Union, a so called “Sozialpartnervereinbarung“ (a work’s council agreement resp. in companies without a work’s council an individual agreement with the employees)
- The approval from AMS

It has to be considered, that the Unemployment Agency is supporting the short time working, however, the employer is not allowed during this time to terminate a working relationship, unless, the AMS has granted this (this will rather happen only in special cases). Please note that this regulation does not apply to the employees who are in short time working, but all employees of the employer.

Process and required documents

In order to apply for short time working three documents are needed:

1. Application at Unemployment Agency: (https://www.ams.at/content/dam/download/allgemeine-informationen/covid_kurzarbeit/KUA_Begehren_03_2020_final.pdf)
 - a. The unemployment Agency is providing an online calculator, which should support understanding the lump sums to be received:
<https://www.ams.at/unternehmen/personalsicherung-und-fruehwarnsystem/kurzarbeit/rechner-fuer-kurzarbeit>
 - b. An explanation video with further details (in German) can be found here:
<https://www.ams.at/unternehmen/personalsicherung-und-fruehwarnsystem/kurzarbeit>
2. Agreement with “social partners“
 - a. Individual agreement (no work’s council in place):
<https://www.wko.at/service/sozialpartnervereinbarung-corona-formular-einzelvereinbarun.docx>
 - b. Agreement with work’s council
<https://www.wko.at/service/sozialpartnervereinbarung-corona-formular-betriebsvereinbar.docx>
 - c. Additional information:
<https://www.wko.at/service/handlungsanleitung-corona-sozialpartnervereinbarung.pdf>
3. Short summary on the economic difficulties due to COVID-19

The application at Unemployment Agency can be made via email and has to be send to the correct county office:

Burgenland: ams.burgenland@ams.at

Corinthia: sfu.kaernten@ams.at

Lower Austria: ams.niederoesterreich@ams.at

Upper Austria: kua_beantragung.oberoesterreich@ams.at

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Salzburg: kua.salzburg@ams.at
Styria: ams.steiermark@ams.at
Tyrol: kua.tirol@ams.at
Vorarlberg: sfu.vorarlberg@ams.at
Vienna: ams.wien@ams.at

The application can be made, even if the social partners did not agree yet. In this case, it has to be stated on page 4 that the agreement will be provided afterwards.

The social partner agreement has to be signed by the Chamber of Commerce ("WKO") resp. the proper representative of interests by law and the social partners (usually, the Trade Union). If the company has a work's council, he is also to be included into the agreement and has to sign it. If this is not the case, all employees, who will be working short term, have to sign the last page of the form. This signed agreement has to be also send to the Unemployment Agency. Please note that according to current regulation, the official signature by the employee can be also made once he returns from short time working, as long as there is in anyway a confirmation from the employee that he agrees to this (e.g. email, SMS).

In the explanation, it has to be shown that due to the current economic situation a lower earning/profit of the company is expected. This explanation can be either included directly in the Unemployment Chamber's form (page 4) or can be send together with the form in a separate document.

The request can be also made backdated – short term working can start the earliest with March, 1st 2020. The Unemployment Agency's homepage is also confirming, that requests for 1.3. can be also send after 31.3.

How does the process of short time working look like?

In the form it has to stated how many hours the employee will reduce. This number can be calculated as following:
Normal working time: 40 hours. Reduction by 80% to 20%. $40 \text{ h} \times 20 \% = 8 \text{ h}$ per weeks working time. Therefore, the reduction is equal to 32 hours per week. The application for short time working is for 13 weeks: $32 \text{ h} \times 13 \text{ (weeks)} = 416$ reduction hours.

After each payroll month, the employer has to declare at the Unemployment Agency, how many reduction hours the employee actually had (most likely: up until the 28th of the month via the AMS Portal). If employees work more and, therefore, less reduction hours have happened, the support will be also lower. In times of holidays or time off, as well as other times, where the employer has to continue the payment, this is not considered as "reduction time hours".

Some additional, important questions in regards to Corona short working time

Scope and length of short time working: Short time working can be requested for 3 months (approx. 13 weeks) and can be – under certain circumstances – extended by additional 3 months. The working time can be temporarily reduced to 0 %, if on average the employee is working 10 % (e.g.: 12 weeks of short time working, 10 weeks: 0 %, 2 weeks: 60 %). In order to request short time working, the working time has to be reduced at least by 10% (i.e. can be maximum 90% of the normal working time).

How does this monetary support look like? What is paid back? The AMS is paying back the non working hours in form of lump sums. These lump sums include the prorated: special payments, the employer contribution to social security, and other employer contribution payments.

Can the scope of the short working time be changed (i.e. the number of hours)? The normal working time can be changed during this period, if work's council resp. the employee agrees with it. The social partners only have to be notified about this change (5 working hours prior).

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Is it compulsory to consume open vacation days resp. overtime hours? In the new regulation it is not stringently required to consume these leave types, however, it has to be proven that it has been tried to do so. The attempt has to be demonstrated, not necessary, the outcome.

If due to the corona measures the establishment had to be closed (e.g. due to the fact that shops can not be entered by customers anymore), the employer can impose a consumption of open vacation days and overtime hours – if short time working will be implemented. Entitlements from current working year only have to be consumed up to two weeks. In total, the employee doesn't have to consume more than 8 weeks of vacation and overtime.

Is it possible to perform overtime during short time working? Overtime is possible, however, is reducing the "reduction hours".

Who is supported? Except for regional administrative bodies ("Gebietskörperschaften), legal entities of public law and political parties, all employers are able to receive support. It is also including all employees (also the directing manager, if he is insured in ASVG) and apprentices. Marginal employments ("geringfügige Dienstverhältnisse") and freelancers are excluded from this regulation.

Am I entitled to dismiss employee during short time working? The number of employees is to be kept. Exceptions to this are only possible if AMS has specifically given its permission. Terminations prior to short time working are not impacted. Terminations due to personal reasons are possible, however, the total number of employees has to remain the same, i.e. someone else needs to be hired.

Am I allowed to terminate the employee after short time working? There is a one month period of having to keep the employee after the short time working period. This, however, only applies for employees, who have actually been on short time working.

How can I get my employees' signatures, if they are in home office/at home? The Chamber of Commerce is stating that an agreement of the employee is a minimum requirement. However, it is also sufficient to have this via email or SMS.

Do all employees have to change to short working time? No, it is not needed, that all employees change. However, also employees that did not reduce their working time can not be terminated.

Can I amend applications afterwards? Yes, a change is possible – e.g. an increase of working time, however, it has to be applied and approved upfront.

Are employments with an income above €5.370,- (maximum contribution base for social security) also supported? Yes, however, solely the payments up to € 5.370,- are supported. All payments above this value are not covered by the support.

Do all employees have to have the same reduction or can I distinguish between employees? The reduction time can be distinguished between groups, i.e. for each group an individual reduction can be agreed.

Do I have to apply multiple times, if having employees in various counties? For each county separate applications have to be made at the office of the corresponding county. If there are multiple working locations within one county, one application is enough – if all locations have the same length of reduced working. According to the Unemployment Agency, the applications can be bundled and then send to one office – this will then take over the lead with the applications.

When is the billing of cost for short time working taking place? This has to take place electronically via "AMS-Abrechnungsdatei" up until the 28th of the following month.

Please note that it is not possible to bill any costs prior to April, 28th.

In regards to the timing of the payout, there is no clear statement yet. The general guidelines foresee up to 90 days, however, often it is stated that the targeted period is 30 days.



What effect does consumption of vacation days or overtime hours have on the short time working? During the consumption of leave days, the employee is entitled to receive the full payment. This payment will be also not supported by the Unemployment Agency.

What happens if an employee gets sick? The regulation has been adjusted in such a way, that employees are now entitled to receive the support, when being sick. The relevant hours are the ones the employee and employer have agreed/planned on during the period of sickness.

Are overtime lump sums and all-in salaries also supported? From current perspective, revocable the overtime lump sum is not to be considered when calculating the basis for the support. All-in salaries, however, can be considered fully since a clear distinction between the base salary and the part for the overtime is not possible.

How should partial retirement (“Altersteilzeit”) be considered? For partial retirement the salary can be shortened to the actual performed working time, however, the “Lohnausgleich” (salary equalization) can not be shortened. In case of a blocked partial retirement, the employee is still acquiring the same amount of time credit.

What has to be considered for general managers according to trade law (“gewerberechtlicher Geschäftsführer“)? This type of general manager has to be employed for at least 50% of the actual worked time at the establishment (without overtime hours). This means that, if only parts are going into short time working, while other employees still work 40 hours per week, the general manager according to trade law has to work at least 20 hours per week. If he is deregistered completely, a new one is to be announced within 6 months.

Which salary is relevant for the support application? Significant is the salary according to §49 ASVG. Therefore, not only salary/wage should be considered, but also other recurring salary components, as well as benefit in kind. Whereas, special payments (Christmas payment and vacation bonus) are not to be included.

How should a salary change or a change of working hours be considered? The support payment is considering the last month prior to short time working. If – for example – short time working is implemented with April, 1st, the salary and the working time from March are relevant.

II. Special care time – up to 3 weeks

According to § 18b AVRAG employers can grant their employees - in case of closing of schools and kindergartens – up to 3 weeks of additional leave time for taking care of their children if:

1. Employer is not critical to the public infrastructure
2. The children are below the age of 14
3. The employee has a duty of supervision for this child

If this time is leave is granted to the employee, is solely decided by the employer. Also, it has to be considered that this leave does not necessarily has to be in weeks, but can be also granted in single working days. The employee, however, has only the possibility to take this special care time, if he does not have the right/possibility of a leave of absence for taking care of the children (§ 1154b Abs. 5 ABGB resp. § 8 Abs. 3 AngG).

Please note that the law does not define further, what type of businesses/sectors are considered as „critical to the public infrastructure“. According to the intention of the law, however, these are companies in the production and selling of groceries, pharmacies, transportation, public security, as well as companies, which are required to keep the business running or whose lock down would mean a big financial impact (such as running a melting furnace).



Employer's compensation claim

Employers have the right to claim back one third of the paid money during special care time leave from the government. The claimed back amount is defined with a maximum of the monthly ASVG-maximum contribution base (currently: € 5.370,-) and has to be claimed back within 6 weeks after the state has repealed the existing measurements at the tax authorities of the employer.

III. Other possibilities to reduce the costs

- **Consumption of holidays:** agreement needed
- **Consumption of overtime:** agreement needed
- **Reduction of normal working time** (e.g. for an already predefined time): Change from full time to part-time resp. from part-time, reducing further. A written agreement is needed
- **Part-time retirement:** For employees, who are meeting the requirements in terms of age and governmental aid requirements. A written agreement is needed
- **Unpaid holidays:** agreement needed
- **Educational leave resp. Educational part-time:** if this is within the interest of the employee and the unemployment chamber grants it: agreement needed
- **“Standby Agreement” (“Aussetzungsvereinbarung”):** This is an ending of employment with the guarantee to employ the employee again. In this time, the employee will receive unemployment payments from the AMS: agreement needed
- **Termination of employee by employer:** Here, however, the “normal rules” apply, i.e. employer has to consider termination periods, possible claims from employees, employees with special protection, etc.
- **Mutual agreement between employee and employer:** Agreement needed – ending an employment with mutual agreement is any time possible

IV. Some additional, important questions

- **Can the employer insist on home office?**
Home office has to be agreed between employee and employer. A command from the employer to remain at home is by law only possible, if the working contract included a clause in regards to home office. Also, the employee has no right to insist on home office, unless, this has been included in the working contract.
- **What happens if the employee wants to take care of his children, rather than having the school supervise them?**
If there is no supervision by the school and there is no other appropriate care possibility, then this is considered as a paid “hindrance from work”, which can last a maximum of one week (§ 8 Abs. 3 AngG resp. § 1154b Abs. 5 ABGB). In this case, the employer also has no possibility to claim back any money.
If, however, the employee would have the possibility to have the child supervised by school, the employee has to consume holidays or take time off.
- **Is an employer entitled to send employees home?**
Generally, each company is entitled to send employees home, even if an employee is not sick. In this case, this is considered as “release from duty” (“Dienstfreistellung”) and not as a sick leave.

