

NKF Client News

MARCH 2020

Coronavirus COVID-19 / Employment Law Short Time Work and Compensation for Loss of Earnings

The new coronavirus COVID-19 is spreading rapidly all over the world and in Switzerland. On 16 March 2020, the Federal Council declared that Switzerland faces an "extraordinary situation" (state of emergency) in terms of article 7 of the Epidemics Act of 28 September 2012 and ordered drastic measures:¹ Shops (with the exception of grocery stores), restaurants, bars, and entertainment and leisure facilities must remain closed until 19 April 2020; school attendance is suspended.

The effects of the COVID-19 pandemic and the measures taken by the authorities pose major challenges for employers and employees. On 20 and 25 March 2020, the Federal Council took various measures to mitigate the economic consequences for the affected companies and employees.

This newsletter contains an overview over the measures taken by the Federal Council (as of 26 March 2020) in connection with i) short-time work² and ii) further compensation for loss of earnings³. These measures were put into effect retroactively as of 17 March 2020 and shall remain in force for six months.

1. Extension and simplification of short-time work

Purpose of short-time work and unemployment insurance benefits:

- In the event of temporary reduction or complete cessation of work in a company, the employer can apply for short-time work compensation for the employees concerned. Such short-time work compensation is intended to preserve jobs and to prevent redundancies.
- The unemployment insurance (ALV) covers 80% of the loss of earnings attributable to the reduction in working hours by way of short time work compensation for a certain period of time. The maximum insured salary is CHF 148,200 per year or CHF 12,350 per month.
- The employer must pay the salary (for the work that is still performed) and the short-time work compensation (80% of the loss of earnings) and will subsequently be reimbursed for

¹ Ordinance 2 on measures to combat the coronavirus (COVID-19) (COVID-19 Ordinance 2) of 13 March 2020 (as of 26 March 2020).

² Ordinance on measures regarding unemployment insurance relating to the coronavirus (COVID-19) (COVID-19 Ordinance on Unemployment Insurance) of 20 March 2020 (as of 26 March 2020).

³ Ordinance on measures in the event of loss of earnings in connection with the coronavirus (COVID-19) (COVID-19 Ordinance on Loss of Earnings) of 20 March 2020.

the short-time work compensation of the respective employee, provided that the requirements are demonstrably met.⁴

- Social security contributions must be paid by the employer on 100% of the salary; the employer's contributions to AHV/IV/EO/ALV for the earnings attributable to the reduction in working hours are reimbursed by the unemployment insurance.
- Every employee has the right to refuse short time work. In this case the employer must continue to pay the full salary.

The conditions for short-time work are in particular:

- Ongoing employment relationship;⁵
- Working time controls, which, inter alia, provide information on the hours worked and on the reduction in working hours on a daily basis;
- Consent of the respective employee;
- Reduction in working hours: A reduction in working hours is to be considered if (i) per accounting period (usually one month) such reduction amounts to at least 10% of the total working hours usually worked in the company and (ii) it is due to economic reasons and unavoidable; in order to meet requirement (ii), the employer must credibly demonstrate why the reduction in working hours to be expected in his or her business is due to the occurrence of COVID-19 (adequate causal link);
- No other insurance benefits.

Application for short-time work and assertion of short-time work compensation:

- The employer must notify the cantonal authority of the canton in which the company or branch is domiciled (in Zurich, the Office of Economic and Labour Affairs) of the short-time work before the intended claim for short-time work compensation (advance notification).
- The notification period⁶ as well as the waiting period (Karenzfrist)⁷ have been suspended in full.
- The notification procedure shall be simplified. Some cantons, e.g. the canton of Zurich, have already introduced corresponding simplifications.
- If the cantonal authority approves short-time work, the employer may submit an application for short-time work compensation to the competent unemployment insurance fund within three months after the end of each accounting period.⁸

⁴ As per the latest measures of the Federal Council, a request for short-time work compensation can now be made without making such advance payment to employees (Art. 6 COVID-19-Ordinance on Unemployment Insurance).

⁵ In accordance with the latest measures of the Federal Council, short-time work can now also be requested for employees who (i) are in a fixed-term employment relationship, an apprenticeship or in the service of an organisation for temporary work or (ii) hold a higher management position or are involved in the company (Art. 4 and 5 COVID-19-Ordinance on Unemployment Insurance).

⁶ Art. 8b (1) COVID-19-Ordinance on Unemployment Insurance.

⁷ Art. 3 COVID-19-Ordinance on Unemployment Insurance.

⁸ The Federal Council has also relaxed the conditions in this regard (Art. 7 COVID-19-Ordinance on Unemployment Insurance).

2. Compensation for loss of earnings

The Federal Council has established a basis for further compensations for loss of earnings, subject to the condition that there is no entitlement to other benefits, namely from any other (social) insurance, and no continued salary payment by the employer.⁹

Compensation for parents:

- Entitled to compensation are employed or self-employed parents with children under 12 years of age who require leave of absence from their employment because third-party care of the children is no longer guaranteed (e.g. due to school closures or because the caregiver is a particularly vulnerable person).
- The entitlement begins on the 4th day of the care-related incapacity to work. The compensation (paid as a daily allowance) corresponds to 80% of the average income, but not more than CHF 196 per day.

Compensation for persons due to a quarantine measure:

- Entitled to compensation are employed or self-employed persons who require leave of absence from their employment because of a quarantine measure.
- The entitlement begins on the day on which all eligibility criteria are met, i.e. on 17 March 2020 at the earliest. The compensation (paid as a daily allowance) corresponds to 80% of the average income, but not more than CHF 196 per day. The compensation is limited to 10 daily allowances.

Compensation for self-employed persons:

- Entitled to compensation are self-employed persons who suffer loss of income due to a closure of business or the ban on events ordered by federal law.
- The entitlement begins on the day on which all eligibility criteria are met, i.e. on 17 March 2020 at the earliest, and the compensation (paid as a daily allowance) corresponds to 80% of the average income, but not more than CHF 196 per day.

If you have further questions and suggestions on this topic, please contact your regular NKF contact.

Authors/Contact

Valerie Meyer Bahar
Partner, Employment
valerie.meyer@nkf.ch

Livia Keller
Associate, Employment
livia.keller@nkf.ch

Annina Fey
Associate, Employment
annina.fey@nkf.ch

⁹ Art. 2 (4) COVID-19-Ordinance on Loss of Earnings.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

