



23 March 2020

Questions and answers relating to short-time work (*Kurzarbeit*) and skills development

What is the short-time allowance (*Kurzarbeitergeld*)?

The Employment Agency (*Agentur für Arbeit*) pays the short-time allowance as partial compensation for a loss of earnings caused by a temporary cut in working hours. This reduces the costs faced by employers in the context of employing workers, and enables companies to continue to employ their workforce even in the event of a loss of orders. In other words, the short-time allowance helps to prevent dismissals.

What conditions have to be met to receive the short-time allowance?

In principle, the short-time allowance (*Kurzarbeitergeld*) can be granted if an agreement has been reached by the employer and the employee representative body, or by the employer and the employees affected, to cut working hours in the company in accordance with the provisions of labour law, and this results in a substantial loss of working time and pay. The following conditions must be met:

- The cut in working hours must be caused by economic reasons or circumstances beyond the employer's control (e.g. flooding, orders issued by the authorities).
- The cut in working hours must be unavoidable and the company must have done everything possible to reduce or resolve it (e.g. use of the credit in working time accounts, within certain limits).
- The cut in working hours must be temporary in nature. This means that, in principle, a return to the normal working hours can be expected during the period for which the short-time allowance is available.
- The Employment Agency (*Agentur für Arbeit*) must have been notified of the cut in working hours.
- The employee must remain in employment subject to social insurance contributions after the cut in working hours, and must not be made redundant.
- The cut in working hours must be substantial. This means that at least one-third of the company's employees must face a reduction of more than ten per cent in their gross monthly pay.

Are the rules on the short-time allowance being relaxed during the crisis?

Yes, the Federal Government is issuing a statutory instrument relaxing the conditions for the short-time allowance. These changes will apply for a limited period, until 31 December 2020. The conditions for accessing short-time work have been relaxed and employers are being given relief on the payment of social security contributions.

The specific changes are as follows:

- A company can register short-time work if at least ten per cent of its workforce are affected by a cut in working hours. The normal threshold is one-third of the workforce.
- There is no requirement to build up negative working time balances before the short-time allowance is paid. The law normally requires companies which use agreements to introduce changes to working hours to also utilise these agreements to avoid short-time work.
- Temporary workers can also receive the short-time allowance.
- The social security contributions which have to be paid solely by employers for employees working short-time are reimbursed in full by the Federal Employment Agency.
- Likewise, for recipients of the seasonal short-time allowance (*Saison-Kurzarbeitergeld*), the social security contributions are reimbursed not from the winter employment levy, but from social security contributions.

How do I prove that economic reasons exist for the introduction of short-time work (Kurzarbeit)?

A detailed explanation of the reasons for the cut in working hours must be provided on the form used to notify the local Employment Agency about the cut in working hours. The form includes a declaration by employers that the information provided is true to the best of their knowledge. If an employee representative body exists, it must state its agreement with the information provided by the employer or submit a separate statement.

Who is entitled to receive the short-time allowance?

All employees who have not been made redundant, who lose more than 10 per cent of their pay due to the short-time work and who remain in employment subject to social insurance contributions are entitled to receive the short-time allowance. If the condition of a “substantial” cut in working hours is met (i.e. if at least one-third of the workforce is facing a cut in working hours of more than 10 per cent), employees can also receive the short-time allowance if they have not been made redundant, they remain in employment subject to social insurance contributions, and they are losing 10 per cent or less of their pay. For a limited period until 31 December 2020, the threshold for a “substantial” cut in working hours has been reduced from one-third to ten per cent of the workforce.

How quickly can short-time work be introduced?

In the case of a loss of orders, agreements to cut working hours in the company allow short-time work to be introduced and the local Employment Agency to be notified very quickly. Employers calculate the short-time allowance and pay it to the employees. An application for reimbursement is subsequently submitted to the local Employment Agency, which, after examining the application documents, reimburses the employer for the short-time allowance paid without delay. Questions can be clarified with the local Employment Agency quickly and without unnecessary bureaucracy.

Do working hours need to be reduced by the same percentage for all of a company's employees?

Working hours do not need to be reduced equally for all employees. What is important is that, for all affected employees, the cut in working hours with a reduction in pay, i.e. short-time work (*Kurzarbeit*), is effectively agreed on the basis of collective agreements, firm-level agreements or the provisions of individual contracts. The conditions for payment of the short-time allowance are met if, among other things, at least one-third – or, for a limited period until 31 December 2020, ten per cent – of the company's employees are affected by a loss of pay of more than ten per cent of their gross monthly pay.

Do employers have to introduce short-time work for the entire company, or is it possible for it to apply only to certain departments?

Short-time work does not need to be introduced for the entire company. It can be limited to individual departments within the company.

By how much can working hours be reduced for employees working short-time?

Whether the loss of working time represents hours, days or even weeks depends on the company's order books and on agreements within the company. In the case of "short-time work zero" (*Kurzarbeit null*), the cut in working hours is 100 per cent, meaning that work is stopped entirely for a temporary period.

What needs to be done to apply for the short-time allowance?

There is a two-stage process to be followed when providing notification of short-time work and applying for the short-time allowance:

- The employer or the employee representative body notifies the local Employment Agency in writing of the cut in working hours. The Employment Agency responsible is the one in the district where the company is based. The Employment Agency decides without delay whether the conditions for payment of the short-time allowance are met. The employer calculates the short-time allowance and pays it to the employees.
- The employer subsequently submits a written application for reimbursement of the short-time allowance payments to the Employment Agency in the district in which the employer's payroll office is located. The application must be submitted within three months. This period begins at the end of the calendar month containing the days for which the short-time allowance is claimed.

Companies which require advice regarding the application process should please contact their local Employment Agency direct or contact the service for employers run by the Federal Employment Agency on the following telephone number: +49 (0)800 4 5555 20. The necessary forms and a table for calculating the short-time allowance are available on the Federal Employment Agency's website (www.arbeitsagentur.de).

Is the process for granting and paying the short-time allowance too bureaucratic?

The feedback received from employers affected by short-time work about the process, the handling of applications and the staff working in the benefits offices in the Federal Employment Agency's Operational Service (OS Team for short-time allowance, insolvency allowance, allowance for part-time work leading into retirement) is wholly positive. The benefit is normally paid to the employer within 15 working days after the application is

submitted. The two-stage process for the payment and reimbursement of the short-time allowance has worked well in practice. It is in the interest of all involved that the process is quick and unbureaucratic. The staff of the local Employment Agency are available to answer any questions. The forms for notifying the Employment Agency of the cut in working hours and for applying for reimbursement can be found on the Federal Employment Agency's website (www.arbeitsagentur.de).

What role does the works council (*Betriebsrat*) play in the introduction of short-time work?

The agreement of the works council is required for short-time work to be introduced in a company. In companies without a works council and without provisions on short-time work in a collective agreement, all of the employees affected have to agree to the short-time work.

What happens if the employer and the works council (*Betriebsrat*) are unable to agree on the introduction of short-time work?

Under Section 87 (1) no. 3 of the Works Constitution Act (*Betriebsverfassungsgesetz*), the works council has a right to co-determination when it comes to the introduction of short-time work. In concrete terms, this means that if the employer and the works council are unable to agree on whether and how short-time work should be introduced, the conciliation committee (*Einigungsstelle*) can be convened by either the employer or the works council. The conciliation committee's decision replaces an agreement between the employer and the works council (Section 87 (2) of the Works Constitution Act).

Do employees need to take any holiday leave carried over from the previous year (*Resturlaub*) before they begin receiving the short-time allowance?

If employees still have holiday leave entitlement carried over from the previous year, they are in principle required to take this holiday leave to avoid payment of the short-time allowance. This does not apply if the employees have other overriding plans to use their holiday entitlement carried over from the previous year.

How much is the short-time allowance?

The short-time allowance is based on the amount of net pay lost. In principle, employees working short-time receive 60% of the standardised net pay lost. Employees who have at least one child living in their household receive a short-time allowance of 67% of the net pay lost. A table for calculating the short-time allowance is available on the Federal Employment Agency's website (www.arbeitsagentur.de).

How is the short-time allowance calculated?

In many companies, software is used to calculate the short-time allowance. If software of this kind is not available, the table produced by the Federal Employment Agency can be used to calculate the short-time allowance.

For how long is the short-time allowance paid?

The statutory period for which the short-time allowance can be received is 12 months.

Is the short-time allowance also available to non-profit organisations, such as associations, schools, child day care centres, or to organisations in the cultural sector, such as theatres?

Non-profit organisations such as associations and child day care centres, as well as organisations in the cultural sector, such as theatres, can also receive the short-time allowance if the conditions are met in connection with the coronavirus pandemic. If an organisation has to be closed because of a measure ordered by the authorities, this constitutes circumstances beyond the employer's control within the meaning of Section 96 (1), first sentence, no. 1 of Book III of the Social Code (*Sozialgesetzbuch*). If the organisation introduces a substantial cut in working hours with a loss of pay for employees, the short-time allowance can be granted, provided that the other conditions are met.

How do existing agreements to safeguard jobs affect the level of the short-time allowance?

Agreements to safeguard jobs through temporary changes to working hours (*Beschäftigungssicherungsvereinbarungen zur vorübergehenden Änderung der Arbeitszeit*) which the employer reaches with the works council (*Betriebsrat*) or – if no works council exists – with the employees do not have a negative impact on the level of the short-time allowance. The short-time allowance is based on the wage paid before the introduction of the agreement to safeguard jobs.

How do additional earnings / a second job affect the level of the short-time allowance?

If an employee had a second job before short-time work was introduced, it has no impact; in other words, the pay received from the second job is not taken into account regarding the short-time allowance. If an employee begins a second job while receiving the short-time allowance, the pay received from the second job is taken into account in the calculation of the short-time allowance, as the actual amount of pay received by the employee has increased.

On what basis is the short-time allowance calculated if the employee earns more than the contribution assessment ceiling?

The short-time allowance is calculated on the basis of the difference between the employee's actual pay (actual gross pay in the month in which short-time work takes place) and his or her normal pay (gross pay subject to social insurance contributions which the employee would otherwise have earned in the month in question). In other words, the normal pay to be used in the calculation is, in principle, the regular pay for the purposes of social insurance up to the contribution assessment ceiling.

As in the case of unemployment benefit (*Arbeitslosengeld*), protection against loss of pay is provided up to the level of pay which represents the ceiling for contributions. Consequently, if the actual pay received during short-time work is above the contribution assessment ceiling, the short-time allowance cannot be paid.

Can senior employees who are not covered by collective agreements also be entitled to the short-time allowance, and can an employment contract with an employee not covered by collective agreements have a negative impact on the granting of the short-time allowance?

An employment contract with a senior employee not covered by collective agreements does not preclude the payment of the short-time allowance, provided that the employee is employed in a job subject to social insurance contributions. Please see the previous question for information about the effects of pay which is above the contribution assessment ceiling.

Are top-up payments regulated by a collective agreement taken into account in the calculation of the short-time allowance?

Top-up payments or subsidies to the short-time allowance paid by the employer are not taken into account in the calculation of the short-time allowance. They do not reduce the amount of short-time allowance paid, provided that a loss of pay still exists.

Do short-time work and the short-time allowance affect integration grants which the employer receives for an employee?

Integration grants (*Eingliederungszuschüsse*) are calculated on the basis of the “eligible pay” (*berücksichtigungsfähiges Entgelt*). This consists of the regular pay and a standardised employer’s share of the total social insurance contribution. For periods when the employer does not pay the employee, the integration grant is to be reduced accordingly or cannot be paid at all. In principle, these periods do not affect the period for which the grant is provided. Further information can be obtained from the local Employment Agency.

Are students counted when determining a company’s number of employees, or do only employees in jobs subject to social insurance contributions count?

All employees are counted who work for the company for at least one day in the month in which short-time work applies. This includes employees who are not in jobs subject to social insurance contributions.

The following types of employee are to be counted, for example:

- people in marginal employment,
- employees who are ill,
- employees who are on leave,
- employees on maternity leave.

However, the following groups, for example, are not to be counted:

- apprentices (expressly regulated by law),
- employees whose employment relationship is suspended, for example during parental leave.

Is short-time work also possible for apprentices who are given fixed-term contracts after completing their apprenticeship?

Yes. The short-time allowance can also be paid for apprentices who take up a job (fixed-term or permanent) subject to social insurance contributions with the same or another employer after completing their apprenticeship.

What approach should employers take with regard to people in marginal employment if no work is available? Is it necessary to make them redundant before short-time work can be introduced?

It is not necessary to make people in marginal employment redundant before short-time work can be introduced. However, people in marginal employment cannot receive the short-time allowance.

Who pays the social security contributions during the period of short-time work?

In the case of the pay earned during the period of short-time work, social security contributions continue to be paid jointly by the employer and the employee. In the case of the time which is not worked because of short-time work, the social security contributions are reduced to 80 per cent of the normal level. These contributions are paid by the employer alone.

Does short-time work have a negative impact on social protection for employees?

No. Employees working short-time have to cope with a reduction in their income, but they remain in jobs subject to social insurance contributions. They retain their social safety net in the form of health insurance, pensions, long-term care insurance, occupational accident insurance and unemployment insurance.

How does short-time work affect pension entitlements?

Employees remain enrolled in pension insurance while receiving the short-time allowance. The contributions to be paid on the employee's reduced wages are, as normal, shared by the employer and employee. To ensure that employees do not suffer any disadvantages in terms of their pension entitlements in retirement, contributions are also paid on 80 per cent of the lost pay (the difference between what the employee is normally paid and what he or she is actually paid), and these contributions are paid by the employer alone. Anyone who has questions relating to how short-time work affects pension benefits later in life can contact the staff of the information and advice centres of Deutsche Rentenversicherung (German Pension Insurance) or the service hotline on +49 (0)800 1000 480 70.

Doesn't it cost employers less to make their employees redundant?

The advantage of short-time work is that, if orders improve, it is immediately possible to increase working hours or return to normal working hours. The staff are available again immediately; there is no need to first find and hire workers and familiarise them with the workplace. The time lost is often shorter than for redundancies. Moreover, in the event of redundancies, employees are entitled to receive their full pay until the end of the notice period – irrespective of whether they can still be employed full-time or not. Short-time work reduces companies' costs immediately.

Can employees be made redundant during a registered period of short-time work?

The principle of proportionality (i.e. that dismissal should be the last resort) means that the introduction of short-time work in event of a temporary loss of work, as a less severe measure, can make redundancies impermissible. However, short-time work does not prevent redundancies if the company is unable in the long-term to provide work for the employees concerned. If an employee is actually made redundant, the short-time allowance can no longer be paid.

Does the short-time allowance affect entitlement to and the level of unemployment benefit (*Arbeitslosengeld*)?

In many cases, short-time work helps to avoid redundancies. If redundancies nonetheless take place, employees do not suffer any disadvantages as a result of short-time work. Periods in which an individual has received the short-time allowance do not have a negative impact on entitlement to unemployment benefit. If a job is, in principle, subject to social insurance contributions for employment promotion, receiving the short-time allowance does not change this. This remains true even if employees stop working entirely in the framework of short-time work. Periods in which employees receive the short-time allowance count towards the qualifying period for entitlement to unemployment benefit in the same ways as “normal” periods of employment, and are also taken into account when calculating the entitlement period. If employees become unemployed after receiving the short-time allowance, unemployment benefit is calculated on the basis of the pay they would have received without the cut in working hours. This ensures, in principle, that employees do not suffer any disadvantages in terms of their entitlement to benefits if they should become unemployed after receiving the short-time allowance.

Can funding be provided for continuing education and training during the period of short-time work?

Employees can receive full or partial funding for the cost of continuing education and training under Book III of the Social Code (*Sozialgesetzbuch*) if

- the programme will impart knowledge and skills which go beyond solely job-related updating training,
- they obtained their vocational qualification at least four years ago,
- they have not taken part in continuing vocational education and training funded under Book III of the Social Code in the last four years before submitting the application,
- the programme takes place outside of the workplace and lasts for more than 160 hours,
- the programme and the provider are eligible to receive funding, and
- the employees are affected by structural change or are applying for continuing education or training in shortage occupations. Exceptions may be made in the case of companies with fewer than 250 employees.

How does the Employment Agency’s funding for continuing education and training work in practice?

Both employers and employees can contact the Employment Agency to apply for it to cover the costs of skills development programmes. The Employment Agency examines whether an entitlement to funding exists and determines whether funding is possible under Book III of the Social Code. If funding is provided, an education voucher is normally issued to the employee. Subject to the conditions which apply to the education voucher, employees can then redeem the voucher with a provider of their choice which is eligible for funding. A guide to finding a suitable programme and various tips are provided in the leaflet “*Förderung der beruflichen Weiterbildung*” (“Support for continuing vocational education and training”), which is available from the Employment Agency. Comprehensive information about eligible programmes is also available from the Federal Employment

Agency's "KURSNET" online database of initial and continuing training programmes, and from the providers themselves.

What opportunities exist for continuing education and training before short-time work becomes an issue, or in companies where short-time work is not necessary?

The introduction of the Skills Development Opportunities Act (*Qualifizierungschancengesetz*) in 2019 paved the way for employees to receive support for continuing education and training irrespective of their training, age and the size of their company, and thus opened up access to support. The expansion in support for continuing education and training is focused on all employees who perform work activities which could be replaced by technology, who are otherwise affected by structural change, or who want to engage in continuing vocational education and training in a shortage occupation. The support for continuing education and training includes, on the one hand, meeting the costs of continuing education and training (e.g. course fees) for individual employees (employee support) and, on the other hand, the payment of wage subsidies to employers for absences from work caused by continuing education and training (employer subsidy). In principle, co-financing by the employer is a precondition for employees' costs to be met and for wage subsidies to be received by the employer. The type and scope of the support is based primarily on the size of the company concerned.

Is it possible to continue a continuing education or training programme begun before the introduction of short-time work?

This is possible, in principle, if the programme in question takes place alongside work (e.g. in the evenings or at weekends). If, before the introduction of short-time work, an employee began skills development which takes place wholly or partially during working hours, requiring the employee to be released from work for that purpose, it must be kept in mind that the short-time allowance is paid for cuts in working hours which are necessary for economic reasons. In these cases, however, the periods of release from work are caused by continuing education and training, and so the employee retains his or her entitlement to be paid. If the employee continues to be paid, the Employment Agency will continue to fund the costs of continuing education and training, if applicable.

Can a continuing education or training programme begun during the period of short-time work be continued if the short-time work is reduced or ended?

Continuing education and training must not stand in the way of a return to normal working hours. In principle, therefore, the continuing education or training programme must be adapted, in terms of time, to reductions in short-time work, and must end when employees return to their normal working hours. If the employer agrees and continues to release the employee from work, the continuing education or training programme may potentially be continued even after the end of the period of short-time work. Details about continued funding in the framework of support under the Skills Development Opportunities Act (*Qualifizierungschancengesetz*) can be requested from the local Employment Agency.

Who takes the decision on possible skills development measures – the employer or the employee?

The employer and employee agree on the substance, type and duration of continuing education and training measures.

What do I have to do, in concrete terms, for my continuing education or training programme to be funded by the Employment Agency (*Agentur für Arbeit*)?

Both employers and employees can contact the Employment Agency to apply for it to cover the costs of skills development programmes. The Employment Agency examines whether an entitlement to funding exists and, if so, an education voucher is normally issued to the employee. Subject to the conditions which apply to the education voucher, employees can then redeem the voucher with a provider of their choice which is eligible for funding. A guide to finding a suitable programme and various tips are provided in the leaflet "*Förderung der beruflichen Weiterbildung*" ("Support for continuing vocational education and training"), which is available from the Employment Agency. Comprehensive information about eligible programmes is also available from the Federal Employment Agency's "KURSNET" online database of initial and continuing training programmes, and from the providers themselves.

In parallel, employers can apply to the Employment Agency for a wage subsidy if they release employees from work to take part in a skills development programme and continue to pay them during this period. If the application is successful, the Employment Agency pays the wage subsidy directly to the employer.