FACTSHEET

From: Practice Group Employment (Atty. Dr. Urs Marti / Atty. Dr. Michael Daphinoff / Atty. Karin Friedli)
To: Whom it may concern
Date: 23 March 2020, 12.00 CET
Subject: Short-time work due to the coronavirus crisis

1 INTRODUCTION

The spread of the coronavirus has drastic consequences for the Swiss economy. On 16 March 2020, the Federal Council classified the situation in Switzerland as an "extraordinary situation" in accordance with the Federal Act on Epidemics and ordered that all shops, restaurants, bars and entertainment and leisure facilities be closed until 19 April 2020. Exceptions to this rule include grocery stores and health facilities. For many employers, these measures will result in considerable profit losses. In addition, countless businesses will no longer be able to (fully) employ their staff.

For many companies, the focus is therefore currently on registering and implementing short-time work and correctly calculating short-time work compensation as an immediate measure.

2 BASICS

In particular:

- the Ordinance 2 on measures to combat coronavirus (COVID-19) of the Swiss Federal Council of 13 March 2020 (COVID-19 Ordinance 2; with amendments of 16 and 20 March 2020),
- the Ordinance of 20 March 2020 on measures relating to unemployment insurance in connection with coronavirus (COVID 19 Ordinance on Unemployment Insurance),
- the Ordinance of 20 March 2020 on measures in connection with coronavirus to compensate for short-time working and to settle social security contributions,
- Articles 31 et seq. of the Federal Law on Unemployment Insurance and Insolvency Compensation of 25 June 1982 (AVIG), and
- Articles 46 et seq. of the Ordinance on Compulsory Unemployment Insurance and Insolvency Compensation of 31 August 1983 (AVIV).

3 Q&A

<table>
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<tr>
<th><strong>1. What is short-time work?</strong></th>
<th>Short-time work refers to the temporary reduction or complete cessation of the working time contractually agreed between employer and employee. The employment contract remains in force.</th>
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<td><strong>2. Why short-time work?</strong></td>
<td>The purpose of short-time work is to prevent dismissals that would be unavoidable due to circumstances, which have a negative impact and lie outside the employer's sphere of influence. Unemployment insurance covers part of the wage costs (80% of chargeable earnings) of employees affected by short-time work for a certain period of time.</td>
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<td><strong>3. Who pays whom short-time compensation?</strong></td>
<td>In contrast to unemployment compensation, benefits are paid by the unemployment insurance fund to the employers. The employers then pass on the reduced hours compensation to the employees. However, all employees have the right to refuse the short-time work compensation. Employers must continue to pay these employees their full wages (see question 11 below).</td>
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| **4. How is short-time work applied for?** | In principle it is a two-stage procedure:  
1) First, the employer must send a **pre-notification** to the cantonal office of the canton in which the business operates / the company is based. Following the pre-notification, the cantonal office checks whether the conditions for short-time work are met. If they are met, it issues a positive decision (authorization).  
2) If the cantonal office approves short-time work, the employer must then submit an **application for short-time work compensation** to the unemployment insurance fund of his choice for the **individual accounting periods** (usually per calendar month). The unemployment insurance fund |
checks the eligibility criteria in detail and then pays the short-time work compensation. Employers are free to choose the unemployment insurance fund, i.e. they can determine from which unemployment insurance fund the short-time work compensation is paid.

| 5. What are the requirements for the introduction of short-time work? | Employees whose normal working hours are reduced or whose work comes to a complete stop are entitled to compensation for reduced working hours if:
- they are in principle subject to the Swiss social security system,
- they have completed compulsory education but have not yet reached the OASI (AHV) retirement age,
- they are in an employment relationship without a notice period,
- the loss of working hours is due to the occurrence of the coronavirus and it can be expected that jobs can be maintained by short-time working,
- the employees have given their consent to short-time work (however, if they refuse to do so, employees run the risk of being properly dismissed. For consent, see also question 11),
- the hours worked/working hours are controllable,
- the loss of working hours represents at least 10% of the total hours normally worked by the employees of the establishment (or the establishment department concerned). |

| 6. Is there any relief for short-time work due to the COVID-19 situation? | Yes, there is:
- Only three days' advance notice before short-time work begins (instead of 10 days).
- Short-time work compensation also for employees in temporary employment and for persons in the service of an organization for temporary work. |
4

- Short-time work also for apprentices.
- Short-time work also applies to persons who, in their capacity as shareholders, as those who have a financial stake in a company, or as members of a supreme company decision-making body, determine or can significantly influence the employer's decisions, as well as their assisting spouses. They can claim a lump sum of CHF 3,320 as short-time work compensation for a full-time position.
- No waiting period for short-time work compensation. This eliminates the employer's participation in the loss of working hours.
- Employees no longer have to reduce their overtime hours before they can benefit from short-time work compensation.
- The processing of applications and payments for short-time work have been urgently simplified with the adoption of new regulations. This makes it possible, for example, to advance due salary payments via short-time work compensation.

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<th>7. Are there simplifications for pre-notification due to the COVID-19 situation?</th>
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| SECO has instructed the cantonal offices to accept the following simplifications for pre-notifications:

Provided that the employers with summary answers to the questions 9 a (field of activity of the company), 10 b (monthly turnover in the last two years, whereby in our opinion it is irrelevant whether the net or gross turnover is stated, because it is essential for the authorities that the figures supplied show that there has been a clear loss), 11 a (justification) and 11 c (postponement of contract deadlines) can credibly demonstrate that the loss of working hours expected in their company is due to the occurrence of the coronavirus, the other questions in paragraphs 9 - 12 do not need to be answered. The information for questions 1 - 8 must be provided as usual.

The following documents do not have to be submitted with advance notifications of short-time work: |
- Form "Consent to short-time work" (however, employers must confirm in writing in advance that all employees affected by short-time work agree to the introduction of short-time work, see question 6 above),

- Copy of the current extract from the commercial register.

Pre-notifications (including accompanying documents) can now be submitted in most cantons by e-mail to the cantonal office to speed up and simplify the process.

SECO also instructed the authorities in charge that the examination of the pre-notification should be carried out with a sense of proportion and that objections should only be raised in the event of justified doubts.

### 8. Are the effects of coronavirus considered to be an operational risk?

According to SECO, the occurrence of the coronavirus and the associated negative effects do not constitute a normal operational risk. However, a general reference to the new coronavirus is not sufficient to justify a claim for short-time working compensation. Rather, employers must provide a credible explanation as to why the loss of working hours to be expected in their company is attributable to the occurrence of the coronavirus.

### 9. In which constellations is short-time work conceivable due to the coronavirus situation?

In our opinion, the following constellations are primarily conceivable:

1. Companies must close on official order or are closed on official order;
2. Collapse of production because components from countries/regions or farms affected by coronavirus are no longer available (import);
3. Collapse of production because products can no longer be supplied to countries/regions affected by coronavirus (export);
4. Goods' transports collapse;
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<th>5. Customers stay away for fear of contagion (mainly concerns travel agencies, passenger transport companies, retail branch, etc.)</th>
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| 10. **How can employers credibly explain why the loss of working hours expected in their company is due to the occurrence of the coronavirus?** The questions on the pre-notification form must be answered in **sufficient detail and in a comprehensible manner**. It must be shown which specific incidents (e.g. closure of a supplier, absence of orders/orders from a certain customer group) have led to a reduction in employment and to what extent.

The manner in which evidence is to be provided, depends on the specific constellation at hand (see the answers to question 9). In constellation 1, the **official order** can simply be attached to the pre-notification form. In the other cases, the company must **plausibly prove** the **connection with the coronavirus**; in constellations 2 and 3 by corresponding notifications from suppliers and customers, in constellations 4 and 5, an extraordinary decrease in turnover or a decline in orders must already be plausibly demonstrated with the pre-notification. The precautionary approval of short-time work is excluded. Depending on the industry, it may also be necessary to check whether the loss could have been insured or whether someone could be sued (e.g. for order cancellations).

| 11. **Do the written declarations of consent of all employees have to be available at the pre-notification?** Employers can **temporarily waive** the requirement to obtain written declarations of consent (see question 7 above).

It remains to be seen whether, later in the application and accounting phases, the statements/settlements of hours to the attention of unemployment insurance must be signed by the individual employee. Certain unemployment insurance funds currently assume that this requirement will be dropped in view of the large number of applications for short-time work. According to SECO, the cantonal authorities and the unemployment insurance funds may, in the current situation, exceptionally **accept scanned handwritten or digitally signed forms** (see question 16 below).

**Caution:** However, these simplifications do not solve the problem at the level of the employment contract. |
There, the problem remains that short-time work cannot be enforced unilaterally by instruction and that it presupposes a (temporary) amendment of the employment contract, which requires the employee’s written consent - unless this is already covered by the employment contract or the employment contract provides for the unilateral ordering of short-time work.

Possible simplifications for larger companies:

- **Consent of the employee representation/union:** According to the wording of the law, the consent of the employee representation or union is not sufficient, although it was sufficient for some individual cantonal offices during the financial and economic crisis of 2008/2009 and in certain cases beyond (e.g. SG).

  It remains open whether such consent would suffice if a Collective Labour Agreement (CLA) were to grant such a body the powers of consent. According to the AVIG practice on SECO’s short-time working compensation, the consent of individual persons may also be given by a legitimated employee representative body.

  It would be possible for the company employee representatives within the meaning of the Federal Law on Employee Participation to confirm in writing that the employees concerned have given their consent to the introduction of short-time work. In our opinion, however, this does not really simplify obtaining consent in this case, since the employee representation must also be responsible for the declarations of consent or must know whether and which employees agree.

- **Tacit approval of short-time work** should be possible. In order to simplify and accelerate the process, all employees could therefore be asked to give their consent to short-time work (by e-mail, SMS, post, etc.), specifying that tacit consent would be presumed within a certain period of time if no response was received. To be on the safe
side, a short period of grace should then be granted.

If consent is not obtained at any time, the employer runs the risk that an employee take the position that he or she did not agree to short-time work and thus claims 100% salary.

12. Do employers need to have a time recording system?

The loss of working hours must be sufficiently recorded, which requires an in-company working time control system.

In other words, a prerequisite for short-time working compensation is that the company maintains a **time recording system in which the employee's actual working time for the company can be retrieved**. If the working hours recorded in the time recording system correspond to the effective hours actually worked, this requirement would probably be met. However, if a registration pattern is stored in the time recording system and the effective hours actually worked deviate from this pattern, we do not believe that the prerequisite is fulfilled.

It is not the responsibility of the cantonal office or the unemployment insurance fund to check the operational working time control. The payments of short-time work compensations are subject to random checks by SECO only, in accordance with art. 110 AVIV. For this reason, the employer must, among other things, keep the documents relating to working time controls at the employer's headquarters for a period of 5 years.

If the employer's inspection subsequently reveals that the absence of a suitable control mechanism of working time by the company, SECO shall reclaim the unjustifiably paid short-time work compensation. According to case law, the justification that the employer has repeatedly been paid short-time work compensation without reservation over a longer period of time does not trigger any protection of confidence and does not prevent the recovery.
13. How much is short-time work compensation?

The short-time working compensation amounts to 80% of the loss of salary attributable to the lost working hours.

**Example:** 100% workload, insured earnings of CHF 6,500.-, 50% short-time work (= works only 50%)

Employer pays 50% salary (CHF 3,250.-) and short-time compensation of 80% of 50% loss of earnings (CHF 2,600.-), totaling CHF 5,850.-

In the case of short-time work compensation, the unemployment insurance also reimburses the employer’s contribution to AHV/IV/EO/ALV, which is currently set at 6.375%.

14. Does short-time work have an impact on contributions to AHV, IV, EO and ALV?

No, employers and employees must continue to pay full contributions to the AHV, IV, EO and ALV.

15. How is accounting done or how is the application for short-time work compensation made?

If the cantonal office approves short-time work, the employer must submit an application for short-time work compensation to the unemployment insurance fund for each individual accounting period.

A period of four weeks is considered a payroll period if wages are paid at intervals of one, two or four weeks. In all other cases, the payroll period is one month.

Employers must assert the claim for short-time work compensation with the selected unemployment insurance fund within three months of the end of each accounting period. Claims made thereafter shall be deemed expired.

All employees who are basically entitled to compensation for short-time work must be listed, i.e. also those who have not worked short-time (but who would meet the requirements).
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<th>16. Are there simplifications in the settlements?</th>
<th>Yes, the accounting process for the short-time work compensation has been simplified as follows:</th>
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<td>- The short-time work compensation <strong>application form and statement are combined in a single form.</strong></td>
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<td>- The <strong>additional supplement forms</strong> &quot;Report on economically-related lost hours&quot;, &quot;Certificate of income for interim employment&quot; and &quot;Data entry form for determining seasonal lost hours&quot; are <strong>not required.</strong></td>
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<td>- The company <strong>only</strong> needs to <strong>enter five items</strong> (fields marked in grey), the rest of the calculation is automated. The five entries must be backed up with suitable company documents (e.g. payroll journal, overview of the time sheets, extracts from the company’s time recording system). According to SECO, the respective unemployment insurance fund should, if possible, rely on the documents that the company may retrieve from its HR systems.</td>
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<td>- On the back of the form, the categories of persons not entitled to benefits are listed: These are persons in a terminated employment relationship who do not agree with short-time work or whose loss of working hours cannot be determined (on-call employment relationships).</td>
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<td>- Persons in a <strong>similar position to employers</strong> are now also entitled to a lump sum. Here too, the calculation has been simplified: When specifying the AHV-liable wage total, the company must add the total of the lump sums for persons with a similar employer status to the employees' wages and enter the total amount in the form.</td>
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<td>- The form is already available to the unemployment insurance fund for the accounting period <strong>from March 2020</strong>, because the measures from the Federal Council Decree were put into force retroactively as of 17 March 2020. This means that the unemployment insurance fund can calculate the</td>
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entire March 2020 accounting period (for the entire month) according to the new rules that apply with immediate effect.

- In the current situation, the cantonal offices and the unemployment insurance funds may exceptionally **accept scanned handwritten or digitally signed forms in** accordance with SECO’s guidelines. Signatures inserted as image files are excluded.

It should be noted that this simplification ("abbreviated procedure" or the special form) only applies to the assertion of work absences, which have an economic impact and are due to official measures as a result of the coronavirus pandemic.

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<th>17. Is there a risk that the short-time work compensation received will have to be repaid?</th>
<th>SECO and its commissioned trustees carry out <strong>random checks on</strong> the short-time work compensation paid out by employers. If it is established that benefits were paid out incorrectly, these can be reclaimed. According to Art. 25 ATSG, the claim for repayment expires within one year after the unemployment insurance fund has become aware of an unlawful receipt of benefit, but no later than 5 years after the payment of the benefit. As a rule, the one-year relative limitation period only begins to run at the point in time at which the unemployment insurance fund could reasonably have been aware of the facts giving rise to a claim for repayment.</th>
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<tr>
<td>18. Can an employer continue to guarantee his employees 100% pay during the period of short-time work (by continuing to pay the 20% not covered by the unemployment insurance fund)?</td>
<td>In principle, the purpose of short-time work is to <strong>prevent dismissals</strong> that are unavoidable due to circumstances that have a negative impact and lie outside the employer's sphere of influence. If an employer continues to guarantee its employees 100% pay, this is somewhat at odds with the purpose of short-time working. Nevertheless, the employer is <strong>in principle free</strong> to guarantee and pay its employees 100% wages. However, there is a (probably rather modest) risk that the competent cantonal office or later the chosen unemployment insurance fund may not consider the conditions for short-time work or short-time compensation to be met under</td>
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19. **Maximum duration of short-time work compensation?**

According to the applicable law, short-time work compensation is paid for **two years**, for a maximum of **twelve accounting periods**. This period applies to the company and begins on the first day of the first payroll period for which short-time work compensation is paid. However, after the end of the two-year period, a new period can be opened immediately and the entitlement is examined again.

Loss of working hours may not exceed 85 percent of normal working hours for a maximum of four accounting periods.

In the event of persistent substantial unemployment, the Federal Council may extend the maximum duration of benefits in general or for individual regions or economic sectors that have been hit particularly hard by a maximum of six accounting periods.

Unfortunately, it is still unclear at present time whether the Federal Council will decide to loosen the maximum duration of short-time work compensation in view of the extraordinary situation.

20. **Can employees be dismissed during a period of short-time work?**

Yes, employers (and employees) may terminate their employment at any time during a period of short-time work - subject to the notice periods. For the duration of the notice period, employers must pay employees their full wages, regardless of whether full employment is possible or not.

21. **Where can I find further information on short-time work compensation?**

Because of the coronavirus and its consequences, the Federal Council has taken extraordinary measures in connection with short-time work compensation for unemployment insurance. Individual aspects of the regulations on compensation for short-time work that normally apply may therefore temporarily be adjusted or suspended with immediate effect. This Q&A takes into account the adjustments up to and including 20 March 2020 (12:00, noon).
The most up-to-date information is available on the SECO website at the following URL:

https://www.seco.admin.ch/seco/de/home/Arbeit/neues_coronavirus.html

SECO forms for short-time work compensation:

https://www.arbeit.swiss/secoaly/de/home/service/formulare/fuer-arbeitgeber/kurzarbeitsentschae-digung.html/

Press releases of the Federal Council:

https://www.admin.ch/gov/de/start/dokumenta-tion/medienmitteilungen/bundes-rat.html?dyn_startDate=01.01.2015

The relevant regulations:


Cantonal Authorities:

ZH:


BE:

https://www.vol.be.ch/vol/de/index/direktion/organisation/AWI_Amt_fuer_Wirtschaft/ueber_uns.html

BS:

https://www.coronavirus.bs.ch/Unterneh-men.html#page_section3_section2

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