

Legal employment opportunities to cope with the Corona-Crisis

Background

The challenges to cope with the economic upheavals caused by the COVID-19 crisis can only be partially solved or overcome with the currently available labour law framework. During the last weeks, several legislative packages (Covid-19 1. to 5.) have been passed, which also provide financial support measures for entrepreneurs. The main labour law instruments currently available are summarised below:

- Short-time work
- Use of vacation and working time credits
- Childcare and other time off work
- Termination of employment relationships with reemployment commitment
- Entitlement of remuneration whilst quarantine

Short-time work

Like in many other countries, Austria also implemented "short-time working model". The framework conditions of the existing model were modified several times to fit the Corona-Crisis and the access got simplified. A short-time working model is used to reduce the normal working hours by at least 10% and at most 90%. For a short period of time, the working hours can also be reduced to zero. The employees will continue to receive 80% to 90% of their previous net basic salary, depending on the salary category. The difference in costs between the reduced regular working hours and the ongoing employee's entitlement to remuneration will be paid to the employer by the Public Employment Service Austria (AMS) as a short-time work support, up to the maximum base of EUR 5,370.00 per month. During the short-time work and the following month, the employer is not allowed to terminate the employment relationship (for operational reasons).

An agreement on corona short-time work can be concluded for a maximum of 3 months. If necessary, an extension for a period of further 3 months is possible.

To implement short-time work, in companies with a works council a social partner agreement based on a company agreement must be concluded, in companies without a council like that, an individual agreement must be concluded with the employer itself. The respective social partner agreements are standardized and there is usually very little room for specialities. E.g. short-time work can be agreed for individual departments or parts in the company.

Special case: foreign companies with domestic employees and management-bodies:

The short-time work can be applied to all employees in an employment relationship who are subjected to unemployment insurance contributions (i.e. basically also third-party managers) with a company or business based in Austria. However, for companies based abroad, at least one branch office registered in Austria would be required.

Use of vacation and working time credits:

The use of vacation and working time credits must be agreed between the employee and the employer. Therefore, many employees refused to use vacation and working time credits to compensate the low utilization of time. A change in the law has now been made for this purpose: In the case that trade or service companies are covered by a statutory prohibition of entry, and therefore the employees do not provide their service due to these measures, employers have the possibility to order the obligatory use of vacation (up to a maximum of 8 weeks, including a maximum of 2 weeks from the current vacation year) and working time credits. For all other companies, which also suffer from the consequences but are not covered by a prohibition of entry, there is still no possibility to unilaterally order the use of vacation and overtime credits.

Childcare and other time off work

Within the acts of COVID-19, the possibility of additional leave for necessary childcare of children younger than 14 was also created (for a limited period until Easter). This special leave must be agreed between the employer and the employee and it assumes that there is no other reason to stay away from work. One third of the costs are paid back to the employer by the state. In special cases, employees are entitled (unilaterally) to stay away from work for important personal reasons for a reasonable period of time with continued payment of remuneration. The cases of Covid-19 are generally accepted to establish such a right (e.g. for childcare when schools are completely closed), but the duration of this right is disputed.

Termination of employment relationships with reemployment commitment

In addition to the termination of employment relationships through amicable dissolution or termination by the employer itself, employers often grant promises of reemployment in crisis situations. The employer confirms to rehire the employee at a certain point in time, normally considering his or her previous periods of service. The employee is not obliged to accept the position again. If there is a promise of reemployment, the unemployed employee is not placed in a new job, whether the interruption is only for a short time and still retains the right to unemployment benefit. There is a high chance for the employer that the employee will start working for them again and not move to another employer. In the case of a promise of reemployment, it can be agreed that certain termination claims will only be settled if the employee is not reemployed. However, special care must be taken in structuring promises of reemployment, as the distinction to parental leave must be observed.

Entitlement of remuneration whilst quarantine

If the authorities have imposed isolation (quarantine) on a company or an employee only according to the Epidemics Act and the employee is therefore not able to perform work, the employee's entitlement to continued remuneration remains in force (unless the employee is entitled to continued remuneration due to illness anyway). In these cases, the employer is entitled to reimbursement of the continued remuneration costs according to the Epidemic Law ("Epidemiegesetz 1950") (attention: deadlines must be observed). It is currently not clear whether this claim of reimbursement also applies to cases in which a ban on entering was imposed on the company, in order to restrict customer traffic, as the ban on entering the premises – at least according to the wording of the law – does not constitute quarantine under the Epidemic Law.

Our experts of the SAXINGER COVID-19-Unit will be happy to advise you in this context.

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We point out that the legal situation can change constantly, but we are on effort to keep the contents up to date.



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