

Continued remuneration during COVID-19 pandemic

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Introduction

Sick leave

Care for sick children

Employee quarantine

Quarantine and sickness

Business closure under new COVID-19 legislation

Childcare due to lockdown of schools and pre-schools

Comment

Introduction

The COVID-19 pandemic has caused employers to use various methods to support employees and maintain business performance. Despite receiving much media attention, short-time work schemes are but one measure that can be used (for further details please see "[COVID-19: short-time work](#)"). While short-time work schemes seek to retain staff and at the same time safeguard employers' liquidity, both old and new legal remedies provide for continued payment of salaries (and in some cases also corresponding grants to employers) if performance of work is impossible. This article outlines the routes that employers and employees can take where normal working is impossible.

Sick leave

If an employee is infected with COVID-19 and falls ill, the general laws on sick leave apply. Employees have a right to continued remuneration by their employer for at least six weeks (eight weeks after five years' service, 10 weeks after 15 years' service and 12 weeks after 25 years' uninterrupted service). For four weeks beyond these periods, employees are entitled to be paid half of their regular remuneration. Minor subsidies for sick pay are available for only employers with up to 50 staff.

Care for sick children

If a child suffers from COVID-19, their parent can apply for care leave for up to one week under continued payment. If more than one week is required, the parent can unilaterally take annual leave if the child is younger than 12 years old. Employers are not subsidised in such a scenario.

Employee quarantine

If the health authorities order an employee to be quarantined (or if a business is shut down due to quarantine measures), they are entitled to continued payment by their employer based on the Act on Epidemics. If the quarantine measure has been expressly decreed by the authorities and is not a mere precautionary measure afforded by an employer, the employer can request to be reimbursed by the government for the gross remuneration paid plus the social security contributions to be borne by employer. Applications for reimbursement must be filed within six weeks after the quarantine measure has been terminated.

Quarantine and sickness

If a quarantined employee falls ill due to COVID-19, the same rules as above apply: employers must continue to pay salaries but can apply for reimbursement within six weeks after the quarantine has ended.

Business closure under new COVID-19 legislation

As in many other countries, the COVID-19 lockdown in Austria saw the government decree a closure of retail, gastronomic and tourist outlets. While such a lockdown prompted by the spread of COVID-

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19 would have been otherwise classified as a *force majeure* incident by the Austrian courts and would thus have relieved employers of the burden to afford continued pay, new legislation reversed such course and now expressly mandates continued remuneration. In exchange, employers can now unilaterally order their staff to take annual leave. If so instructed by their employers, staff must use up:

- all of their entitlements to paid leave that accrued during previous holiday periods; and
- up to two weeks of their current entitlement that accrued or will accrue until the lockdown has been lifted.

In total, employers can request that up to eight weeks of leave entitlements must be used up.

Childcare due to lockdown of schools and pre-schools

As pre-schools and schools have been closed, school children are taught remotely at home and require parental care. Therefore, the government introduced a special care leave: employers can agree with affected staff that care leave of up to three weeks can be taken if this is necessary to care for children younger than 14 or close relatives in need of care. Employees have no entitlement to request this form of leave, but if an employer agrees to the measure, they can receive a subsidy amounting to one-third of the continued remuneration paid to employees.

Comment

While continued remuneration during sick leave and the necessary care for a sick child are statutory entitlements that have not changed due to the COVID-19 lockdown, other forms of continued remuneration (particularly those prompted by the government lockdown) place a severe financial burden on employers. Having employers shoulder the costs of a government lockdown is hardly a measure that preserves their liquidity and safeguards jobs and operational know-how. The benefit of other government support programmes might be thwarted by statutory measures that allocate the risk associated with a *force majeure* event to employers that are already hit hard by the government lockdown.

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