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EMPLOYMENT & IMMIGRATION - AUSTRIA

COVID-19: short-time work

06 May 2020 | Contributed by Graf & Pitkowitz Rechtsanwalte GmbH

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Introduction

Austria pioneered short-time work schemes. Introduced in 1949 and overhauled in 2008 and 2009 during the financial crisis, the Austrian short-time work scheme has recently been further adapted to the particular needs of the COVID-19 crisis. In principle, little has changed over the decades.

As in other countries, the model allows employers to reduce costs in an economic downturn while ensuring that they need not lay off their experienced workforce, which will then remain on hand when the economy recovers. Employees, in turn, keep their jobs and most of their spending power, thereby aiding stimulation of the economic recovery that is needed once the government measures to contain the spread of the virus are lifted.

As of 20 April 2020, approximately 63,000 applications for short-time work have been filed by employers, covering approximately 875,000 jobs (ie, almost 25% of Austria's total workforce).

Which employers are eligible?

Employers can apply for short-time work, regardless of their size and industry. Temporary staffing companies are also eligible. Excluded are companies subject to bankruptcy or restructuring proceedings and certain entities not pursuing an economic purpose (eg, governmental bodies, political parties and certain other public entities).

Which employees are eligible?

In general, all employees earning above the current marginal level (€460.66 per month in 2020) are eligible to be included. Even chief executive officers and other managerial personnel are covered if they are insured under the General Social Security Act. Apprentices and trainees are also eligible and are afforded 100% of their previous income as a short-time subsidy – the highest rate among all eligible employees. Eligible employees can be included if their employment relationship existed at least one month prior to the commencement of the short-time work period. Further, parents returning from parental leave during the short-time work period can be included in the scheme.

Other conditions and proceedings

The introduction of short-time schemes usually requires a special arrangement between the so-called 'social partners' of the Austrian collective bargaining landscape (ie, the Chamber of Commerce and the labour unions). Under the agreement, the social partners negotiate the scope of the scheme, in terms of both staff covered and the maximum period of application, as well as the conditions for any lay-offs during the short-time work period. The model agreement introduced for COVID-19 schemes allows for a duration of three months, which can be extended by another three months, starting from 1 March 2020. Retroactive applications starting on 1 March 2020 were possible until 20 April 2020. However, short-time work can start on any later date, although it is common to start on the first day of a month to facilitate calculation and accounting.

As a staff retention scheme, Austria's short-time work scheme prohibits employers from terminating employees during the scheme and for a period of one month thereafter, unless such termination were for reasons caused by employee (in which case the employer had to hire a replacement) or if an employee committed a material breach of contract and had to be summarily dismissed (no replacement requirement). Mutual terminations also require a replacement hire, unless the employee was counselled about the consequences of such a mutual termination by either the labour union or the Chamber of Employees (the statutory representative body of all employees in Austria). Terminations of employment for mere operational or economic reasons are prohibited and result in a partial or total loss of state subsidies for employers, even if they concern employees who are not included in the short-time work scheme.

Employers must show that they undertook all efforts to have employees who are covered under the short-time scheme use up all of their holiday entitlements accrued over the previous accrual period (work or calendar year). The same applies with respect to credits for time off in connection with overtime worked.

The social partner model agreement must be signed by either the works council (where established) or each employee included in the scheme, and also the employer. Legally, the short-time scheme is viewed as a mutual reduction of work hours and is no different from, for example, a mutual change from full-time to part-time work or a reduction of or an increase in weekly working hours. Employees who refuse to cooperate and are unwilling to sign the social partner agreement can be terminated before applying for the short-time work scheme and, in most cases, would have a hard time challenging their dismissal as their employer would have a valid operational justification for such a lay-off.

The current short-time work model provides that employees accept a reduction in working hours of between 10% and 90%. The allowance paid by employers is a (staggered) flat rate depending on the income level of the employees affected.

Subsidies and net replacement rate

Once an application has been filed with the labour market authority (AMS), employers continue to pay employees for work actually performed and, in addition, pay a short-time work subsidy depending on the net salary of the employee before the introduction of the scheme:

- for a monthly gross salary of up to €1,700, the remuneration amounts to 90% of the previous net salary;
- for a monthly gross salary of up to €2,685, the remuneration amounts to 85% of the previous net salary; and
- for a monthly gross salary of more than €2,685, the remuneration amounts to 80% of the previous net salary.

For salaries of more than €5,370, no subsidies apply.

Actual work hours must be recorded and reported to the AMS on a monthly basis. Based on those reports, the AMS reimburses employers for almost all of the costs spent on subsidies paid to their employees in connection with the short-time work remuneration.

Thus far, the Austrian government has budgeted €7 billion for short-time work (in comparison, during the financial crisis in 2008 and 2009, the total cost was only €300 million).

Comment

Some are already criticising the current model as overly bureaucratic under the specific circumstances, resulting in slow payouts and, thus, putting at risk those employers that it seeks to save from economic ruin.

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