

### **Short-time work compensation and foreign employer**

In connection with the application for short-time work compensation, the question has regularly arisen in the past as to whether a claim also exists in the event of employment with a foreign employer. We would like to clarify the following:

Regardless of nationality or residence title, all employees who contribute to German unemployment insurance are entitled to short-time work benefits (KUG). Contrary to the legal provisions on the KUG, the experts of the Federal Employment Agency partly also take the view that KUG can only be granted to employees in companies which have their registered office within the scope of the Social Security Code, i.e. within the borders of the Federal Republic of Germany. This procedure is based on an internal technical instruction to which the specialists of the Federal Employment Agency currently adhere in some - but not in all - cases.

Despite the current practice of the Federal Employment Agency, we recommend that employees who are subject to social insurance contributions in Germany and whose employers do not have a registered office in Germany should still apply for the KUG, provided that the requirements for the application of KUG according to §§ 95 ff. of the German Social Code III are met, since the current practice of the Federal Employment Agency cannot be related to any legally binding regulation.

For example, there is no legal provision in the Social Security Code (§§ 95 to 109 SGB III) according to which only employers with a place of business in Germany can apply for KUG. In particular, the "Act on Facilitated Access to Social Security and on the Use and Protection of Social Service Providers due to the Coronavirus SARS-CoV-2" - which came into effect on 28 March 2020 - has not led to any changes to this effect.

Likewise, the technical instruction of the Federal Agency cannot be justified by the accompanying explanatory memorandum to the KUG, which provides for the receipt of insurance benefits in the case of a contribution obligation. Furthermore, the main purpose of the short-time working allowance is to enable employees to continue working and to avoid lay-offs in the event of a temporary loss of work.

Furthermore, with regard to the employer's place of business, there is also no regulation within the framework of the German government's regulation on facilitating short-time work (Kurzarbeitergeldverordnung - KugV) of March 25, 2020, which came into force on March 1, 2020.

If applications for short-time work are rejected, it would have to be decided on a case-by-case basis whether an appeal is appropriate. An appeal against the decision is admissible. Any appeal must be submitted by the employer or the works representatives in writing or for recording to the employment agency that made the decision within one month of notification of the decision.

Sources of information:

- The directives of the Federal Employment Agency of 22.04.2020 on the Act on Facilitated Access to Social Security and on the Use and Protection of Social Service Providers due to the Coronavirus SARS-CoV-2 (Social Protection Package) and supplementary regulations are available at <https://www.arbeitsagentur.de/datei/ba146402.pdf>
- Law for easier access to social security and for the use and protection of social service providers due to the coronavirus SARS-CoV-2 (social protection package) of March 27, 2020, available at [https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Gesetze/sozialschutz-paket-gesetz.pdf?\\_\\_blob=publicationFile&v=3](https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Gesetze/sozialschutz-paket-gesetz.pdf?__blob=publicationFile&v=3)
- Short-time work compensation ordinance of 25 March 2020, available at [https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Gesetze/kurzarbeitergeldverordnung.pdf?\\_\\_blob=publicationFile&v=1](https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Gesetze/kurzarbeitergeldverordnung.pdf?__blob=publicationFile&v=1)