

Mannheim/Frankfurt/München, April 2020



Special Update - Compensation for Employees in case of School and Day-Care Centre Closure

Many employees who are unable to perform their work at home are still severely affected by the current closure of schools and childcare facilities.

Up to now, we have only been able to point out that for the duration of a short-term disability (usually up to five days), the employee is entitled to continued payment of remuneration in accordance with sect. 616 BGB, and that the disability due to necessary childcare subsequently represents the employee's "private problem".

The federal legislator took account of the situation, which is unacceptable for both sides - employer and employee - in the Corona emergency legislation with the Act of 27 March 2020.

According to the new provision in sect 56 para. 1 a IfSG (Law on Infection Control), the closure of a care facility for children, in particular day-care centres, and schools shall be treated equal to other persons affected by infection control orders under sect. 56 para. 1 IfSG are largely the same.

As a result, the affected employee who is unable to perform his or her work due to the closure of childcare facilities and schools (children up to 12 years of age) as a result of the pandemic is entitled to compensation.

Notes: The claim to continued remuneration for short-term hindrance without own fault under sect. 616 BGB takes precedence. (In the next few months, however, it will still have to be clarified whether a longer-term school and day-care centre closure does qualify as a short-term hindrance pursuant to sect. 616 BGB). And: If the facility had been closed even without pandemic restrictions, e.g. now during the Easter holidays, the provisions do not apply either.

The employer has to pre-finance the continued payment of salary. Similar to the short-time working allowance, it is unlikely that the authorities will be able to reimburse the amounts disbursed in the short term (continued remuneration pursuant to § 56 para. 1 a IfSG as well as short-time working allowance) due to the expected highly increased cases. In case of relevant high disbursements, we recommend to contact the house bank

with regard to pre-financing of the corresponding disbursements against assignment of the reimbursement claims.

We are happy to provide support.

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