

# JUSTICE DURING THE CORONA CRISIS!

OGB



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jobundcorona.at is a service by the Austrian Chamber of Labour and the Austrian Trade Union Federation (ÖGB). During the first lockdown, the website was clicked over a million times. This is where employees can find information and support during the crisis.

If you can't find an answer to your question, there is also the possibility to ask questions on [www.jobundcorona.at](http://www.jobundcorona.at)

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## 1. Quarantine and Co.

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### ▶ 1450 or my doctor recommend that I stay at home. Do I still have to go to work?

A simple recommendation is usually not sufficient to justify sick leave. But if your doctor is of the opinion that you are not fit for work he can issue a notification of your sickness "Krankmeldung" which is required for a sick leave.

1450, as a call center it lacks the authority, to give legally binding recommendations. If you are suspected of having corona, 1450 will refer you to the local health authority ("Gesundheitsamt"), which will issue a binding quarantine-order ("Quarantänebescheid").<sup>1</sup>

Only if you have neither received a notification of sickness form your doctor nor a quarantine order ("Quarantänebescheid") you still have to go to work.

Nevertheless, we advise you to inform your employer of any such „recommendations“. In the event that he decides to grant a short leave of absence from work, you could still stay at home and keep your full salary entitlement for this time.

### ▶ How do I call in sick if I am not allowed to come to the doctor's office?

For those insured by ÖGK (blue-collar and white-collar workers) and BVAEB (railroad workers, civil servants), it has been made possible for the duration of the corona crisis to report sick by telephone to doctors with a health insurance contract.

<sup>1</sup> [https://www.roteskreuz.at/fileadmin/user\\_upload/Images/News/2020/Comics\\_english\\_quarantined\\_what-now.pdf](https://www.roteskreuz.at/fileadmin/user_upload/Images/News/2020/Comics_english_quarantined_what-now.pdf)  
<https://coronavirus.wien.gv.at/site/faq-english/>

➤ **My child's kindergarten is closing due to suspected corona.  
Can I stay at home?**

We recommend that you talk to your employer about arranging a special care period. This will allow you to stay away from work up to four weeks in order to provide the necessary care for your child.

However even without taking advantage of the special care period: If you suddenly lose the opportunity to care for your child because the kindergarten closes at short notice, you can look after your child at home if no other suitable caregiver is available. In this case, you are prevented from work without your own fault. The employer continues to pay your salary if your absence is relatively short. This is even the case if it happens more than once. If the kindergarten should have to close again during the winter months the requirement on remuneration continuation can exist again.

➤ **There is a confirmed case of corona in my company.  
Do I have to go into quarantine now?**

In principle, your employer cannot impose quarantine measures. These are exclusively the responsibility of the health authorities. Your employer may well grant short-term leave of absence due to his duty of care. For the duration of this leave, he has to continue to pay your salary.

➤ **What happens to my salary or wage if I am in quarantine?**

If you have been subjected to domestic quarantine order ("Quarantänebescheid") from the health authorities (not 1450!) because of manifest or suspected corona infection, you are entitled to continued payment of your salary for the entire period. The federal government will reimburse the employer for the continued remuneration.

➤ **Do I have to work from home if I am in quarantine?**

**A distinction must be made here:**

- If you are in quarantine because you have specific symptoms of the disease, first contact your doctor by telephone to determine whether you are able to work at all. If you are ill and unable to work, you are not allowed to work and must take care of yourself.
- If you are in quarantine because you have been identified as a possible contact person but have no symptoms of illness, you are basically (still) able to work. Even in these cases, your employer cannot unilaterally order you to work from "Home office". However, existing home office agreements are still valid and a new home office agreement can be made with your employer, for example for the duration of your quarantine.

## ➤ Is the boss allowed to assign activities to me that I do not do otherwise?

Your activities are part of your employment contract whether agreed verbally or in writing. A permanent change in your activities would change this contract. Both you and your employer must give their consent.

**Note:** You also have a duty of loyalty to your employer. If your company is threatened with disproportionate damage and you can prevent this, you are obliged to help your employer to keep the damage as small as possible.

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## 2. short-time work

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### **Attention: short-time work phase 1, phase 2 and phase 3:**

The answers to the many short-time work questions may vary depending on which phase of short-time work your question refers to.

The social partners have revised the regulations on short-time work several times and adapted them to the current circumstances and problem areas since the beginning of the crisis. In order to answer your question, it may be necessary to first clarify whether **your company is in phase 1, 2 or 3.**

Regulations of phase 1 apply to all short time work arrangements introduced and extended before the 1<sup>st</sup> of June.

Regulations of phase 2 apply to short time work arrangements starting from 1<sup>st</sup> of June through to 30<sup>th</sup> of September.

For short time work arrangements taking effect from 1<sup>st</sup> of October regulations of phase 3 apply.

## ➤ What is the Corona short-time work?

Your working time is reduced and you keep your job. You will continue to receive monthly payments of between 80 and 90 percent of your previous income from your employer. In return, the employer receives a subsidy from the AMS, in compensation of your lost working hours.

To ensure that you do not have to be dismissed and that your company and the economy as a whole can cope with the Corona crisis, the social partners, consisting of the Chamber of Labor, the unions and the Chamber of Commerce, have negotiated a special model. Among other things, your working hours can be reduced to as little as zero.

**You are entitled to:**

- Protection against dismissal during short-time work and up to one month afterwards.
- Corona short-time work is also possible in companies without a works council.
- Short-time work also applies when the company is completely closed.

**If your employer offers you a (temporary) termination of your employment relationship, please explicitly inform him about this alternative of corona short time work!**

**➤ How much pay or salary will I receive if I work short time?****The following applies to all phases:**

The income during short-time work is based on the employee's gross salary before short-time work (including allowances, supplements and ongoing commissions as well as overtime and extra hours, excluding expense allowances/diets and overtime pay) and it guarantees the employee a minimum income:

- Up to € 1.700, - gross salary before short-time work, the remuneration in short-time work is 90% of the previous income.
- Up to € 2.685, - gross salary before short-time work, the remuneration in short-time work amounts to 85% of the previous income.
- From € 2.686, - gross salary before short-time work the remuneration in short-time work amounts to 80% of the previous income.
- However, the employer is not entitled to any allowance for parts of income in excess of € 5,370.
- For apprentices the income is 100% of the previous apprenticeship compensation.

At the end of the month, you are always entitled to the guaranteed (80/85/90%), gross replacement regardless of how few hours you actually work. However, actual hours worked are still important: your employer has to ensure that all hours you actually work are actually paid.

**Tip:** keep a detailed record of the hours you actually work. This way you can easily check whether you have been paid for all your hours. The AK offers its own app for this purpose. In order to record working hours in a comprehensible and complete way please have a look at <https://ak-zeitspeicher.at>

**➤ Is a new agreement/consent required for the extension of short-time work (phase 2 or phase 3)?**

Yes. Short-time work cannot be introduced unilaterally: Both the employer as well as the employee have to sign a new agreement for the second or third phase of short-time work.

### ➤ **Can short-time work in a company also be introduced retroactively?**

**In Phase 3:** Initial applications have to be submitted before short-time work begins.

**Attention:** Due to the sudden imposition of a second „lockdown“, it is now possible by exemption to submit an application retroactively as of 1 November until 20 November.

### ➤ **Do I have to use up vacation and time credits before short-time work starts?**

The Corona short-time work guideline states that old vacations from previous years and open time credits are to be used up „as far as possible“ before or during short-time work. If the employer demands that time compensation or old vacation be reduced, you have to do so.

### ➤ **How and when can Corona short-time work be introduced in a company?**

Corona short-time work is possible in your company regardless of the size of the company and the industry. Associations and legal entities under public law (e.g. public museums) can also introduce short-time work. If your company wants to introduce Corona short-time work, the first step is to contact the AMS by e-mail or telephone.

At the same time, discussions take place at company level to conclude a company with the works council.

### ➤ **How can the works council be involved in short-time work?**

Your works council is important for negotiations on short-time work to take place at all. In any case, it has to be involved in negotiations on the introduction of short-time work from the very beginning. This applies to the talks between the employer and the Public Employment Service (AMS), as well as to negotiations on a short-time work agreement and any necessary additional work agreements. In the absence of a works council, the trade union takes its place.

### ➤ **How do I know which regulations on short-time work apply in my company?**

In principle, the express consent of all employees has to be obtained before short-time work is introduced. Before consent is given, we recommend that you read the completed short-time work agreement (social partner agreement) in detail, if you have any questions, contact the works council, the chamber of labor or the responsible trade union before signing anything

From phase 2 onwards, you also have a legal claim to these documents: your employer has either to provide you with a copy of the short-time work agreement or create a special short-time work service slip (“Dienstzettel”). If he does not do so, you could even sue for these documents.

### ➤ **How long can Corona short-time work last?**

In phases 1 and 2, the period for Corona short-time work was limited to three months. If necessary, the short-time work could be extended by another three months. With the start of phase 3, the short time work can be extended until 31.03.2021. The employer can extend the short-time work step by step or submit an application for 6 months immediately.

### ➤ **Is the employer allowed to unilaterally change the working time schedule during short-time work?**

**In phases 2 and 3, the following applies:**

The situation of working hours is basically the same as before the introduction of short-time work. It no longer needs to be stated separately in the short-time work agreement. The regulations of working hours resulting from the collective bargaining agreement, the company agreement or the employment contract. They also apply in short-time work.

### ➤ **What happens to my special payments (vacation and Christmas bonus) during short-time work?**

The special payments (vacation pay and Christmas bonus) are granted without reduction, regardless of your replacement rate (80-90%). In 2020, you will therefore receive your vacation and Christmas bonus (in the amount of your unabridged salary) as usual, paid by your employer at the respective due dates (usually the end of June and the end of November).

AK and trade unions have reached an agreement that the net amount of your vacation or Christmas bonus may not be reduced during short-time work.

### ➤ **Further training during short-time work - what applies to me?**

With the beginning of phase 3, there is the possibility of further training in the cancelled working hours during short-time work. 60% of the training costs are borne by the AMS, 40% by your employer. For you no costs will incur.

With the beginning of phase 3, you are obliged to attend a training, further education or continuing education offered by your employer. However, you can also make suggestions to your employer yourself once you have found a suitable training measure. However, there is no obligation for your employer to actually arrange training, further training or continuing education!

### ➤ **Can I also participate in short-time work with a fixed-term employment contract, temporary work or part-time work?**

Yes, if you work **part-time**, your working hours only need to be reduced accordingly.

If you are in **partial retirement**, your already reduced working hours will be reduced again. You will then continue to receive income compensation for the part-time work. Your company will pay you for the hours you continue to work. The AMS will pay the rest, up to 90%.

**Temporary workers** can also work short hours.

### ➤ **What applies to apprentices?**

Apprentices can also be included in short-time work. They will even continue to receive full compensation for their apprenticeship. If apprentices in ongoing short-time work enter a higher apprenticeship year or successfully pass their final apprenticeship examination, the apprentice's compensation or wage/salary must be increased accordingly, even in short-time work.

#### **From phase 3 onwards, the following applies additionally:**

short-time work for apprentices is only possible if the training of apprentices is guaranteed. At least 50% of the lost working time over the entire short-time work period have to be used for training or job-related measures.

If an apprentice's working time has been reduced by more than 20% on average, the company providing the apprenticeship has to present a separate implementation report for every apprentice with concrete measures and their extent in order to ensure training.

### ➤ **I am marginally employed. Does short-time work also apply to me?**

Corona short-time work is available to everyone who has paid into unemployment insurance. No one who has only been marginally employed can therefore apply for Corona short-time work. Unfortunately, marginally employed persons are not covered. However, your boss may not simply dismiss you. The periods of notice according to the collective agreement apply to you. In the hospitality industry, this is 14 days. At least for the duration of the notice period, the boss has to continue to pay your wage/salary.

### ➤ **What happens if I get sick during short-time work?**

If you fall ill, you will receive your continued remuneration - as usual - from your employer to the extent of your guaranteed short-time work remuneration (80/85/90%).

### ➤ **Can I go on vacation during short-time work?**

Yes, this is possible. However, it is not possible to take vacations only on the days during which work is done and not for the days when work is cancelled. Therefore, it is not possible, for example to get a whole week off while consuming just three days of vacation.

### ➤ What happens if my employer becomes insolvent during short-time work?

In this case, the short-time work will be terminated. Continue to declare yourself ready for work and report to the AK immediately.

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## 3. labor law in the home office

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### ➤ Do I have a right to a home office?

No. In Austria, home office is a matter of agreement. This means: You are not allowed to simply decide on your own to work from home. Your employer has to agree to it - even in times of Corona. There are exceptions for people who belong to the COVID19 risk group.

### ➤ Am I a risk patient? Yes or no?

The decision whether you belong to the COVID19 risk group lies with your doctor. There you can apply for a „Covid19-risk certificate“ („Covid19-Risikoattest“) independently from the information letter you might receive from the ÖGK .

### ➤ Can the employer simply order me to work from a home office?

No. Reports that a „home office obligation“ was introduced for the Corona period are incorrect. Although the federal government recommends home office in all possible cases, home office still remains a matter of agreement between employees and employers as regulated by the law.

Therefore you only „have to“ work in your home office if there is a company agreement or if you yourself agree to this relocation of your place of work. An agreement can be made in writing or verbally.

### ➤ Can I freely arrange my working time in my home office?

Actually not. The working hours in the office and in the home office are basically the same. This is because working hours have always be regulated somewhere. For instance, in a company agreement or individually in the employment contract. The agreed normal working time, possibly with overtime, also applies in the home office.

### ATTENTION!

If you would like to go shopping, go for a walk or look after your children during regular „office working hours“, and would rather want to work the hours before or after your regular



office time? Your still can not unilaterally change previously agreed and lived normal working hours also apply at home!

**But:** If other, more flexible working hours would be practical for you in your home office, please express this wish to your employer. If you can agree on a different arrangement for home work, there is no reason at all why you shouldn't!

▶ **I have tasks to complete out of the my usual home office – is that considered working time?**

Yes, if you have actually agreed on a home office, whether in writing or verbally, this means that the place of work has been moved home permanently. As soon as you have to leave home for work - whether for a customer appointment, for a delivery or even for a short trip to the actual office - then the travel time is also working time.

▶ **Do I have to use my own equipment and office supplies in my home office?**

No. The employer is responsible for ensuring that you have the necessary equipment for regular „teleworking“ and that it is maintained.

▶ **Who has to pay home office costs for internet, cell phone, electricity etc.?**

Any additional costs incurred by your home office (e.g. telephone and Internet costs, but not furnishings) have always be reimbursed by your employer. Ideally, you should reach an agreement in advance, for example by agreeing on a flat-rate reimbursement of expenses.

If it is only small purchases, for example for paper, pens or a USB stick, it will be sufficient if you keep the invoices and later send them to your employer. If it is a larger expense, you should at any rate consult your employer in advance, because the company actually has to make sure that you have the technical equipment you need.

▶ **I do not have suitable office furniture at home to work with. Does the employer have to provide it?**

No. You are responsible for your working environment in your home office. Your employer is not obliged to provide you with suitable tables or seating. If he does, he has to ensure that they meet all the necessary ergonomic requirements.