

This translation was created by the voluntary work of the [Sprach AG Frankfurt](#). Many thanks to everyone involved in the project! Please note that this is not a professional translation, so errors in translation may occur.

Special Regulations on Short-Time Work for Foreign Employees

Updated version from May 12th 2020

Regardless of their nationality or residence permit, all employees previously paying mandatory social security contributions and working for a commercial employer or for enterprises that serve cultural or social purposes, are entitled to claim short-time work allowance.

There are exceptions or special regulations for certain categories of employees, that need to be borne in mind.

Regardless of their residence permits, the following category of employees will not receive any short-time work allowance:

- Employees paying mandatory social security contributions who work in home care or offer household-related services, and who are employed directly by a private household.
- Persons in marginal employment (mini-jobbers); persons engaging in this kind of work are not required to pay into the German employment insurance scheme.
- Short-term workers (70-day-rule), who mainly work in the agricultural sector. Persons engaging in this kind of work are not required to pay into the German employment insurance scheme.
- Foreign employees posted in Germany; they fall under the social security system of their home country.

Regulations for Cross-Border Workers

- As for the relevant social security law: claims for payments such as daily sickness allowance and short-time work allowance are governed by the laws of the competent Member State, meaning the state of the social security system that the employee has so far been part of. Usually that is the state where the employee is employed. Cross-border workers employed in Germany may thus, in case of work stoppage in German businesses, receive short-time work allowance. Cross-border workers from Germany are governed by the laws of the state where they are employed.
- Temporary Corona-related tele-work does not lead to any changes to the applicable law with respect to social security contributions. Employees remain under the social security system of the same state as before.

- Since border closures / quarantine regulations within the EU represent an exception for infection protection, cross-border workers who are prevented from reaching work due to border closings / quarantine can also be entitled to short-time allowance if all the other requirements are met. **For this purpose it is irrelevant whether short-time work existed before or only after the border was closed / quarantine was imposed.** This is a new regulation. Previously, the entitlement to short-time work allowance only applied if short-time work was announced before the border was closed / quarantine imposed. For employees who have not received any benefits due to the previous regulation, employers can submit a correction statement to the employment agency for the months of March and April.
- In order to apply for short time work allowance for employees residing abroad, employers must submit the payroll documents to the Federal Employment Agency, together with an informal declaration which confirms that the employees concerned will not receive compensation from their home countries for the loss of earnings.
- If, however, no short-time work is introduced in the company, workers (including those who are not cross-border commuters) who - for whatever reason - can no longer reach their job and therefore cannot fulfill their duty to perform work, will not receive any short-time work allowance.

Note: Cross-border commuters who do not reside in Germany are not entitled to benefits under SGB II, so they currently cannot top-up their short-time work allowance. If the other prerequisites are met, cross-border commuters may nevertheless have the right to top-up their short time work allowance through the child supplement ("Kinderzuschlag").

Regulations for Refugees

- Recognized asylum seekers are entitled to receive short-time work allowance without other exceptions than the ones stated above.
- Employees with a so called "Duldung" or "Aufenthaltsgestattung" are also entitled to receive short-time work allowance. If, however, the received short-time work allowance is not sufficient to cover their costs of living, the respective employees will have no possibility of receiving additional assistance according to the system described in the Second Book of the Social Code (SGB II). At the same time, in this case they may receive supplementary payments based on the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*). As a rule, 25% of the short-time work allowance will not be charged to the standard benefits received in this way and may thus be kept as a so-called exempt amount. The remaining 75% will be charged in full.
- In cases of an "Ausbildungsduldung", or of a normal "Duldung" where people undergo a traineeship, the rules applying to all persons in traineeship also apply here: trainees normally do not receive short-time work allowance, as even in cases where a business is producing at reduced capacity, the traineeship should be pursued. If an interruption of the traineeship is unavoidable – this would e.g. be the case if a



business closes because of Corona – trainees may also be included in short-time work. In these cases, as stated above, it is possible to receive supplementary payments based on the Asylum Seekers Benefits Act.

- Employees with “Duldung”, Aufenthaltsgestattung or “Aufenthaltserlaubnis”, who receive only short-time work allowance, with no supplementary social benefits will, in the opinion of the DGB, not be obliged to inform the relevant immigration authority (*Ausländerbehörde*).

Regulations for the Employment or Training of Third-Country Nationals with Residence Permits

- Third-country nationals with residence permits allowing them to work or to do a traineeship may receive short-time work allowance. Since the employment contract is still valid during short-time worker and short-time work allowance is a contribution-based benefit, its receipt has no direct impact on the existence of the residence permit. This also applies - according to a BMI circular of March 25, 2020 - for EU Blue Card (Section 18b (2) Residence Act) owners and for the residence permit for IT specialists (Section 19c (2) Residence Act) even if the short time work allowance falls below the respective salary limits and short-time work in connection with the corona virus is required.
- In case these funds are not sufficient to cover their costs of living, it is generally possible to receive additional assistance according to the system described in the Second Book of the Social Code. However, in this situation, the respective employees or trainees will need to inform the competent immigration authority. The fact that someone has applied for assistance under the Second Book of the Social Code may be interpreted as a sign that he/she is not able to ensure his/her means of subsistence; this may lead to consequences for the respective employee’s/trainee’s residence permit, which may even include reducing the time that his/her residence permit is valid, or refusing to extend a residence permit.