

Compensation for working parents due to school and preschool closures during COVID-19 pandemic

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Legal background

Amendment to Infection Protection Act

Compensation details

The COVID-19 pandemic continues to impose many challenges on employers and employees alike, particularly working parents. Many schools and preschools remain closed for the time being. However, whether employers must continue to pay salaries to parents who cannot work since they must care for their children at home is debatable.

Legal background

A claim to continued payment of salary exists only under restrictive conditions. The main statutory regulation is Section 616 of the Civil Code:

The person obliged to perform services is not deprived of his claim to remuneration by the fact that he is prevented from performing services for a relatively trivial period of time for a reason in his person without fault on his part. However, he must allow to be credited against him the amount he receives for the period when he is prevented under a health or accident insurance policy that exists on the basis of a statutory duty.

Section 616 of the Civil Code states that the claim for salary payment remains unaffected if the prevention lasts only for a "relatively trivial period of time", which is defined as a maximum of 10 days. The claim under Section 616 may also be restricted or even completely excluded from the outset by employment or collective bargaining agreements.

Amendment to Infection Protection Act

On 18 December 2020 the Bundesrat (the upper house of Parliament) approved an amendment to the Infection Protection Act (IfSG). Pursuant to Section 56(1a) of the IfSG, parents may claim compensation if schools or preschools are closed to protect against infection.

Section 56(1a) provides compensation if parents must care for their children at home due to officially ordered school or preschool holidays or suspended classroom teaching to protect against infection. The condition is that no other reasonable care option exists for the child. Parents of children who are younger than 12 or who are disabled and in need of assistance are eligible.

The legislature has clarified in Section 56(1)(3) of the IfSG that employees who must quarantine after returning from an avoidable trip to a high-risk area already classified as such at the time of departure have no claim to compensation.

Compensation details

The claim applies for a total of 20 weeks – 10 weeks for mothers and 10 weeks for fathers. Single parents are entitled for compensation for up to 20 weeks. The maximum period can be spread over several months. The compensation amounts to 67% of the loss of earnings, up to a maximum of €2,016 per month. Employers must pay the compensation for the first six weeks and can then claim reimbursement from the competent authority. From week seven, employees must submit applications to the competent authority.

On 26 March 2021 the Bundesrat approved a legislative proposal according to which going forward Section

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56(1a) of the IfSG will apply permanently and whenever there is a pandemic situation of national reach. The maximum duration of the entitlement of 10 or 20 weeks, respectively, per pandemic continues to apply.

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