

Update

Newsflash 19 March 2020

COVID-19: Hardship indemnities from the unemployment insurance in case of temporary decrease of the workload of companies

On March 13, 2020 and March 16, 2020, the Swiss Federal Council took the decision to introduce more stringent measures to protect the public against the spread of COVID-19 (coronavirus). There is no doubt that all these measures will have a direct and severe impact on the activities of many companies. Companies that are facing a temporary decrease of their workload may apply for hardship indemnities from the unemployment insurance in order to save on wage costs and prevent partial or complete unemployment of employees whose working hours are temporarily reduced. Aware of the difficulties currently encountered by companies, the Swiss Federal Council has decided on certain measures to simplify the application for hardship indemnities.

On March 13, 2020 and March 16, 2020, the Swiss Federal Council took the decision to introduce more stringent measures to protect the public against the spread of COVID-19 (coronavirus) and complete the measures already decided on February 28, 2020.

As a result, all shops (except for food stores and healthcare institutions), markets, restaurants, bars and entertainment and leisure facilities will remain closed until at least April 19, 2020 (businesses at which the recommended distance between persons cannot be maintained are also affected). All public and private events are prohibited and the schools, high schools, universities and other training centers are closed. People at high risk should work from home (if not possible, they are to be released from the obligation to perform work but will continue to

receive their salary), while for other employees, home office is recommended to the extent possible. Travel restrictions have also been introduced.

All these measures will have a direct and severe impact on the activities of many companies. Aware of the difficulties currently encountered by companies, the Swiss Federal Council has decided on certain measures to simplify the application for hardship indemnities from the unemployment insurance. These hardship indemnities may help the companies that are facing a temporary decrease of their workload to save on wage costs and prevent partial or complete unemployment of employees whose working hours are temporarily reduced.

This newsflash briefly summarizes the key elements of the hardship indemnities.

1. Principles

Hardship indemnities are governed primarily by the Federal Act on Compulsory Unemployment Insurance and Insolvency Compensation (LACI/AVIG) and its Ordinance (OACI/AVIV). They offer compensation for loss of work (but not loss of earnings) and are designed to save jobs.

The hardship indemnities cover 80% of the employee's loss of earnings resulting from reduced working hours, as well as the employer portion of the AVS-AHV/AI-IV/APG-EO/AC-ALV¹ contributions (the "1st pillar contributions") for the reduced working hours, after deduction of a waiting period. From now on and until September 30, 2020, the waiting period has been reduced to 1 day by the Swiss Federal Council.

Hardship indemnities are to be paid by the companies to the employees affected by it. They are then reimbursed by the unemployment insurance. The maximum monthly salary taken into consideration is CHF 12,350.- (CHF 148,200.- per year).

The companies may decide to make up the shortfall and continue to pay the contractual salary (or part of it) during the reduction of the working hours.

2. Affected employees

Currently, employees are eligible for hardship indemnities provided that:

- › They are subject to the obligation to contribute to unemployment insurance or have completed compulsory schooling and have not yet reached the minimum age for AVS contributions;
- › They have accepted the reduction of working hours²;

¹ Old-age/Invalidity/Loss of earning in case of service or maternity/Unemployment insurance.

- › Their employment relationship has not been terminated (regardless of the terminating party); and
- › They do not belong to the following categories:
 - Employees on a fixed-term contract, which is not subject to early termination;
 - Employees who determine or can significantly influence the decisions taken by the company (as a partner, member of a governing body of the company or holder of a financial participation);
 - Employees, who are not recording working hours and whose reduced working hours can therefore not be determined or whose working hours are not sufficiently controllable; or
 - Employees who work on call, are temporary or apprentices.

The Swiss Federal Council is currently assessing whether employees with fixed-term contracts and temporary workers should become eligible to hardship indemnities. More information should be available on March 20, 2020. It is however expected that the applicable regulations will be adapted so that these employees are also eligible to hardship indemnities.

3. Conditions

The loss of work may be taken into consideration and, therefore, be compensated, if:

- › The loss of work is due to economic factors and is unavoidable;
- › The loss of work is temporary; and
- › The loss of work amounts to at least 10% of the total hours normally worked by the employees of the company (or operating sector).

In practice, the competent cantonal authority will consider that the loss of work related to the COVID-19 (coronavirus) is temporary and unavoidable. Nonetheless, information on

² Each employee has the right to refuse hardship indemnities in the event of a reduction in work; as the case may be, the companies are then obliged to continue to pay them their full salary.

turnover and the number of delayed orders should be provided by the companies in order to exclude possible normal operating risks (*e.g.* seasonal variations in work, postponement of deadlines, etc.) (see Section 6. below).

4. Obligations for the companies in the event of hardship indemnities

If hardship indemnities are approved, the companies should in particular:

- › Advance the hardship indemnities (80% of the loss of earnings) and pay them to the affected employees in line with regular payroll;
- › Bear for each accounting period³ the costs of the hardship indemnities during the waiting period (1 day until September 30, 2020);
- › Continue to pay all the social security contributions (1st pillar contributions as well as accident insurance, family allowance, pension contributions, etc.) as if the working hours were normal, *i.e.* on 100% of the salary (unless otherwise agreed, the companies are entitled to deduct the employee portion of the contributions from the salary to be paid to the employees and the employer portion of the 1st pillar contributions for the reduced working hours will be reimbursed to the companies by the unemployment insurance); and
- › Ask for compensation of the hardship indemnities and employer portion of the 1st pillar contributions for the reduced working hours within 3 months of each accounting period, even if the competent cantonal authority has not yet approved the hardship indemnities (the companies should file specific forms with the unemployment insurance at the end of each accounting period in order in particular to specify the hours actually worked compared to the hours that should have been worked under normal circumstances).

5. Maximum duration of the hardship indemnities

In principle, hardship indemnities will be paid for a maximum of 12 accounting periods within a period of 2 years. However, the monthly loss of work in excess of 85% of the company's normal working hours may, as a rule, not exceed 4 accounting periods. An extension of the duration of the hardship indemnities can however not be excluded in the context of the measures against the COVID-19 (coronavirus).

6. Application for reduction of the working hours

In order to be eligible for hardship indemnities, the companies need to file an application for reduction of the working hours with the competent cantonal authority (the competent cantonal authority is the authority of the canton in which the company or business is located). The application is composed of (*i*) a form, which is different from the forms to be filed with the unemployment insurance at the end of each accounting period as mentioned under Section 4.d. above, (*ii*) a cover letter to answer some of the questions raised in the application form and (*iii*) supporting documents requested in the application form.

Due to the exceptional circumstances related to the COVID-19 (coronavirus), the application for reduction of the working hours should be filed with the competent cantonal authority at least 3 days (instead of the 10 days that usually apply) before the beginning of the reduction of working hours. If the reduction of the working hours is notified without complying with this deadline, the loss of work is only taken into consideration after the 3-day period. This 3-day period is applicable in addition to the waiting period (1 day for each accounting period until September 30, 2020) during which the companies should bear the costs of the hardship indemnities. **As a result, companies affected by COVID-19 (coronavirus) should file the application for reduction of working hours as soon as possible.**

³ One accounting period corresponds in principle to a calendar month.

The application for hardship indemnities has been simplified in the context of the measures against the COVID-19 (coronavirus). In the cantons of Geneva, Vaud and Zurich for instance, the companies do no longer need to provide the competent cantonal authority with an excerpt from the commercial register and the approval of the reduction of the working hours signed by the employees (they should however confirm in writing in the application that all employees affected by a reduction in working hours agree to the introduction of hardship indemnities). It should therefore be sufficient if they provide the following information and documents:

- › Number of employees and type of employment agreement;
- › Number of employees whose employment relationship was terminated;
- › Number of employees possibly affected by the reduction of working hours;
- › Extent of the reduction of working hours (an estimate is sufficient at this stage since the hardship indemnities to be paid to the companies by the unemployment insurance will depend on the working hours actually

reduced for each accounting period as detailed in the forms to be filed with the unemployment insurance);

- › Likely duration of the reduction of working hours (in practice, the competent cantonal authority should in principle no grant hardship indemnities for more than 3 months; if necessary, the application should be renewed before the expiry of the previous authorisation);
- › AVS/AHV compensation fund to which they are affiliated, including company registration number;
- › Unemployment insurance to which they will ask for compensation of the hardship indemnities;
- › Field of activity;
- › Monthly turnover for the last 2 years; and
- › Reasons for introducing a reduction of the working hours and the delay of orders.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this UPDATE Newsflash is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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