



## New short-time work regime to help ride the economic crisis

Ever since the onset of the economic crisis, an increasing number of companies have been opting to change to a short-time regime for their workers. Legislators have responded to the growing demand for this work model and the changing economic framework that it reflects: on 26 February 2009, the Austrian Parliament adopted the Employment Promotion Act of 2009 which became retroactively effective as of 1 February 2009 (BGBl I 12/2009). The new regulation extends the short-time allowance, a scheme to provide state financing for shorter working weeks, and defines new retention periods.

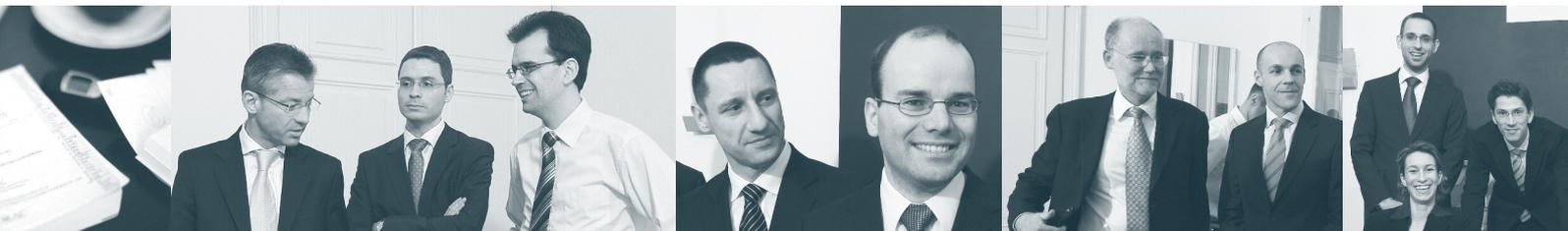
Short-time work ("Kurzarbeit") means a **temporary reduction in the standard working hours**. Companies may introduce such a regime through a collective agreement at shop level ("Betriebsvereinbarung"), generally, however, without being allowed to reduce workers' pay. If working hours are to be reduced concomitantly with a **reduction in pay**, this is permissible only (through a **shop-level agreement**) when the applicable collective bargaining agreement makes provision for such a scheme (as do, i.a., the collective bargaining agreements for metal-working SMEs and large-scale industries, or for electric and electronic industries) and the parties to the collective bargaining agreement have come to an individual, case-based agreement. If the applicable collective bargaining agreement does not authorise any shop-level agreement on short-time work (as is the case for wholesale and retail trade workers), all employees affected by the regime need to give their **consent**.

Employees or works councils will typically consent to a reduction in working hours only if they are granted at least a partial compensation for the pay loss. In this situation, the **short-time work allowance** ("Kurzarbeitsbeihilfe") will be of help. It is paid out by the Public Employment Service ("AMS") to the employer who then passes it on as a payment to workers affected by short-time working hours (so-called **short-time work support**; "Kurzarbeitsunterstützung"). An employer accepting the short-time work allowance is then bound by a range of conditions governing short-time work (maximum duration, period during which employees must be retained and are protected against dismissal, etc.).

Government-funded short-time work is regulated by several legal provisions. The short-time allowance is based on the Public Employment Service Act (Arbeitsmarktservicegesetz; AMSG) as amended by the Employment Promotion Act of 2009 (Beschäftigungsförderungsgesetz 2009; Sections 37b and 37c AMSG). The provisions of the AMSG are implemented by a guideline of the Administrative Panel of the AMS (Federal Guideline for Allowances for Short-time Work and Short-time Work Combined with Skills Training). Added to this is a basic agreement between the social partners which, i.a., regulates the retention period once the short-time regime has been discontinued (Declaration by the Presidents of the Austrian Trade Union Federation, Austrian Federal Economic Chamber, Federal Chamber of Labour and Federation of Austrian Industry Regarding the Employment Promotion Act of 2009). Summarised, these provisions stipulate the following framework for short-time work subsidised by a short-time work allowance:

**Economic problems:** The firm must be in temporary economic trouble which is not connected to seasonal variations (e.g. loss of orders).

**Short-term work support:** The employer must pay affected employees a short-term work support equal at least to the amount of the (pro rata) unemployment benefit for time not worked; this minimum short-time work support is covered by the short-time work allowance paid by the AMS. The support is subject to taxation. It should be noted that the contributions and benefits under social insurance are computed from the assessment basis applicable just prior to



the start of the short-time regime, and that in actual practice unions are frequently able to negotiate a short-time work support that is higher than the short-time work allowance. A recent example at Austrian Airlines provides for its ground staff to be paid 90% of their standard pay for a reduction of their working hours to 80% of the standard working hours, or a pay of 95% for a reduction of hours worked to 90% of the standard.

**Duration:** In future, the short-time work allowance may be obtained for a maximum of 18 months, or up to 20 months in exceptional cases (compared to the three months which were previously the rule). The allowance is first granted for a maximum of six months, after which an extension may be applied for at the AMS.

**Reduction of working hours:** In future, working hours must not, on average within the agreed short-time work period, be cut by less than 10% or more than 90% of the standard working hours (previously, the short-time working hours were, as a rule, not allowed to be less than 80% of the standard working week within a four-week period for averaging working time).

**Retention obligation:** While the short-time work regime is in place, the firm must not shed any employees. A new feature is the reduced retention period (period during which employees are protected against dismissal) after returning to normal working hours: Previously, the retention period after returning to normal work was equal to the duration of the short-time work regime. Now the social partners provide for a retention period of one month for up to two months of short time; two months for up to four months of short time; three months for up to 12 months of short time; and four months for any longer period of short-time work. The retention period after short-time work now applies only to workers on short time. In special cases, however, the retention obligation during and after short-time work may be waived, as had been the case before.

**Short-time work combined with skills training:** A novel option is a scheme to combine short-time work with further education. If the hours gained are used for training and (further) education of employees affected by short-time work regimes, the short-time work allowance granted by the AMS is increased by 15% (skills training allowance) to cover the additional expenditure from training.

Little has changed with regard to the **procedure** to apply for a short-time work allowance as foreseen in the Employment Promotion Act of 2009. As before, the employer must contact the local AMS office at least six weeks prior to the envisaged start of the short-time work regime, in order to consult on the situation. The AMS includes the **works council** and the applicable **interest group entitled to enter a collective bargaining agreement** in the consultation process. Together they examine whether there are any other options apart from state-funded short-time work to overcome the crisis, such as reducing accumulated time credits, introducing flexitime schemes, etc. If the consultation process finds for a short-time work allowance, the interest groups enter into a so-called **social partnership agreement** (Sozialpartnervereinbarung) that regulates the specific terms of the short-time work in the company affected with due regard to the above principles. The employer then needs to file an application for a short-time work allowance (co-signed by the works council or the employees affected) with the relevant AMS office not later than three weeks before the short-time regime is introduced in the firm.

**To conclude:** In the event of an expected temporary downturn, government-funded short-time work reduces personnel costs while helping businesses to retain well-trained staff who will be needed once the economy picks up again. If, however, a company suffers from a fundamental problem in its personnel structure, the scheme is just an expensive way of delaying necessary staff cuts (retention period!). It should be noted that members of the Federation of Austrian Industry called for further reforms (higher allowances by the AMS) only a few days after the Employment Promotion Act of 2009 had been passed.



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We are proud to announce the continuation of a well-established tradition – the striking success of our trainee lawyers in passing the bar exam: **Mag. Oliver Walther** and **Dr. Esther Hold** (who authored this issue of P)-News) passed the exam with “excellent success”; **Mag. Clemens Irrgeher**



passed with “very good success”. Clemens Irrgeher, who focuses on civil actions, claims for damages and investor protection, has been a partner in our law office since January 2009. Oliver Walther is the co-author of the

“Handbuch Vergaberecht”, a manual on tendering laws, and concentrates on labour law and regulations governing commercial agents. Oliver Walther will become a partner in early June 2009; Esther Hold will follow suit in January 2010.



Mag. Peter Resch wants to enhance his law skills abroad and therefore renounced his partnership position in late March 2009.