

Short-Time Work and Special Care Leave

COVID-19 Emergency Measures in Austria

March 2020



Freshfields Bruckhaus Deringer

COVID-19 Emergency Measures in Austria

The COVID-19 outbreak has significantly changed the way we live and work.

Against this background, the Austrian government has passed several emergency laws which already came into force. These laws *inter alia* provide for different regimes for emergency relief, in particular in order to stimulate the labour market and to provide further financial assistance in the amount of up to EUR 38 billion to push the economy.

In addition to the economic challenges, the COVID-19 outbreak poses various challenges for employment relationships. Accordingly, the COVID-19 laws introduced two different emergency measures with respect to employment law:

- (i) Corona Short-Time Work (*Corona-Kurzarbeit*); and
- (ii) Special Care Leave (*Sonderbetreuungszeit*).

Employers should analyse how to potentially combine the newly introduced measures with other measures under the regular employment law in order to best deal with the current situation in relation to their workforce individually.

Corona Short-Time Work (Corona-Kurzarbeit)

Short-time work (*Kurzarbeit*) is a state-subsidised temporary reduction in working time and pay due to economic difficulties. Based on the economic difficulties resulting from the coronavirus, the COVID-19 laws enable the Austrian Labour Market Service (*Arbeitsmarktservice*; **AMS**) to pass a guideline on Corona Short-Time Work (**CSTW**) which shall provide for a more economy-friendly short-time work model.

On 19 March 2020, the AMS has published the new AMS guideline for CSTW (**Corona Guideline**) which will be in force until 30 September 2020. Accordingly, these are the general terms under which companies may start implementing CSTW:

1. Process

CSTW requires

- a. a works council agreement or, in companies without a works council, individual agreements,
- b. a "Corona"-social partner agreement between the Chamber of Commerce (*Wirtschaftskammer*) and the union (*Gewerkschaft*) (which is to sign within 48 hours as of the agreement being ready to signature), and
- c. the approval of the AMS.

The social partners have already published a "2 in 1 template" for the works council agreement/social partner agreement and the individual agreement/social partner agreement. These templates can be found on the webpage wko.at/corona, together with detailed instructions on how to complete them and the necessary steps.

2. Period of short-time work

According to the Corona Guideline CSTW may be introduced with retroactive effect as of 1 March 2020 for up to three months and may subsequently be extended by additional three months.

3. Employees covered

CSTW pursuant to the Corona Guideline can be agreed with / in respect of the following employees:

- a. all employees (white-collar and blue-collar workers, as well as part-time workers);
- b. members of the managing bodies if they are insured under the Austrian Social Security Act (*Allgemeines Sozialversicherungsgesetz*; ASVG); and
- c. trainees (*Lehrlinge*).

COVID-19 Emergency Measures in Austria

4. Scope

CSTW may be agreed for (i) a company, (ii) an operation (*Betrieb*), (iii) an operational unit (*Betriebsteil*) or (iv) individual employees.

5. Working time

During short-time work, the average working time can be reduced between 10% and 90% of the weekly normal working time pursuant to the collective bargaining agreement in case of full-time employees (or the agreed working time in case of part-time employees). Temporarily, the normal working time may even be reduced by 100% -- but on average a minimum of at least 10% of the normal working time must be worked during the entire period of short-time work. For example, the normal working time may be reduced to 0% for five weeks and 60% for one week, so that more than 10% will be worked on average. In exceptional cases it is possible that the average working hours exceed the agreed CSTW (e.g. due to improved economic situation, sick leave, vacation, etc.), however, these exceeding working hours will not be reimbursed by the AMS.

6. Net remuneration guarantee

According to the Corona Guideline, employees shall receive the following remuneration, irrespective of the reduction of their normal working time: Employees with a gross monthly remuneration of less than EUR 1,700 will continue to receive 90% of their net salary received before CSTW; between EUR 1,700 gross and EUR 2,685 gross they will receive 85% of their net salary received before CSTW; and above EUR 2,685 gross they will receive 80% of their net salary received before CSTW. The AMS bears the additional costs (up to the maximum monthly contribution basis pursuant to the ASVG, which is currently EUR 5,370 gross per month). Trainees shall receive 100% of their net salary received before CSTW.

7. Short-time work compensation and short time work allowance

The employer has to pay the so-called short-time

work compensation (*Kurzarbeitsunterstützung*), i.e. at least the difference amount between the pro-rated monthly salary for the reduced normal working time and the guaranteed net salary mentioned as stated above, to the employees on a monthly basis as well as the prorated salary -- thus the employer pays such short-time work compensation in advance. As soon as the employer has paid the short-time work compensation, the employer shall send a monthly confirmation to the AMS. The AMS will then reimburse the employer by paying the so-called short-time work allowance (*Kurzarbeitsbeihilfe*) retrospectively. During CSTW the employer contributions (*Dienstgeberbeiträge*) to social security are to be paid as if the normal working hours were not reduced. The AMS will cover the additional employer contributions as well as the prorated costs for the prorated 13th and 14th salaries (*Sonderzahlungen*) as of the first month of CSTW.

For the sake of clarity and ease of understanding, the following table shows a breakdown of the calculation of short-time work compensation/allowance in accordance with an example in the explanatory notes to the Corona Guideline which shows a downtime of 30% (this example has been published by the social partners):

Gross salary before short-time work (38.5h/week)	EUR 2,801.00
Net salary before short-time work	EUR 1,908.85 (monthly salary (12x) according to the "AMS gross-net calculator", excl. 13/14 th salary)
Net salary during short-time work	EUR 1,527.08 (at 80% net reimbursement rate)
Gross salary during short-time work	EUR 2,083.68
Gross salary for hours actually performed	EUR 1,458.58 (70% of gross during short-time working)
Short-time work compensation of the employer to the employee	EUR 625.10 (delta gross during short-time work vs. gross salary for hours actually performed)
Flat rate per downtime hour (<i>Ausfallstunde</i>) according to table (note: assumed separate table with fixed values) for 38.5h/week - wage level EUR 2,801.00	EUR 21.08
Number of billable downtime hours (30% of 166.71 hours (=38.5*4.33) per month)	50.01 hours
Short-time work allowance from the AMS to the employer (50,01 hours * EUR 21,08.00)	EUR 1,054.21

COVID-19 Emergency Measures in Austria

8. Termination lock

The employer must maintain the number of employees during short-time work and – in case of CSTW – for a retention period (*Behaltefrist*) of one month following the end of CSTW. Accordingly, redundancies are generally not possible during such time without prior consent of the works council, union and/or AMS. In case of terminations by mutual consent, the employer may further be obliged to re-hire. Shorter or longer retention periods may be agreed in special circumstances.

9. Mandatory leave

In case of CSTW, employees shall, at the request of the employer, consume all vacation credits from previous years and other time credits in full. If the CSTW agreement is extended beyond three months, employees must consume a further three weeks of vacation upon request of the employer.

Special Care Leave

(Sonderbetreuungszeit)

Pursuant to the newly introduced section 18 b of the Austrian Employment Contract Amendment Act (AVRAG), an employer may grant a paid special care leave (*Sonderbetreuungszeit*) to employees with care obligations for children under the age of 14 for a period of up to three weeks (as of the restricted operation of the school or kindergarten), provided that these employees are not working in a supply-critical area (*versorgungskritischer Bereich*).

Such special care leave is neither a sick leave nor a holiday, and the employer is obliged to continue to pay full compensation. The employer will however be entitled to get reimbursed for one third of the employee's compensation from the federal government if such special care leave is being granted.

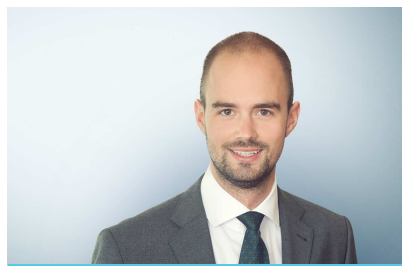
The reimbursement must be claimed within 6 weeks following the end of the restricted operation of the school or kindergarten and is capped with the maximum monthly contribution rate pursuant to the ASVG, i.e. currently EUR 5,370.

In case an employee's child falls ill the regular nursing leave (*Pflegefreistellung*) pursuant to section 16 Austrian Vacation Act (*Urlaubsgesetz*) may be considered.

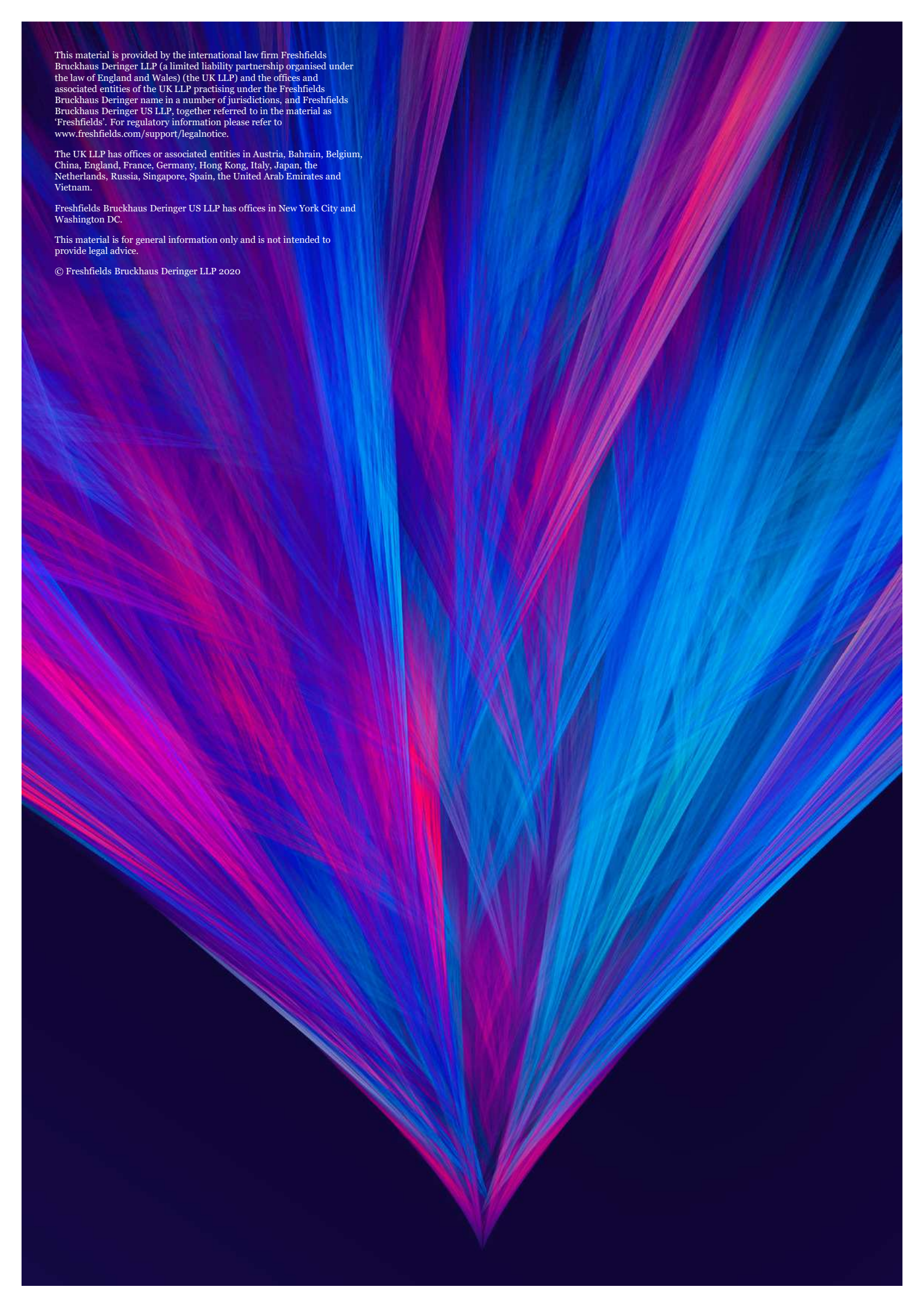
Your contacts



Karin Buzanich-Sommeregger
Partner
T +43 1 515 15 125
E karin.sommeregger@freshfields.com



Leonhard Prasser
Principal Associate
T +43 1 515 15 683
E leonhard.prasser@freshfields.com

The background of the page is a dark blue gradient with a complex pattern of thin, overlapping lines in shades of blue and red. These lines converge towards the bottom center, creating a funnel-like or V-shaped effect. The overall aesthetic is modern and digital.

This material is provided by the international law firm Freshfields Bruckhaus Deringer LLP (a limited liability partnership organised under the law of England and Wales) (the UK LLP) and the offices and associated entities of the UK LLP practising under the Freshfields Bruckhaus Deringer name in a number of jurisdictions, and Freshfields Bruckhaus Deringer US LLP, together referred to in the material as 'Freshfields'. For regulatory information please refer to www.freshfields.com/support/legalnotice.

The UK LLP has offices or associated entities in Austria, Bahrain, Belgium, China, England, France, Germany, Hong Kong, Italy, Japan, the Netherlands, Russia, Singapore, Spain, the United Arab Emirates and Vietnam.

Freshfields Bruckhaus Deringer US LLP has offices in New York City and Washington DC.

This material is for general information only and is not intended to provide legal advice.

© Freshfields Bruckhaus Deringer LLP 2020