

Impact of Business Interruption Insurance on Short-time Work Compensation in Germany?

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Insurance Recovery and Employment

In the context of the coronavirus pandemic, there have been significant recent developments in Germany with respect to business interruption insurance and short-time working compensation.

Many German employers are participating in the federal short-time work compensation program as a way to keep workers employed and partially compensated during the coronavirus pandemic. Short-time work compensation is a benefit paid by the German unemployment insurance scheme to employees whose work hours are reduced by more than ten percent as a result of unavoidable absence from work due to economic reasons affecting at least 10% of the employees employed at a company. It can generally be paid for up to 12 months, and in exceptional cases, up to 24 months.

According to recent press releases, the German Federal Employment Agency has sent notices to at least some companies, stating that short-time work compensation will not be paid if business interruption insurance coverage “exists”. This is a potential problem for German employers who have business interruption insurance and who are currently evaluating settlement offers made by many German insurers (typically a payment of 10% to 15% of the agreed insurance coverage). The settlement offers are typically calculated by taking into account short-time work compensation—a combined financial aid package of both the insurance settlement amount and the short-time work compensation—to make up for a considerable portion of the employers’ losses. Clearly, this calculation will not work if the short-time work compensation is taken out of the equation. As insurance settlement offers tend to be significantly lower than the amount that would be covered under the short-time work compensation, companies could be left in a materially worse position.

It is uncertain what the Federal Employment Agency means by its notice, as it is not clear what is meant by the phrase “if business closure insurance coverage exists.” The wording suggests that even the mere existence of a business closure insurance should suffice for a complete exclusion of short-time work compensation. The Federal Employment Agency has not yet issued formal guidance on what its notices mean.

In our view there is no legal basis for linking short-time work compensation benefits to business interruption insurance. The statutory language indicates that neither the simple existence of a business interruption insurance policy, nor the concrete existence of a claim for compensation from it, can have an effect on the approval or the amount of the short-time work compensation.

Currently, the Federal Employment Agency is quoted in the press with a statement which apparently intends to provide clarification with regard to the current settlement offers of insurers, namely that payments from a business interruption insurance policy will only be offset against the short-time work compensation if the business interruption is insured. Voluntary benefits, however, shall not be affected. The Federal Employment Agency obviously understands settlement payments to be voluntary payments within this meaning. However, this is far from providing clarity as most insurers deny coverage of COVID-19-related business interruption under various legal aspects. Although these legal aspects are often disputed by policyholders, the insurers nevertheless seek to rely on them in offering to settle potential claims for less than full value.

In light of these recent developments, companies should tread very carefully when considering offers to settle business interruption insurance claims. A thorough analysis of the settlement and the potential ramifications to short-time work compensation payments is critical.

Companies who receive adverse decisions from the Federal Employment Agency that attempt to reclaim short-term work compensation payments should strongly consider appealing these determinations, and carefully review the reasoning offered by the agency for why the adverse determination was made.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our practice:

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