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COVID-19

Current legal issues

(Status: 01/14/2021)

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Shortlink:

<https://bit.ly/38LFwIY>

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Unsere Einschätzungen dienen der allgemeinen Beurteilung der aktuellen (aussergewöhnlichen) Lage, sie ersetzen keine Rechtsberatung im Einzelfall.

Nos analyses servent d'évaluation générale de la situation actuelle (extraordinaire) - elles ne remplacent pas le conseil juridique dans les cas individuels.

Our legal opinions serve as a general overview of the current (extraordinary) situation - they do not replace legal advice in individual cases.

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1. Cases of hardship: Who can apply for hardship aid?

Previously: Companies receive up to **10%** of annual turnover (maximum **CHF 500,000**) if :

- ✓ Company founded before **March 1, 2020**
 - ✓ Annual turnover of minimum **CHF 50,000**
 - ✓ Wage costs **mainly incurred in Switzerland**
 - ✓ **Documents and evidence** available
 - ✓ **Turnover decrease $\geq 40\%$ in 2020**
- + simplified procedure in hardship situation
 - + Covid guarantee must not already be exhausted
 - + additional loans/à-fonds-perdu aid (of the cantons) reserved

Please note:

- Any **compensation for short-time work and covid income compensation** must be recognized within 2020 turnover; definition of «turnover» is up to the cantons;
- Companies **with <10% state ownership** may be eligible to apply for hardship aid ; the same for companies owned >10% by smaller municipalities (with up to 12,000 inhabitants) i.e. ski lifts or chairlifts owned by mountain communities;
- **Dividend/royalty ban** for 5 years or until repayment of aid received.

New (as per 01/18/2021) :

Companies receive up to **20%** of annual turnover (maximum **CHF 750,000**) if :

- ✓ Company founded before **March 1, 2020**
 - ✓ Annual turnover of minimum **CHF 50,000**
 - ✓ Wage costs **mainly incurred in Switzerland**
 - ✓ Documents and evidence available
- ✓ **Turnover decrease $\geq 40\%$ in 2020 OR**
 - ✓ **Turnover decrease $\geq 40\%$ within 12 months OR**
 - ✓ **Business closure ≥ 40 days since 11/01/2020***
- + simplified procedure in hardship situation
 - + Covid guarantee must not already be exhausted
 - + additional loans/à-fonds-perdu aid (of the cantons) reserved
- * (no evidence of turnover decrease required)

Please note: (same as above, BUT...)

- Dividend/royalty ban reduced to **3 years** or until repayment of aid received.

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2. Business closures: Which businesses must be closed as of January 18, 2021?

So far, under Art. 5a para. 1 Covid-19 VO 2 (in force from 12/22/2020 until 01/12/2021), "only" **restaurant, bar and club establishments as well as discotheques and dance halls** were affected by closures; exemptions: take-aways, company canteens for their own employees, ditto for dining halls of educational establishments for their own students and teachers, and under special conditions the catering of hotel guests;

Stores, gas station stores and kiosks were subject to **restrictions on opening hours (from 19 h - 06 h and closed on Sundays)** and to **restrictions on the max number of customers**, depending on the size of the store (cantonal implementation).

New (as of 01/18/2021): The Federal Council thus tightens the national protection measures

All stores and markets that do not offer goods for the daily use must be closed;

It will still be possible to pick up ordered goods on site. Sales areas of stores and markets that do not offer goods for daily use are to be closed off. The opening hours restriction for stores, petrol station stores and kiosks does not apply (see below):

Kiosks, bakeries, gas station stores, pharmacies, clinics, hospitals, drugstores, opticians, hearing aid stores, telecom, repair and maintenance stores, laundries, hair salons, construction and garden stores, and flower stores may **remain open**.

- Service providers such as hairdressing salons, post offices, banks, travel agencies, solariums and car washes **must close between 7 p.m. and 6 a.m. and on Sundays** - including those businesses domiciled inside train stations and airports;
- The **restriction on the number of customers** remains in place (implementation by the cantons);
- The cantons will continue to decide on **ski resorts and hotels**. They may only allow opening if the epidemiological situation permits and if there are sufficient capacities of tests, contact tracing and hospitals. Strict protection concepts must be followed. Après-ski activities are not allowed.

3. Employees: What measures should generally be taken in the company to protect employees from Covid?

In principle, every company is recommended to draw up a protection concept according to the model protection concept for companies under Covid-19 (or to adapt it to the current situation). The core element of the measures is the "STOP" principle: > https://www.seco.admin.ch/seco/de/home/Arbeit/neues_coronavirus/schutzkonzepte.html

New (as of 01/18/2021):

- Wherever possible, employers must mandate HomeOffice;
- In the office, the mask requirement also applies when sitting, as soon as more than 1 person is in the room;
- Persons at particular risk are entitled to HomeOffice/equivalent protection at the workplace - otherwise to paid leave.

4. Highly vulnerable persons: Who is considered a particularly vulnerable person?

According to Covid-19-VO 3 of June 19, 2020 (SR 818.101.24), the new Art. 27a (amendment of Jan. 13, 2021) specifies under which conditions particularly endangered persons may continue to be employed or are exempt from work on a paid basis:

- 1) Whenever possible, work-related duties are to be performed from home;
- 2) If not possible, equivalent substitute work must be assigned that can be done from home;
- 3) If presence at the workplace is indispensable, strict protective measures must be complied with (protective suit, etc.);
- 4) If this is not possible neither, equivalent work must be assigned on site at the same pay with such requirements. Only if this is also not possible, the person is released from work with continued payment of wages.

Affected persons must communicate their endangerment, for this the personal explanation is sufficient in principle. Irrespective of this, the employer has the right to demand a medical certificate for the hazard.

According to the current status, such persons include pregnant women who have not been vaccinated against Covid-19 (i.e. 2 doses) and in particular have diseases such as **hypertension, diabetes, cardiovascular diseases, chronic respiratory diseases or other diseases listed in Art. 27a para. 10 f. Covid-19-VO 3 present or attend therapies.**

Persons 65 and older and adults with pre-existing conditions were already considered vulnerable. For details see: Annex 6 of Covid-19-Vo-3 > <https://www.admin.ch/opc/en/classified-compilation/20201773/index.html>

