

The logo for 'krfacts' features a large, stylized white letter 'k' on a green background. To the right of the 'k', the word 'rfacts' is written in a white, lowercase, sans-serif font. The background is a light green with a pattern of small, glowing white circles.

COVID-19 Update: Selected Federal Measures

The Covid-19 Act has been in force since September 27, 2020. It provides the basis for the Federal Council to order the "Covid-19 measures" in the ordinances based on it. In this issue of krfacts, selected federal regulations that are in force and have already been repealed are highlighted or mentioned as an update. Status: January 18, 2021.

A. LABOR LAW

I. Short-time compensation

The Covid-19 Unemployment Insurance Ordinance is still in force, but it has undergone some changes in recent months. Since September 01, 2020, the eligibility requirements according to articles 31 to 33 of the Unemployment Insurance Act apply again, so the originally expanded group of eligible employers no longer applies. An exception continues to apply for employees on call in a permanent employment relationship who have been working in the company for at least six months and for vocational trainers for their expenses in connection with the training of apprentices.

As of September 1, 2020, the maximum duration of the approval process is again three months. In addition, a maximum period of 18 months compensation coverage now applies. However, the summary settlement procedure continues to apply (until March 31, 2021). The Federal Council is expected to decide on certain adjustments again on January 20, 2021. Possible adjustments include the abolition of the waiting period, the exclusion of accounting periods for which the loss of working hours exceeds 85 percent of the company's working hours, and the extension of the short-time compensation (KAE) entitlement to persons in fixed-term employment relationships and apprentices.

II. Compensation for loss of earnings

As a cushion for loss of earnings, the Federal Council has adopted the Covid-19 loss of earnings compensation (SR 830.31). In particular, the following are entitled to compensation:

- Parents with children who have to interrupt their employment because outside childcare is no longer guaranteed;
- Persons who have to interrupt their employment due to a quarantine measure;
- under certain conditions, self-employed persons and persons in a position similar to that of an employer if their activities have been significantly restricted by the Corona measures (a 40% loss in sales revenue compared to the average of the years 2015 to 2019 is considered a significant restriction)

The compensation is paid as a daily allowance and amounts to 80% of the average earned income. The compensation amounts to a maximum of 196 Swiss francs per day. The cantonal authorities provide forms for claiming the allowance.

III. Working from Home Obligation

At the Federal Council meeting on January 13, 2021, the Federal Council decided to amend the Covid-19 Ordinance Special Situation (SR 818.101.26) in view of the continuing high levels of infection. As of January 18, 2021, employers must ensure that employees fulfill their work obligations from home, where this is possible due to the nature of the activity and can be implemented with reasonable effort. Employers shall take the appropriate organizational and technical measures for this purpose. The Federal Council thus introduces the so-called "home-office obligation".

The wording of the law leaves employers a certain amount of leeway as to whether working from home must be arranged or not. Primarily, it should depend on the activity of the employees. If the work activity is basically possible from home, the question remains whether the order is proportionate. The measures, especially in the areas of IT hardware and software, are to be realized by the employer if this is possible with a proportionate effort and the basic infrastructural and spatial conditions at home are given.

Ultimately, this means that a decision must be made in each individual case as to whether the arrangement of working from home is proportionate or not.

If working from home is arranged, the employer does not owe the employee any compensation for expenses (in particular for electricity costs, rental costs, internet, etc.). On the other hand, the employer must pay for expenses that are necessary for the performance of the work (e.g. for postage, printer cartridges, paper, etc.).

Special regulations apply with regard to particularly vulnerable employees. Pregnant or unvaccinated and sick employees are considered as such (for the exact definition, please refer to Art. 27a of Covid-19 Regulation 3). For them, it applies that they must perform their work from home. If this is not possible, the following cascade applies:

- The employer assigns the employee equivalent substitute work that can be performed from home.
- If this is not possible, employment at the original workplace is permissible if all close contact with other persons is excluded.
- If close contact with other persons cannot be avoided due to the activity, the measures according to the STOP principle (protection concept of the Federal Office of Public Health) must be observed for the work at the original workplace.
- If the previous employment is also not possible in compliance with the measures on site, the employee must be assigned equivalent substitute work on site that meets the requirements.

It is important to mention that the employer must listen to the employee before taking the measures and documenting the decided measures in writing. Finally, the employer must inform the employees in an appropriate manner of the measures decided upon. Under certain conditions, the employee has a right of refusal and must be released from work with continued payment of wages if necessary. Employees who are particularly at risk are entitled to Covid-19 compensation.

B. HARDSHIP ASSISTANCE

The Covid-19 Hardship Ordinance of the Federal Council (SR 951.262) came into force on December 01, 2020. Among other things, it regulates the basic requirements for companies to be eligible for hardship assistance from the cantons. Within the cantons, further requirements may apply in order to receive hardship assistance.

Eligible are sole proprietorships, partnerships or legal entities domiciled in Switzerland with a valid VAT number, which were founded or entered in the commercial register before March 01, 2020, generated an average turnover of at least CHF 50,000.00 in 2018 and 2019 and the majority of their wage costs are incurred in Switzerland.

The beneficiary must also prove to the canton that

- it is viable or profitable
- it has taken all necessary measures that are important for securing liquidity and capital
- it has not received Covid-19 sector-specific federal financial assistance in the areas of sports, culture, public transportation or media.

For a claim to exist, the entrepreneur must prove to the canton that its annual turnover in 2020 in connection with officially ordered measures to combat the Covid-19 epidemic is below 60% of the average annual turnover in 2018 and 2019. This means that there is a sales shortfall of at least 40%.

As of January 13, 2021, the Federal Council decided to change the requirements, which should facilitate the receipt of hardship payments. In the event of a drop in sales in the months of January 2021 to June 2021 in connection with measures ordered by the authorities to combat the Covid-19 epidemic, the company concerned can now use the sales of the last 12 months instead of the annual sales for 2020 to calculate the drop in sales.

In addition, businesses that have had to close their operations for at least 40 calendar days since November 01, 2020 due to federal or cantonal measures to contain the Covid-19 epidemic will no longer be required to show the aforementioned decline in sales. This will primarily provide financial support to restaurants, bars and leisure and entertainment businesses.

The regulation describes the individual requirements in detail. Should any questions arise in the specific case, we recommend contacting us.

C. À FONDS PERDU CONTRIBUTIONS IN TEAM SPORTS

As of December 19, 2020, the Covid-19 Ordinance Team Sports (SR 415.022) came into force. Upon request, clubs can apply for À-Fonds-Perdu contributions to partially compensate for financial losses (mainly from ticket sales). No contributions are paid for cancelled matches.

D. SUPPORTS IN THE FIELD OF CULTURE

The entry into force of the Covid-19 Cultural Ordinance (SR 442.15) and the measures contained therein are intended to mitigate the economic impact on creative artists. In particular, losses in connection with the cancellation of events are to be partially compensated upon request. The Swiss government may grant financial aid for this purpose.

In addition, non-repayable cash benefits are granted to cover the immediate costs of living (so-called emergency assistance), insofar as these cannot be met by the beneficiaries themselves.

E. SOLIDARITY GUARANTEE LOANS

Still in force is the Covid-19 Solidarity Guarantee Ordinance (SR 951.261), which is now based on the Solidarity Guarantee Act (SR 951.26) that entered into force on December 19, 2020. Accordingly, sole proprietorships, partnerships or legal entities domiciled in Switzerland may apply for a loan if they:

- have been established before March 01, 2020;
- are not in bankruptcy or composition proceedings or in liquidation at the time of the request;
- have been significantly impacted economically due to the Covid-19 pandemic;
- have not already received liquidity guarantees based on the emergency regulations in the areas of sport or culture at the time the application is submitted.

A distinction is made between interest-free loans up to CHF 500,000.00 (so-called joint and several guarantees with simplified conditions) and loans bearing interest at 0.5% p.a. from CHF 500,000.00 up to CHF 20 million (so-called other joint and several guarantees). In the case of the latter, the bank performs a credit check as is normally customary in the industry. This is not required for loans up to CHF 500,000.00.

Both loans are granted for a term of 60 months and five years respectively, with a two-year extension option in cases of hardship.

Finally, reference should be made to the penal provisions in the Ordinance, according to which anyone who intentionally obtains a credit under this Ordinance with false information or uses credit funds for the following purposes shall be punished by a fine of up to CHF 100,000.00:

- for the distribution of dividends and bonuses and the repayment of capital contributions;
- for the granting of asset loans or the refinancing of personal and shareholder loans structured as asset loans;
- for the repayment of group loans;
- for the transfer of credit funds secured by means of a joint and several guarantee in accordance with this Ordinance to a group company directly or indirectly affiliated with the applicant that is not domiciled in Switzerland;
- for the purpose of rescheduling pre-existing loans (with exceptions; Art. 2 para. 3 Covid-19-SBüG).

F. INSOLVENCY LAW

The Covid-19 Ordinance on Insolvency Law (SR 281.242) was repealed as of October 20, 2020. The measures applicable therein, such as the adjustments to the notification of over-indebtedness in connection with Art. 725 para. 2 CO, adjustments to the law on composition contracts and the Covid-19 deferral, were thus no longer continued.

G. HEALTH LAW

On December 18, 2020, the Federal Council decided that rapid antigen tests can now also be used for people who do not show any symptoms of the disease. The declared aim is to detect persons suffering from Covid-19 without symptoms in order to interrupt chains of infection at an early stage. However, the federal government does not pay for tests performed in such a setting. It is also important to note that participation in such tests is voluntary. Employers in particular cannot oblige employees to take such tests.

H. REAL ESTATE LAW

I. Regarding tenancy law

In its 2020 winter session, Parliament rejected the Covid-19 business rent bill. In it, business tenants affected by the Covid-19 measures were to receive a rent reduction of 60%. This means that tenants continue to rely on the goodwill of landlords or benefit from cantonal measures.

II. Regarding condominium law

For the question of holding condominium owners' meetings, reference can be made to the explanations on the subject of meetings of companies (Section E).

III. Private construction law and the law governing contracts for work and services

Furthermore, if SIA standard 118 is included, Art. 96 para. 1 SIA 118 must be observed. Should the measures continue to have an effect on the time schedule of the contract, these contractual deadlines shall be extended appropriately if the execution of the work is delayed through no fault of the Contractor. The prerequisite is that the Contractor has taken the possible as well as additional precautions to prevent the delay.

If the parties have not included SIA Standard 118 in their contractual relationship, any delay caused by the COVID-19 measures shall be assessed in accordance with the Code of Obligations.

For further, concrete explanations, reference can be made to the krfacts special issue on [real estate law](#) dated April 09, 2020.

I. GENERAL ASSEMBLIES

The current Covid-19 Ordinance 3 provides in Art. 27 for the measure already known from the Emergency Ordinance that the organizer may order, irrespective of the expected number of participants and without observing the invitation period, that the participants may exercise their rights exclusively in writing, in electronic form or through a designated independent proxy. The order must be communicated in writing or published electronically no later than four days before the event.

The provisions are also applicable to association and condominium owners' meetings.

Further details on this possibility of restricting participation rights can be found in the May 11, 2020 krfacts special issue [Meetings of Companies](#).

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Contacts



Luca Eigensatz
Attorney at Law
luca.eigensatz@krlaw.ch


Profilsite Luca Eigensatz



Raffael Steger
Attorney at Law
raffael.steger@krlaw.ch

Profilsite Raffael Steger

Kaufmann Rüedi Attorneys at Law
Office Lucerne: Alpenquai 28a | CH-6005 Luzern
Office Zug: Lindenstrasse 16 | CH-6340 Baar
Tel. +41 41 417 10 70 | Fax +41 41 417 10 77
krlaw@krlaw.ch | www.krlaw.ch

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