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La réduction de l'horaire de travail (RHT) avant et après le Covid



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Reduced working hours (RHT) before and after Covid

A few weeks ago, the Federal Council has decided to increase the maximum duration of compensation for reduced working hours from 12 to 18 months. This decision is an opportunity to remember that while RHT, or reduced working hours, was much in the news during the Covid pandemic, it already existed before Covid. Swiss companies were using it before the pandemic and are still using it today. It is an opportunity to remind ourselves what RHT is and a few principles about it.

In a press release dated 19 June 2024, the Federal Council has announced that it has decided to increase the maximum period of compensation for reduced working hours from 12 to 18 months. This change will come into force on 1 August 2024 and will apply until 31 July 2025.

The Federal Council explains its decision as follows: *"Due to the sharp rise in energy prices at the start of the war in Ukraine, energy-intensive industries in particular had to make use of the compensation for reduced working hours (RHT). Although these prices have fallen again in the meantime, the economic situation remains difficult in a number of sectors. The extension of the maximum compensation period gives companies that have already reached or are about to reach the ordinary maximum compensation period the opportunity to benefit from a reduction in working hours"*.

(<https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-101484.html>).

RHT (or compensation paid in the event of RHT) is provided for in the Federal Law on Compulsory Unemployment Insurance and Compensation in the Event of Insolvency (LACI). These provisions already existed long before Covid. The Covid-19 law only introduced and provided for a faster, simplified procedure for obtaining compensation for RHT in connection with the pandemic. It did not introduce this compensation, which already existed and could already be granted to companies facing a temporary drop in their activity and therefore a reduction or loss of work.

According to SECO's explanation, the RHT *"aims to offset a temporary drop in activity and preserve jobs. In this way, unemployment insurance offers employers an alternative to imminent redundancies"*. The advantage for the employer is that it *"saves the costs of staff turnover (training costs for new staff, loss of the company's own know-how, etc.) and is able to draw on its workforce in the short term"*. The advantage for employees is that they keep their jobs, are still protected by the "social protection linked to the employment contract" and avoid "gaps" in social insurances' contributions.

<https://www.seco.admin.ch/seco/fr/home/Arbeit/Arbeitslosenversicherung/leistungen/kurzarbeitsentschaedigung.html>

Articles 31 and 32 of the LACI lay down the conditions for obtaining compensation in the event of RHT. Certain conditions must be met by employees and others by employers.

According to article 31 of the LACI, employees whose normal working hours are reduced or whose activity is suspended are entitled to compensation in the event of a reduction in working hours if they meet the following conditions:

1. they are obliged to contribute to the insurance scheme or have not yet reached the minimum age for AVS contributions, i.e. retirement age
2. the loss of work must be taken into account in accordance with Article 32 of the LACI;
3. their employment contract has not been terminated;
4. The reduction in working hours is likely to be temporary and it can be assumed that it will enable the jobs in question to be maintained.

However, the following employees are not entitled to compensation in the event of a reduction in working hours:

1. Employees whose reduced working hours cannot be determined or whose working hours are not sufficiently controllable.
2. The employer's spouse, employed in the employer's company;
3. Persons who determine the decisions taken by the employer - or are in a position to influence them considerably - in their capacity as a partner, member of a governing body of the company or holder of a financial interest in the company; the same applies to the spouses of these persons, who are employed in the company.

With regard to the loss of work that must be taken into consideration, according to Article 32 of the LACI, if the loss of work is due to measures affecting the organisation of the business, such as cleaning, repair or maintenance work, or to other habitual and repeated interruptions to operations, or to circumstances inherent in the normal operating risks that the employer must assume, compensation for RHT cannot be received.

The same applies to a loss of work that is customary in the industry, profession or business, or caused by seasonal fluctuations in employment.

The same also applies if the loss of work coincides with public holidays, is caused by company holidays or is claimed by the employer only for certain days immediately preceding or following public holidays or company holidays.

It should be noted – and this is an important point – that RHT is only possible if the employees accept it. If they do not, they must be paid in accordance with their contract of employment. However, they run the risk of being dismissed for economic reasons.

Nor is RHT possible if the contract is a fixed-term contract, or if the contract is an apprenticeship contract, or if the employee is placed with the employer by a temporary employment agency.

Reduced working hours are also not possible if the reduction in working hours is caused by a collective labour dispute within the company where the employee works.

Compensation for reduced working hours amounts to 80% of the loss of earnings taken into consideration.

Under article 37 of the LACI, the employer is obliged to advance the compensation and pay it to the employee on the usual payday. It must also continue to pay all social security contributions.

In other words, the employer advances the amount of the allowance by paying it to the employee, i.e. 80%, but pays the social security contributions on a 100% salary so that the employee has no loss or “hole” in his social insurances’ contributions.

Under Article 35(1) of the LACI, compensation is paid for a maximum of twelve accounting periods within a two-year period.

Under Article 35 paragraph 2 of the LACI, the Federal Council may temporarily extend the maximum duration of compensation by a maximum of six deduction periods. The Federal Council announced this extension in its decision of 19 June 2024.

The procedure to be followed by companies to obtain compensation for RHT is explained very simply on the travail.swiss website and comprises 5 stages.

<https://www.arbeit.swiss/secoalv/fr/home/menue/unternehmen/versicherungsleistungen/kurzarbeitsentschaedigung/covid-19.html#-1231722694>

The undersigned refers to the above-mentioned website and concludes by reminding companies that the possibility of obtaining compensation for RHT existed before Covid and still exists. This has definite advantages when the reduction/loss of work is temporary and exceeds 10%. For employees, RHT has the advantage of allowing them to keep their jobs. In addition, if income is reduced, social security contributions continue to be paid by the employer at 100% during the period of RHT.

Source : <https://www.wg-avocats.ch/en/actualites/reduced-working-hours-rht-before-and-after-covid/>