

Bavarian State Ministry for Science and the Arts, 60327 Munich

Per E-mail

To the personnel administration offices  
in the business division of the Bavarian  
State Ministry of Science and the Arts

Your reference /your message dated

Our reference (please indicate when  
replying)  
R.5-M1100/64/164

Munich, 20.01.2021

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**Service and labour law measures in connection with the  
coronavirus pandemic;  
here: extension of the children's sickness benefit to 20 days**

Ladies and Gentlemen,

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On 14 January 2021, the German Bundestag decided to extend children's sickness benefit by 10 days and, in the case of single parents, by 20 days for each child in 2021; the subsequent Bundesrat resolution passed on 18 January 2021. In addition to the need to care for sick children, the regulation is also to apply in cases in which the care of children becomes necessary due to the closure of schools or childcare facilities. The implementation will take place with an amendment to § 45 SGB V (Social Code Book V), which is to come into force retroactively from 5 January 2021.

Due to the effects of the extension of the child sickness benefit on leave of absence for **employees of the State of Bavaria**, the following information is provided to explain the legal situation.

## **1. Leave of absence to care for sick children under 12 years of age or disabled children dependent on assistance**

With regard to leave to care for sick children who have not yet reached the age of twelve or who are disabled and dependent on assistance, the only change is the increase in the scope of children's sickness benefits and the longer period of leave that is possible for employees and civil servants. The exemption for employees results directly from the application of § 45 SGB V. For civil servants, these provisions apply via a reference to this regulation in § 10 para 3 of the Ordinance on Leave, Maternity Protection, and Parental Leave for Bavarian Civil Servants (Bayerische Urlaubs- und Mutterschutzverordnung - UrIMV).

In the case of employees with private health insurance and civil servants whose remuneration exceeds the compulsory insurance limit in the statutory health insurance system, the previous legal situation remains unchanged; § 45 SGB V does not apply to them.

## **2. Leave of absence in case of closure of schools and childcare facilities**

The new regulation also provides that the entitlement to sickness benefit for the calendar year 2021 also exists if facilities for the care of children, schools, or facilities for persons with disabilities are temporarily closed by the competent authority to prevent the spread of infections or communicable diseases on the basis of the Infection Protection Act, or if access to them is prohibited, including because of mandated isolation, or if school or company holidays are ordered or extended by the competent authority for reasons of infection protection, or if compulsory attendance at a school is lifted, or access

to childcare is restricted. The situation is thus extended from "sick children" to "healthy children in need of care". This extension also applies to employees and civil servants in a way that is analogous to the legal situation for sick children.

According to the FMS of 2 October 2020 (Gz.: P 1400-1/130) on the service and labour law measures due to the coronavirus pandemic, which we sent you with the WKMS of 5 October 2020 (Gz.: R.5-M1100/64/121), there are no special provisions in this case group for employees of Bavaria, however, there are already extensive support options.

According to point 8 b) of the above-mentioned FMS, in the event of the closure of schools and childcare facilities, parents may be granted teleworking and subsidiary leave from work (with continued payment of remuneration) for the entire duration (without time limit or allocation) of the closure of the schools or individual year groups and other facilities, provided that orderly business operations permit the telework or leave of absence, and the telework or leave of absence is necessary for the care of children (without a fixed age limit for the children applying). A school/facility closure is also assumed if and insofar as scheduled lessons/care are not offered in the regular full scope, but only for a limited time (e.g. alternating lessons). There is no obligation to provide evidence of the closure of the facilities.

These regulations clearly go beyond the intended extensions in § 45 SGB V, because in particular there is no allocation system. Recourse to the provision of § 45 SGB V for leave of absence in the event of the closure of schools and childcare facilities is therefore not reasonable or appropriate, neither for employees by direct application of the provision of the Social Code by direct application of the provision of the Social Code,

nor for civil servants through reference to these provisions in the holiday regulations.

However, it is expressly pointed out that employees must in any case perform telework as far as this is possible in terms of their position and technical equipment. Various press statements on the amendments to § 45 SGB V, on the other hand, could be understood to mean that the provision of § 45 SGB V could also be used if the employee could perform telework, but would prefer to care exclusively for the child (and not perform telework). Should an employee of the State of Bavaria wish to make use of the provisions of § 45 SGB V in this sense, i.e. without doing telework, although telework would be possible, this claim can of course not be refused. However, further exemptions according to point 8 of the FMS of 2 October 2020 can then no longer be granted (no cumulative application of § 45 SGB V and point 8 of the FMS of 2 October 2020, but only as an alternative).

This letter will be **forwarded** to the Associations for Student Affairs and the other legally independent institutions for information purposes.

Yours faithfully,

Michael Kling

Ministerial Counsellor