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## Germany: Wage guarantee in case of insolvency

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Germany

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 17 February, 2022

Native name:

Sozialgesetzbuch III

English name:

Social code book III

### Article

165, 358

### Description

In case an employer terminates business activities and does not pay the remaining due wages to workers, workers are entitled to receive financial insolvency compensation (Insolvenzgeld). The insolvency compensation is restricted: Compensation will only be paid for the three month prior to the opening of insolvency proceedings or the rejection of insolvency proceedings. In case the employment relationship between a worker and a company ended before that decision, workers are eligible to receive insolvency compensation for the three months before the termination of the employment contract. Redundant workers already receiving unemployment benefits are not entitled to receive insolvency compensation. An employer is considered insolvent if the company is definitely closed down, if there is a high probability that payment obligations cannot be settled at the due date, or if the assets are not sufficient to cover the company's debts. In this process, different actors have a duty to inform the affected workers: Workers must be informed by the works council (as stipulated by the Works Constitution Act in case of insolvency) and the employer or the responsible insolvency manager.

The insolvency compensation comprises net wages including holiday remuneration, payment in case of illness, remuneration for overtime, travel costs, subsidies for maternity benefit, subsidies for voluntary health insurance, and capital-forming benefits, with certain maximum limits; income from a new employment contract or from self-employment during the 'insolvency income period' will be deducted.

The compensation is covered by a centralised contribution system ('Insolvenzzumlage') set up for potential claims of workers in the case of insolvency. The fund rests on monthly contributions by private employers (0.06% of the pay roll in 2020, 0.12% in 2021, 0.09% in 2022) which are paid alongside with social security contributions to the statutory health insurers. The insurers transfer the contributions to the Federal Employment Agency (Bundesagentur für Arbeit) that governs the funds. Private households, public employers, and public agencies/bodies exempt from the risk of insolvency do not have to contribute to this fund. For 2022, the insolvency compensation is capped at a wage level of €6,900 in Western Germany and €6,450 in Eastern Germany (for 2021:€7,100 in Western Germany and €6,700 in Eastern Germany).

All workers employed with private employers are entitled to this provision, including trainees, apprentices and home workers. The compensation is paid by the Federal Employment Agency.

Application for insolvency income has to be filed with the Federal Employment Agency within two months after the agency has attested the termination of business or the insolvency, otherwise the employee loses the entitlement.

### Comments

The Federal Employment Agency provides statistics on the claimants of insolvency compensation ('Insolvenzgeld'). In 2020, the total number of applications\* was 150,500; 123,100 applications\* were approved during this period. In 2020, the Federal Employment Agency spent €1.21 billion on insolvency compensation and related social security contributions (BA, 2021), compared with €842 million in 2019 (BA, 2020).

A decade earlier, at the peak of the financial crisis in 2009, the number of claims and approvals was significantly higher at 276,400/214,600 – and then fell to 149,400 claims and 121,000 approved claims by 2018. In 2009, the Federal Employment Agency spent €1.62 billion on insolvency compensation and related social security contributions (BA, 2010); in 2018, the figure was €588 million (BA, 2019).

Due to the suspension of the insolvency application requirement from 1 March 2020 to 30 April 2021, an increase in insolvency benefit claims is expected in 2021.

\*Note that the number of claims is higher than the number of affected employees due to overlapping claims by employees, social security

institutions and third parties.

### Cost covered by

Companies

### Involved actors other than national government






Public employment service

Works council

### Thresholds

No, applicable in all circumstances

### Sources

-  Bundesagentur für Arbeit (Federal Employment Agency) (2018), Insolvenzgeld - Merkblatt für Arbeitnehmerinnen und Arbeitnehmer. Dienste und Leistungen der Agentur für Arbeit.
-  ERM database on restructuring support instruments - Germany: Insolvency compensation
-  Social Code Book III
-  Deutsch, A. (2011), Europäische Beispiele für die Insolvenzentgeltsicherung, Federal Ministry of Labour, Social Affairs and Consumer Protection/IEF, Vienna
-  ERM database on restructuring support instruments - Germany: Short-time working allowance
-  Insolvenzgeld - Jahreszahlen (2021)
-  Bundesagentur für Arbeit (Federal Employment Agency), Geschäftsbericht 2020

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## Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: [information@eurofound.europa.eu](mailto:information@eurofound.europa.eu)

Press: [media@eurofound.europa.eu](mailto:media@eurofound.europa.eu)



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