



LABORA
LEGAL

COVID19 (CORONA) VIRUS – SALARY COMPENSATION SCHEME

Updated 23 March 2020



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TABLE OF CONTENTS

1.	Introduction	3
2.	Purpose	3
3.	Compensation	3
4.	Qualifications.....	5
4.1	Companies	5
4.2	Employees.....	5
4.3	Illness	6
4.4	Release.....	7
4.5	Full Salary and Pay-Cut Agreements	7
4.6	Changes after Application	8
4.7	Termination	9
4.8	Other Schemes	10
5.	Application	10
6.	Documentation Requirements	11

1. Introduction

- 1.1 On 14 March 2020, the Danish Government and the social partners reached an agreement on partial salary compensation for Danish companies, who are or will be temporarily releasing their employees from work with full pay (the "Salary Compensation Scheme").
- 1.2 The Salary Compensation Scheme was presented as a bill on 19 March 2020. Since then, the Danish Government and social partners agreed to an addendum to the agreement, and on 22 March 2020, the Danish Ministry of Employment proposed an amendment to the bill, and further on 23 March 2020 a report to the bill was issued. The bill is expected to pass on 24 March 2020.
- 1.3 Some, but not all, details of the Salary Compensation Scheme have been clarified by the abovementioned addendum, amendment and report to the bill. The following is based on the information currently available and expectations to the interpretation of the Salary Compensation Scheme, however there may be changes to the final enactment or interpretative aids.

2. Purpose

- 2.1 The purpose of the Salary Compensation Scheme is to provide aid for Danish companies (or other legal entities, cf. below), who are experiencing significant financial consequences of the restrictions imposed by the Danish Government in the attempts to limit the spread of the Covid19/Corona-virus (quarantines and closing of schools etc.) and especially to maintain the high employment rate in Denmark and avoid mass dismissals.

3. Compensation

- 3.1 Companies can receive partial salary compensation for individual employees, who are temporarily released from work with full pay ("Temporarily Released Employees") for a period during 9 March – 9 June 2020.
- 3.2 Salary compensation is only payable for Temporarily Released Employees, whose employments commenced prior to 9 March 2020.
- 3.3 Compensation for salaried (monthly-paid) employees is 75% of the individual employee's full salary, maximum (gross) DKK 23,000 per month per full-time employee.

- 3.4 Compensation for non-salaried (hourly-paid) employees is 90% of the individual employee's full salary, maximum (gross) DKK 26,000 per month per full-time employee. The maximum compensation equals DKK 162.17 per hour based on 160.33 working hours per month.
- 3.5 The maximum compensation for part-time employees will be pro-rated based on the maximum compensation for full-time employees with normal weekly working hours of 37.
- 3.6 The Temporarily Released Employees will, as per the Salary Compensation Scheme, and unless the Temporarily Released Employee has accepted a pay-cut prior to the company entering into the Salary Compensation Scheme, cf. Sections 3.7 and 4.5.4, be regarded as having taken 5 holidays (or other non-salaried days, cf. below) per full compensation period, i.e. 9 March – 9 June 2020.
- Ex1: If the company applies for salary compensation for the full period from 9 March – 9 June, the company's salary compensation will be reduced with 5 days per employee.
 - Ex2: If the company applies for salary compensation for only half the period, i.e. from 9 March – 24 April, the company's salary compensation will be reduced with 2.5 days per employee.
 - The company and individual Temporarily Released Employee must agree to the placing of the holiday, or if this is not possible, the company must place the holidays proportionally over the applicable period.
 - If the Temporarily Released Employee does not have 5 (or the applicable prorated number of holidays) remaining holidays with pay or holiday allowance, or any days off-in lieu of overtime or flex-hours, the employee can choose to either take the days without pay or to use his/her holidays with pay or holiday allowance from the holiday year 1 May – 31 August 2020 (as accrued in 2019).
 - It is assumed that the above does not influence the company's otherwise applicable rights to give notice of additional holiday. It is, however, recommended that any additional holidays are placed before or after the period for which the company applies for salary compensation under the Salary Compensation Scheme as it has not been clarified whether this could imply

a deduction in salary compensation or be in conflict with the requirements for receiving salary compensation.

- 3.7 It has been specified in the amendment to the bill that the Temporarily Released Employees are not obligated to take the 5 (or prorated number of) holidays, if the company has entered into a collective agreement, or an agreement with the majority of the Temporarily Released Employees implying a pay-cut, cf. also Section 4.5.4. It is assumed, but has not yet been clarified, that this applies on an individual basis, meaning that each individual Temporarily Released Employee, who has accepted a pay-cut prior to the company entering into the Salary Compensation Scheme, is not obligated to take 5 (or prorated number of) holidays, but any Temporarily Released Employee, who have not accepted a pay-cut prior to the company entering into the Salary Compensation Scheme, *are* obligated to take the 5 (or prorated number of) holidays.

4. Qualifications

4.1 Companies

- 4.1.1 The Salary Compensation Scheme applies to all companies or other legal entities (including foundations) that have a Danish business registration number (CVR-number) and employees (one employee is enough).

- 4.1.2 A company is categorized and evaluated as per its business registration number (CVR-number) regardless of how many separate business units (P-numbers) the company has. A group of companies must, as such, enter (or not) the Salary Compensation Scheme separately for each individual company, and each company in the group must, in order to qualify for the Salary Compensation Scheme, individually meet the requirements.

4.2 Employees

- 4.2.1 The company must have sent at least 30 % or 50 of its employees home and temporarily released them from work (the Temporarily Released Employees) for a period within 9 March – 9 June 2020.

- 4.2.2 All employees, including part-time employees and student workers, who are employed to work in Denmark and who have a CPR-number (social security number) are included in the calculation of how many employees the company has and has sent home. The aggregation of employees is, as such, per CPR-number and not

made in FTEs.

- 4.2.3 It is assumed that the company's working owners and/or chief executive director(s) is/are only subject to the Salary Compensation Scheme, if their role and function is subject to the Danish Act on Salaried Employees.
- 4.2.4 It is unclear whether trainees and apprentices (subject to the Vocational Training Act) are included in calculations for and/or covered by the Salary Compensation Scheme.
- 4.2.5 Employees who are only associated with the company for work on an on-call basis, and who do not have an agreement on employment exceeding 2 (two) days, are not included in the company's employees or compensated for as part of the Salary Compensation Scheme.
- 4.2.6 The company is free to decide which individual employee's the company decides to make the Temporarily Released Employees, however the company must for all other purposes such as salary reductions and later termination comply with applicable laws and collective bargaining agreements.
- 4.2.7 Whether or not the company applies for the Salary Compensation Scheme is decided by the company, and the Temporarily Released Employees cannot object to the company's application.
- 4.3 Illness
- 4.3.1 The company can also include employees who are absent due to illness, when the company releases his/her colleagues, in the Temporarily Released Employees and, hence, receive salary compensation for the salary payable to this individual. The decisive factor is whether the employee would have been released (and as such terminated had it not been for the Salary Compensation Scheme). The company will, however, lose the right to reimbursement of sickness benefits for the individual.
- 4.3.2 If a Temporarily Released Employee falls ill, he/she must notify the company of his/her incapacity to work as per normal regulations but continues to be included in the Salary Compensation Scheme. The company will, however, not receive reimbursement of sickness benefits for this individual employee as long as he/she participates in the Salary Compensation Scheme.

4.4 Release

- 4.4.1 The Temporarily Released Employees are not allowed to work from home.
- 4.4.2 If a Temporarily Released Employee works from home or is later asked to work from home, the company must re-new its application for the Salary Compensation Scheme to not include this individual.
- 4.4.3 The company can have other employees working from home during the same period, where it is applying for salary compensation for Temporarily Released Employees, but the company will of course not receive salary compensation for those working from home (regardless of whether they are not working full time).

4.5 Full Salary and Pay-Cut Agreements

- 4.5.1 The company must pay full salary to the Temporarily Released Employees; and compensation will be paid based on the salary applicable at the time when the company enters the Salary Compensation Scheme.
- 4.5.2 The “full salary” is base salary, salary supplements and all benefits including holiday allowance as it applies, when the company enters the Salary Compensation Scheme.
- 4.5.3 For employees with bonus schemes, commission or other variable salary elements, the “full salary” includes – as normal - a pro rata share hereof. There are different opinions on whether this could be the actual/realistic earning for the relevant period, or whether an average share should be calculated based on the individual’s earnings over the last 3 (three) or 12 (twelve) months, and we are awaiting clarification from the enactment process.
- 4.5.4 It has been confirmed in the proposed amendment to the bill that the company and Temporarily Released Employees can agree to a pay-cut (lower salary) prior to the company entering the Salary Compensation Scheme, and that this will mean that the company can receive compensation and pay salaried to the Temporarily Released Employees based on the new and agreed lower salaries. *However*, it follows from the report to the bill, issued 23 March 2020, that this applies to either (i) collective agreements on pay-cuts and (ii) individual agreements on pay-cuts entered into with *a majority* of the Temporarily Released Employees. We are investigating whether only effects the question of holidays, cf. Section 3.6 or whether it is a condition for the company’s entitlements under the Salary

Compensation Scheme. For now, however, we must recommend that all steps are taken to ensure that agreements on pay-cuts are secured with the majority of the Temporarily Released Employees, and that if this is not successful, that the company enters into the Salary Compensation Scheme with the previously applicable (full) salaries for *all* Temporarily Released Employees (and hence also annuls any agreements on pay-cuts that have been entered into).

4.5.5 Agreements on pay-cuts can consist of any agreement relating to a lower base salary and/or reduction in other benefits and must comply with any applicable collective bargaining agreements and law; and will be an appendix to the individual employee's employment contract. It is noted that agreements on pay-cuts can be overthrown later if they are found to be unreasonable, and if such claim is made by the individual employee. And as this could influence the company's entitlements under the Salary Compensation Scheme, it is recommended to carefully consider the fairness of any agreements on reductions in salary and/or benefits before signing and entering into the Salary Compensation Scheme.

4.6 Changes after Application

4.6.1 The company is expected to only apply for the Salary Compensation Scheme once.

4.6.2 The company can, however, enter the Salary Compensation Scheme with 30% or 50 of its employees and later decide to send home additional employees and then re-new the application for the Salary Compensation Scheme to include the additional Temporarily Released Employees.

4.6.3 The company can also, after having entered the Salary Compensation Scheme with at least 30 % or 50 of its employees, decide to let some of the Temporarily Released Employees return to work. Temporarily Released Employees can be asked to return for work with 1 days' notice. This will, however, imply that (i) the company must update its application and the company will of course only receive salary compensation for the actual number of Temporarily Released Employees, and (ii) it must be assumed that the company will lose all rights to further compensation, if the total number of Temporarily Released Employees is reduced to be less than 30 % or 50 of its employees.

4.6.4 Additionally, the company can also, in the event of extraordinary circumstances, ask a Temporarily Released Employee to return to work for a period of time, and then release him/her again including him/her again in the pool of Temporarily Released Employees for which the company is receiving salary compensation. The company

will, in this event, of course not receive salary compensation for the period, where the individual is working. When "extraordinary circumstances" apply is expected to be specified in a statutory order.

4.6.5 Unless the company is certain it will only have Temporarily Released Employees for a shorter period, it is recommended to apply for the entire period, i.e. until 9 June 2020. The company can always leave the Salary Compensation Scheme early than the period applied for.

4.6.6 If a company has received salary compensation for a number of Temporarily Released Employees until 9 June 2020, but fails to comply with the requirements at an earlier date (for instance, if the Temporarily Released Employees have returned to work), the company must repay the difference, i.e. overpaid salary compensation, including interests.

4.7 Termination

4.7.1 Salary compensation is only payable under the Salary Compensation Scheme for Temporarily Released Employees that would, had it not been for the Salary Compensation Scheme, been terminated. It is assumed that management will have to declare to this fact.

4.7.2 If the company finds it necessary to terminate employees *for financial reasons* while the company is participating in the Salary Compensation Scheme, the company's right to further salary compensation will cease as from the day where the company either terminates an employee for financial reasons or announces that it will terminate employees for financial reasons (which would for instance be relevant if the terminations are subject to the mass dismissal regulations).

4.7.3 All actions under the same company registration number (CVR-number) as a whole are relevant. As such, the company will not be entitled to (or continue to be entitled to) salary compensation under the Salary Compensation Scheme for one department, while executing terminations (for financial reasons) in another department.

4.7.4 The company will, however, not be obligated to repay salary compensation received for a period prior to such termination or announcement of terminations.

4.7.5 The company can participate in the Salary Compensation Scheme even though it has previously terminated employees due to financial reasons. It is assumed that

this also applies to terminations executed after 9 March 2020, but before the company enters the Salary Compensation Scheme. The company will, however, not receive salary compensation for the terminated employees, even if they are released from work during their termination notice periods.

4.7.6 The company's termination of an employee due to other reasons than financial reasons, for instance a termination based on performance issues or the 120-day rule, will not excluded the company from the Salary Compensation Scheme, however the company will not receive (further) salary compensation for the terminated employee. It is assumed that terminations of Temporarily Released Employees for other than financial reasons will be rare.

4.8 Other Schemes

4.8.1 The company cannot receive salary compensation under the Salary Compensation Scheme, if it is participating and it or its Temporarily Released Employees are receiving benefits or support under other state supported schemes.

4.8.2 For instance, the company cannot subscribe to both the Salary Compensation Scheme and the division of work scheme at the same time.

4.8.3 It is, however, expected that companies will be allowed to transition (one time) from one scheme to another.

5. Application

5.1 Application will be digital via the Danish Business Authority (www.virksomhedsguiden.dk) or Virk.dk. The system is expected to be up and running from 25 March 2020. Applications cannot be submitted before the system is ready (but it will be possible to request compensation for salary paid from 9 March 2020).

5.2 Compensation will be paid out as quickly as possible, and pay-outs are expected to commence 30 March 2020. Applications will, however, *not* be processed by a first come, first served policy.

6. Documentation Requirements

6.1 The company must, as part of the application, submit the following:

- The number of Temporarily Released Employees (at least 30% or min. 50 employees) and the total number of employees in the company
- CPR-number, salary and type of employees (full- or part-time employee)
- The period, the company is applying for salary compensation for.
- Declaration from the management that the information is correct.

6.2 When the Covid19/Corona-virus crisis is over (as decided by the Government), the company must submit the following:

- Documentation, confirmed by an accountant, that the number of Temporarily Released Employees stated in the company's application for salary compensation was correct and that they were actually released and not working from home during the period, for which the company applied for salary compensation. It has not yet been specified whether there are any formal requirements to this documentation.
- If the company has a shop steward, the documentation must include a declaration from the said shop steward stating that the employees were Temporarily Released and did not work from home.
- The company's application for the Salary Compensation Scheme and documentation is not otherwise to be submitted to or approved by a trade union.

Copenhagen, March 2020

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