


Corona special leave days ("children's sick leave benefit") for the school and daycare lockdown

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Decided: the announced "Corona special leave days for parents" have now passed not only the Bundestag (14 January 2021) but also the Bundesrat (18 January 2021). The law will come into force retroactively from 5 January 2021.

But how do additional days for children's sick pay ensure special leave entitlement for employees during the school and childcare lockdown?

Entitlement to "children's sick pay" from the health insurance fund

From the beginning of 2021, due to the pandemic and childcare "lockdowns", the number of days for which "children's sick pay" can be claimed from the statutory health insurance funds will be increased for the calendar year 2021:

- Doubling from 10 to 20 days per child.
- But a maximum of 45 days per insured person (=parent), so this will only be relevant if there are more than 2 children.
- For single parents 40 days per child, max. 90 days.

The payment is up to 90% or 100% of the lost net earnings (up to the contribution assessment ceiling). However, the child sickness benefit may not exceed 70% of the daily contribution assessment ceiling in health insurance (in 2021 this value is EUR 112.88).

These can not only be claimed during illnesses of the children, but also apply in case schools or day-care centres (*Kindergarten*) are closed due to the fight against the pandemic ("lockdown"), or there is an official recommendation not to use the facilities (as e.g. in the *Bundesland* of NRW: still open) without the child being ill.

A medical certificate is not required. However, the health insurance fund may request a certificate from the care facility.

The term "child **sickness** benefit" has therefore led to confusion. Politically, this benefit was therefore also announced as "special leave days".

Working from Home option does not prevent

Unlike the other replacement benefits newly introduced in the pandemic in the case of closed childcare facilities (in spring 2020) or quarantine of children (from November 2020) according to § 56 para 1a IfSG, the option to work from home is not considered a reasonable form of care this time, however.

Entitlement to the new "lockdown child sickness benefit" is therefore not excluded by the fact that working from home would **theoretically be possible**. However, if employees actually work from home, they will of course not have any loss of earnings and will not receive any additional "children's sick pay".

Entitlement to special leave (unpaid leave)

The new benefit initially only regulates the replacement of the missing pay.

However, employed parents also have a claim against the employer for unpaid leave under this law (§ 45 para. 3 SGB V) or from general civil law, provided that all the prerequisites for children's sick pay are met. These conditions include that

- the child is under twelve years old (or disabled and dependent on help) and
- no other person living in the household can take over the supervision or care.

If both parents are employed, only one parent is always entitled to the leave, as care by both is regularly not necessary. Who takes over the care is up to the parents, but if they are employed by the same employer, they must give due consideration to the latter's interests. If only one parent is employed, the other parent must always provide care.

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Cash benefit only for employees with statutory insurance, not for all parents

According to the general rules of the "children's sickness benefit" instrument, this can only be claimed by those with statutory insurance, so it is of no help to privately insured workers and self-employed parents.

Practical advice:

- **Employers must now grant the increased amount of (unpaid) Corona special leave** to "employees with children under 12 years of age" according to the above conditions. **Parents in the workforce must therefore be granted leave if they wish so.**
- **Human resources departments watch out: the increased number applies to the entire calendar year 2021!** So if employees do not use these additional days during the current lockdown, they can also be used for "normal child sick days" at some point during the 2021 calendar year. **Any coronavirus or pandemic reference is not required!**

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