

On January 18, 2021, an extension of the benefits to care for a sick child (payable by the respective statutory health insurance fund), pursuant to Section 45 of the German Social Code, Book V (SGB V), which is limited up to and including December 31, 2021, came into force. Child sickness benefits can now be claimed for healthy children in order to compensate for school and daycare closures during the pandemic.

### Which changes are in effect?

- In 2021, an allowance of **10 additional days (20 additional days for single parents)** will be granted per legally insured parent for each child under 12 years of age or per each child with a disability.
  - In total, each parent will be entitled to an allowance of 20 working days per child in 2021. If there are several children, each parent will be entitled to a maximum of 45 working days.
- Please note** – The children’s sick days of one parent may be transferred to the other parent if the employer of the other parent agrees to this.
- For single parents, the entitlement increases to 40 working days per child. If there are several children, single parents are entitled to a maximum of 90 working days.
- In addition, child sickness benefits can be claimed if homecare for a child becomes necessary due to the closure of their school, kindergarten, class or group caused by the pandemic, if compulsory school attendance has been suspended or access to childcare has been restricted, or if there is an official recommendation not to provide childcare.
  - The child’s actual illness is not considered a prerequisite for entitlement to child sickness benefits under Section 45 para. 2a sentence 3 SGB V.
  - The entitlement exists irrespective of whether the work can principally be performed at home.

### For which time period can child sickness benefits be claimed?

- For periods beginning on or after January 5, 2021, parents can have their entitlement to child sickness benefits determined retroactively. Child sickness benefits generally amount to 90% of the lost net remuneration.
- The application must be submitted to the statutory health insurance fund
  - The statutory health insurance fund provides application forms on its websites.
- Child sickness benefits pursuant to Section 45 para. 2a sentence 3 SGB V are not available for pandemic-related care prior to January 5, 2021, but compensation pursuant to Section 56 para. 1a of the German Infection Protection Act (IfSG) is permitted.

### What is the correlation between child sickness benefits pursuant to Section 45 para. 2a sentence 3 SGB V and the compensation claim pursuant to Section 56 para. 1a IfSG and the claim for continued payment of wages pursuant to Section 616 of the German Civil Code (BGB)?

- There is no statutory priority for child sickness benefits in the case of pandemic-related care. Therefore, parents can decide whether they want to claim the new child sickness benefits pursuant to Section 45 para. 2a sentence 3 SGB V or the benefits pursuant to Section 56 para. 1a IfSG.
  - However, for the period of payment of child sickness benefits pursuant to Section 45 para. 2a sentence 3 SGB V, the compensation claim pursuant to Section 56 para. 1a IfSG is then suspended for both parents.
- As in the case of the compensation claim under Section 56 para. 1a IfSG, it must also be assumed with regard to child sickness benefits that a claim does not exist as long as the employee has a claim to continued payment of wages under Section 616 of the German Civil Code (BGB), as this generally takes priority.
  - Pursuant to Section 616 of the German Civil Code (BGB), an employee does not lose his/her entitlement to remuneration if he/she is “prevented from performing his/her duties for a relatively trivial period of time for a reason in his/her person without fault on his/her part.” This also applies to the necessary homecare of children during the pandemic.
  - It is not generally possible to state exactly how long a “relatively trivial period of time” is, as it depends on the circumstances of an individual case.
  - The applicability of Section 616 of the German Civil Code (BGB) can be contractually waived or restricted.

### Does annual leave have to be taken first?

- No. If the prerequisites are met, a parent does not have to use existing leave first in order to apply for child sickness benefits.

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