

Navigating German Employment Law

German employment law basics, horizon scanning & hot topics

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German employment law basics

Employment Contracts:

The event began focusing on key definitions and highlighting the importance of the correct classification of employees vs. contractors. It was explained that whether a contractor is in fact an employee can have a significant impact, for example, on the company's social security and tax obligations and can even have criminal law implications. While there are generally no formal requirements in Germany for standard employment contracts, it was recommended that employment contracts are made in text form and signed either electronically or by hand. However, fixed term contracts ("**FTCs**") are required to be written and signed in wet ink by both the company and the employee. The speakers addressed the importance of including a clear termination provision in FTCs to enable the company to terminate the FTC before the end of the period if required. Finally, remote working arrangements were discussed including the importance of detailing terms such as the right to revoke remote work and specifying the number of days employees are permitted to work from home.

Statutory Employment Rights:

The speakers addressed statutory rights such as vacation leave, where employees have a right to 20 minimum paid holiday days a year if they work 5 days per week (although additional contractual vacation days are customary) and entitlement to sick pay of 100% contractual remuneration for the first 6 weeks of illness.

Maternity and parental leave both offer special dismissal protections in Germany that permit termination only in exceptional cases and with prior approval from the competent authorities. Additionally, there are specific requirements concerning the employment of severely disabled individuals. Employers with 20 or more employees are expected to have at least 5% of their workforce comprised of severely disabled individuals, otherwise the employer will be required to pay a compensation payment (although the speakers noted that this is low). These individuals also benefit from dismissal protection, which similarly to maternity and parental leave protections requires prior approval from authorities for any termination. The speakers confirmed that although individuals are not obligated to disclose their disability status, many choose to do so to access benefits such as tax advantages and additional vacation leave.

Performance Management:

Performance management was discussed, including the absence of specific case law on Performance Improvement Plans (PIPs) in Germany. Nonetheless, several recommended steps for managing performance were outlined including:

- issuing written warning letters in cases of contractual duty breaches;
- establishing written rules for the employee's future conduct;
- monitoring the employee's work to assess compliance with the agreed-upon rules; and
- if breaches of the agreed-upon rules occur, issuing further warning letters if necessary.

The speakers explained that repeated breaches and the issuance of multiple warning letters can ultimately justify the termination of employment in case of misconduct of similar type.

Terminations:

The next topic was how an employer may legally terminate an employment relationship, with mutual agreements first being addressed. Mutual agreements provide a way to bypass statutory dismissal protections and avoid lengthy termination procedures through the mutual agreement of the employee and employer to end the employment relationship. Such agreements must be documented in writing with wet ink signatures from both parties. The speakers advised that although an employer cannot force an employee into a mutual agreement, employees are typically more likely to agree if they receive benefits such as severance payments.

In the absence of a mutual agreement, employees in Germany employed for more than six months in a business unit consisting of more than 10 employees on average are safeguarded by the Dismissal Protection Act (*Kündigungsschutzgesetz*), which stipulates that termination is justified only under three circumstances:

- personal reasons;
- behavioural reasons; or
- operational reasons.

It was explained that operational reasons are frequently relied upon in practice, applicable where:

- the employee's role is made redundant as a result of an entrepreneurial decision;
- there are no vacant positions within the company; and
- a social selection process is conducted within the business unit.

It was recommended that management ensure the pre-conditions for termination are met and documented at least two weeks before issuing a termination notice. Statutory notice periods were also discussed, which vary depending on the tenure of the employee as set out in the table below. These can be extended via the employment contract and will be shorter (two weeks) if the employee is still in the probationary period of up to six months, if agreed.

Years of service	Statutory minimum notice period	Termination effective to
during the first 2	4 weeks	the 15th or the end of a calendar month
after 2	1 month	the end of a calendar month
after 5	2 months	the end of a calendar month

after 8	3 months	the end of a calendar month
after 10	4 months	the end of a calendar month
after 12	5 months	the end of a calendar month
after 15	6 months	the end of a calendar month
after 20	7 months	the end of a calendar month

Works Council:

Companies (more precise: sites) with regularly at least five permanent employees have the option to establish a Works Council to represent their interests, requiring only three of the five employees to request its formation. However, the speakers explained that in practice, Works Councils are typically established in larger companies with around 100 employees or more. However, there are instances where larger companies do not have a Works Council, as its formation largely depends on whether employees initiate the election process for the establishment. Generally, the employer bears all reasonable costs of the Work Council and must provide everything required by the Works Council to perform the duties (e.g., office equipment).

A Works Council has special rights including:

- The right to information including documents or other data from the employer to fulfil its duties.
- The right of information and consultation in relation to, e.g., dismissals, personnel planning, major redundancies, change of work organisation, office moves, and mergers.
- The right of co-determination in relation to, e.g., transfers, relocations, promotions, hiring, rules of operational order (e.g. work clothes), distribution or extension of working time (e.g. schedules), and the introduction of software to rank performance, social compensation plans.

Collective Bargaining Agreements:

The speakers explained that collective bargaining agreements (“**CBAs**”) are legally binding arrangements negotiated periodically between trade unions and individual employers or employers' associations. Typically, CBAs are applicable only if a company concluded an individual CBA or is a member of an employers' association, and only a few are declared as generally binding. Key components of CBAs include agreements on wages and salaries; however, they also may regulate working conditions and employee benefits.

Equal pay

The EU Pay Transparency Directive (2023/970) (the “**Directive**”) came into force on June 6, 2023, but does not yet apply directly to EU citizens until implemented into national law. EU Member States have until 7 June 2026 to implement the Directive into national law. The Directive aims to enforce equal pay for equal work, or work of equal value, between men and women by increasing pay transparency and strengthening enforcement mechanisms.

The speakers compared the forthcoming Directive with the existing legal framework in Germany under the German Pay Transparency Act (EntgTranspG). This comparison highlighted key changes that will be introduced. For example, under current law certain reporting obligations only apply to companies in Germany employing more than 500 employees, which will be reduced to apply to companies employing more than 100 employees with sanctions in place for those that do not comply. Also, further substantial individual information obligations will be introduced.

Practical tips were shared for how to prepare for the implementation of the Directive into national law including:

- reviewing and determining remuneration differences between genders within equal job positions;
- developing a clear definition and allocation of equal work for all positions;
- adapting salary determination processes and remuneration guidelines with detailed documentation;
- considering adjustment of individual salaries in usual salary rounds;
- development of the necessary expertise in the relevant departments;
- reviewing the processes for providing information; and
- monitoring the developments of the national implementation of the EU Pay Transparency Directive until June 2026.

Working time recording

Finally, the speakers addressed the regulations on working hours and time recording. The daily maximum of generally 8 hours (10 hours max if settled to 8 hours on average over certain longer periods) is outlined in Section 3 of the Arbeitszeitgesetz (*ArbZG*). The requirements for recording working time exceeding 8 hours per day are outlined in Section 16, paragraph 2 of the ArbZG. The speakers noted how it is not always clear what would be classified by working time but provided examples of what it may constitute.

The event concluded with discussion on the current regulations for recording working hours. The Federal Labour Court's decision on 13 September 2022 (1 ABR 22/21) mandated that employers introduce a system based on the more general provision in Section 3, paragraph 2, number 1 of the Arbeitsschutzgesetz (*ArbSchG*) to record all working hours, including the start, end, and net working hours. The speakers noted that the risk of non-compliance with regard to fines remains relatively low under the ArbSchG as long as there is no formal order by the occupational safety and health authority to implement such time recording practices. In Germany, a ministerial draft proposing changes has been introduced, but it is not anticipated that these changes will be implemented in the near future.



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