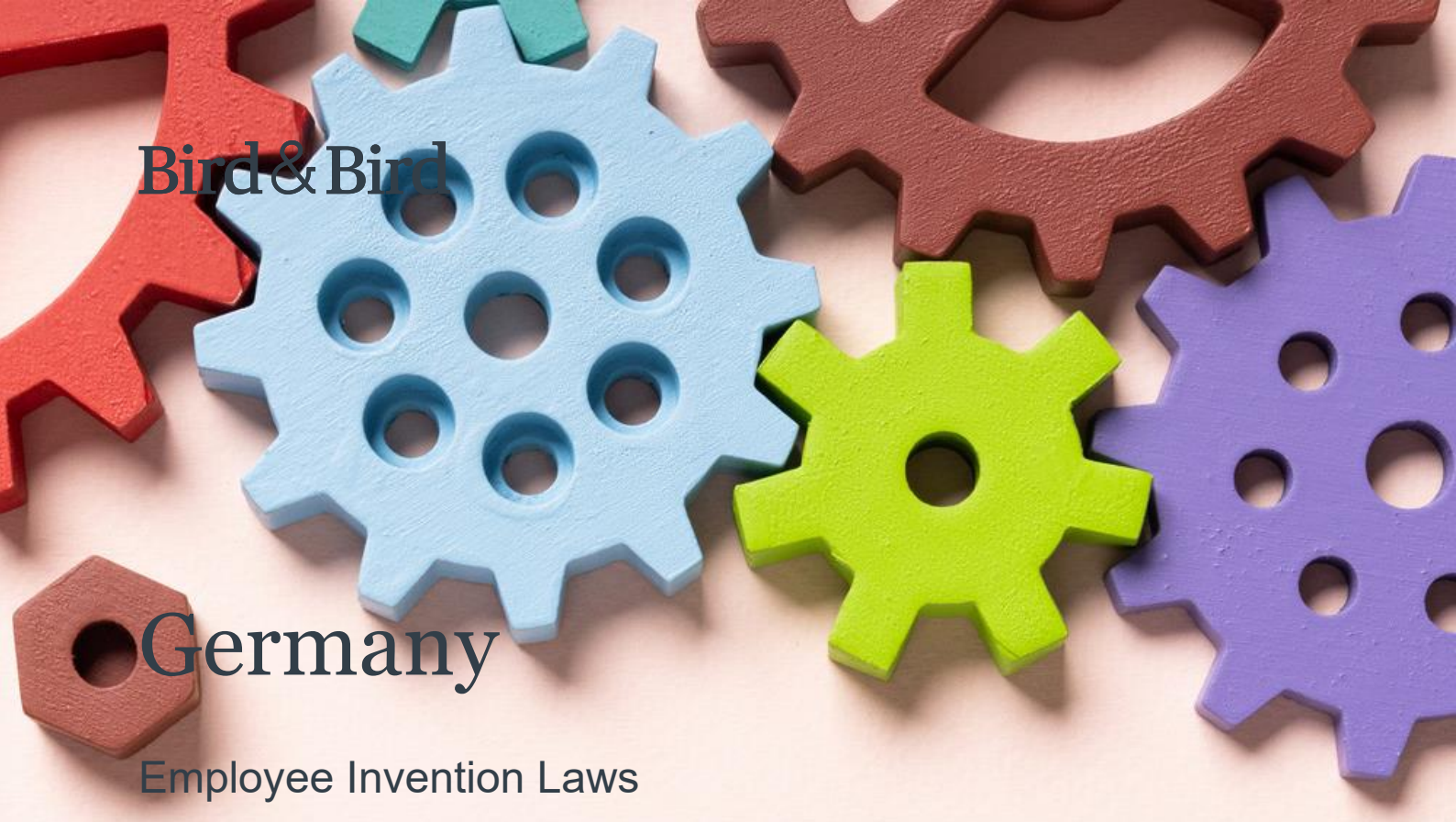

Bird & Bird

Germany

Employee Invention Laws

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Germany – Employee Invention Laws

Does your country have specific laws governing employee inventions?

Yes. Employee inventions are regulated by the **German Employee Inventions Act** (Gesetz über Arbeitnehmererfindungen, hereinafter "ArbEG").

Besides, there are "Guidelines for the Remuneration of Employee's Inventions in Private Employment" (hereinafter "Remuneration Guidelines") by the German Federal Ministry of Labour of 1959 (applicable accordingly for the public service). These Guidelines are practically relevant for determining the amount of compensation.

Yes, specific laws regulate employee inventions.

Primary Legislation/Law: German Employee Inventions Act (Gesetz über Arbeitnehmererfindungen (ArbEG))

Supplementary Guidelines:

- "Guidelines for the Remuneration of Employee's Inventions in Private Employment" (1959) issued by German Federal Ministry of Labour.
- Applicable to both private and public sectors.
- Provides practical framework for compensation calculations.

What types of intellectual property are covered by your national employee invention laws (patents, utility models, trade secrets, etc.)?

German Employee Inventions Act (ArbEG) applies to:

- Inventions (Section 1 ArbEG).
- Technical improvement proposals (Section 1 ArbEG) Invention.

Coverage/Scope: Only those that may be subject to patent or utility model protection (Section 2 ArbEG) - Act refers to patent and utility model law rather than defining "invention" itself.

Technical Improvement: Proposals: Characterised by their lack of patentability and utility model eligibility (Section 3 ArbEG).

Exclusions: Cannot be applied to non-technical creative works created by employees.

Which categories of employees are covered by your national employee invention laws?

German Employee Inventions Act (ArbEG) applies to (Section 1 ArbEG):

- Private sector employees
- Public service employees
- Civil servants
- Armed forces members

Employee Definition: Based on German labour law - person obligated to perform work under private-law contract in personally dependent manner, following instructions and direction (Section 611a German Civil Code).

Assessment: All circumstances must be evaluated to determine employee status.

Exclusions:

- Legal representatives of legal entities
- Freelancers
- Commercial agents (Handelsvertreter)

What temporal and territorial restrictions apply to employee invention laws in your jurisdiction?

Germany: Completion-Based with Continuing Obligations.

Temporal Scope: Date of completion of invention/technical improvement during employment term.

- Historical Application: ArbEG covers inventions completed on or after 1 October 1957 (Section 49 ArbEG).
- Transitional Provisions: Additional rules in Section 43 ArbEG.
- Post-Employment Effect: Rights and duties under ArbEG unaffected by employment termination (Section 26 ArbEG).

Territorial Scope:

- Primary Application: Within Federal Republic of Germany.
- Cross-Border Cases: ArbEG applies when employment contract subject to German law under private international law rules.
- Practical Example: German employee temporarily abroad completing invention still covered.

Do the national employee invention laws recognise different kinds of inventions or are all inventions treated equally?

Yes, the ArbEG differentiates between “Service Inventions” and “Free Inventions” (cf. Section 4 (1) ArbEG):

Service Inventions: Inventions created during employment or from job-related experience. Employer gets full rights unilaterally. It is irrelevant whether the inventive idea came during duty or personal time. Service Inventions represent a joint effort, giving the employer a statutory right of use. Rights transfer to the employer unilaterally.The right to claim is covered in Sections 5–17.

Free Inventions: Developed independently of job duties. Employee owns but must notify and offer it to the employer (Sections 18–19).

What is the statutory process of acquiring rights to employee inventions under your national laws? Does the employer acquire rights directly under the law or does the employer need to take separate actions?

For Service Inventions, the employee must promptly report the invention in text form with enough detail for assessment (Section 5 ArbEG). If multiple employees contributed, they may submit a joint report. The employer must confirm receipt.

Following the 2009 amendment to the ArbEG, for inventions made on or after 1 October 2009, ownership transfers automatically to the employer unless it releases the invention in writing within four months (Sections 6–7 ArbEG).

For inventions made before 1 October 2009, the employer had to claim the invention in writing within four months (Section 6(1)– (2) ArbEG). Upon doing so, all rights transferred to the employer (Section 7(1) ArbEG).

For Free Inventions, the employee must notify the employer immediately in writing, providing enough information to assess whether the invention is free (Section 18(1) ArbEG). Before exploiting the invention elsewhere, the employee must offer the employer at least a non-exclusive right if it falls within the employer's current or planned business scope. This offer can accompany the notification (Section 19(1) ArbEG). If the employer does not accept within three months, its right expires (Section 19(2) ArbEG).

How are employee invention disputes governed in your jurisdiction? Is there a special dispute resolution mechanism / a body for employee invention related disputes?

Under Section 37(1) ArbEG, disputes under the ArbEG generally require prior proceedings before the Arbitration Board ("Schiedsstelle"), with limited exceptions (paras 2–5).

This arbitration procedure - conducted before the Arbitration Board at the German Patent and Trademark Office (DPMA) - is largely mandatory. The Arbitration Board may be consulted in any ArbEG-related employer - employee dispute and aims to mediate amicable settlements (Section 28 ArbEG). The process helps preserve industrial peace, ease court burdens, protect confidentiality, and support employees in asserting their rights.

The Arbitration Board is a public authority independent of the DPMA, not a court or tribunal. It has no power to decide the dispute but facilitates resolution.

If no settlement is reached, the competent patent courts (Section 143 German Patent Act) have exclusive jurisdiction over disputes involving employee inventions (Section 39(1) ArbEG). This jurisdiction cannot be altered by agreement. Section 39(1) applies only to patentable inventions under Section 2 ArbEG. Disputes about technical improvements fall under general rules (e.g., labor or administrative courts), and fixed remuneration claims are excluded under Section 39(2) ArbEG.

Are policies on employee inventions commonly used in your jurisdiction? Are there regulatory requirements for implementation of a policy on employee inventions?

In Germany, companies often adopt internal policies ("Invention Guidelines" or "Invention Policies") to implement the ArbEG consistently and efficiently. Although not required by law, these policies help ensure transparent handling of invention disclosures and inventor remuneration - especially in larger organisations.

Such policies typically outline notification procedures, define responsibilities, and set principles for calculating compensation. They are often attached to employment contracts but are not legally mandated if they comply with the ArbEG.

Under Section 22(1) ArbEG, ArbEG provisions cannot be waived to the employee's detriment. This applies to individual, company, and collective agreements. Only agreements made after an invention is reported, or relating to free inventions or technical suggestions after disclosure, are permitted (Section 22(2) ArbEG).

Where relevant to collective interests, works or staff councils may exercise co-determination rights. Employers commonly use standardised documents and IT tools to manage these processes.

While not mandatory, internal invention policies support legal certainty, simplify administration, and protect both parties. Remuneration guidance is also available (Section 11 ArbEG), including sector-specific and federal frameworks for employee inventions and idea management.

Do your national laws on employee invention obligate employers to pay compensation to employees when taking rights to an employee invention?

Yes. Pursuant to Section 9 (1) ArbEG, once the employer has claimed the service invention, the employee inventor is entitled to a reasonable compensation. The claim for compensation is accompanied by ancillary claims for disclosure and the provision of accounting information relevant to assessing the appropriateness of the compensation.

Under Section 22 ArbEG, the employer's obligation to provide this compensation is mandatory and therefore cannot be waived. Any prior agreements that disadvantage the employee are therefore invalid.

What are the principles of determining the mandatory compensation according to your national laws on employee inventions?

Under Section 9(2) ArbEG, reasonable compensation must consider the service invention’s commercial applicability, the employee’s duties and position, and the employer’s contribution to the invention.

Compensation is reasonable if it fairly balances the employer’s commercial benefit with the employee’s right to remuneration. This balance is achieved when the compensation reflects the invention’s market potential and aligns with what an independent inventor might receive for licensing or selling similar rights.

The official Remuneration Guidelines offer three methods to assess value. The most common is license analogy. Alternatively, value may be based on measurable commercial benefit. If neither applies, the value is estimated.

Employers may refer to internal remuneration policies, but only if they do not limit the employee’s statutory entitlement or disadvantage them compared to the official guidelines.

Do your national laws on employee inventions obligate and/or provide for payment of certain fixed amounts or running compensations, such as royalties?

Compensation may be paid as ongoing (running) payments, a one-time or multi-installment lump sum, or a combination of both, depending on what is appropriate.

Lump-sum payments are common and legally allowed - especially for minor inventions, when annual payments are impractical, when the invention serves as a storage patent, or to avoid conflicts of interest (e.g. when the inventor holds a decision-making role over the invention’s use or development). However, neither party can demand a lump-sum agreement that excludes future royalty-based compensation.

Such agreements are subject to adjustment: if relevant circumstances change significantly, either party may request a revision by mutual agreement. Prior compensation already paid cannot be reclaimed (cf. Section 12(6) ArbEG).

German law does not set fixed amounts or royalty rates. Compensation is determined individually by agreement between the parties.

What is the general level that is considered sufficient or customary in your jurisdiction as a mandatory compensation?

In Germany, there is no established minimum or standard sum for employee invention compensation. Rather, the legislature deliberately refrained from stipulating a specific lower or upper limit. The sole exception concerns service inventions made at universities, where the compensation must amount to 30 percent of the income generated by using the invention (cf. Section 42 No. 4 ArbEG).

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