
Features of German Labor and Employment Law

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Relations between German employers and employees are extensively regulated under German labor and employment law. German labor and employment law is strongly biased in favour of employees and is probably best referred to as the “employee protection law”. Set out below are certain highlights of German labor and employment law:

- In Germany, there is no such thing as “employment at will”. By law, German employees must have written employment contracts that reflect the **key aspects of the employment relationship** (e.g., parties to the contract, work to be performed, gross salary and benefits, vacation, starting date of employment, place of performance, notice periods).
- Although an employment contract **unlimited** in time is typical for Germany, it is possible to agree on an employment contract with a **limited term** (and employers tend to increasingly make use of this possibility). **Limited term employment contracts** are, however, subject to restrictions under German labor and employment law. Generally, a limited term employment contract is permissible only when there is an objective reason for the limitation (e.g., substitution in case of illness, project work). However, an employer can always enter into (but not renew) a limited term employment contract for a period of up to two years, without restrictions.
- All weekdays excluding Sundays and public holidays are considered to be working days. However, German employees normally work from Monday to Friday (**five-day week**).
- Under a five-day week, the average **working time** is between 35 and 40 hours. The daily productive working time generally may not exceed eight hours. A daily working time of up to ten hours productive working time is possible if, over a period of six months, the average

daily working time does not exceed eight hours.

- Working on Sundays and public holidays is **generally prohibited**. However, the German law on working hours provides for several exceptions in which working on Sundays and public holidays is permitted (although prior approval by governmental authorities is required in some circumstances).
- German labor and employment law grants a **statutory claim for 20 working days'** vacation per calendar year for employees who work a normal five-day week (i.e., four weeks' vacation). However, it is more typical for an employee to receive between 25 and 30 vacation days per calendar year, depending on seniority and the type of business.
- German labor and employment law requires the continuation of full salary payments for a period of six weeks **in case of sickness of an employee** (under certain circumstances, the employer has to continue payments for up to 12 weeks).
- Female employees are entitled to **full paid maternity leave** (starting no later than six weeks before the expected due date—depending on the mother's and baby's health situation and the work performed by the woman—and ending eight weeks after childbirth). Payments to the employee are made partly by the statutory health insurance provider and partly by the employer. During the employee's pregnancy and during a period of four months after childbirth, no termination of the employment relationship by the employer is permissible.
- All employees, both male and female, are entitled to a maximum of **three years' parental leave per child**. During this period the employer is not obliged to make any payments to the employee. However, the employer may not terminate the employee. Employees have a legal right to work part-time (up to 30 hours per week) during parental leave. After expiry of the parental leave, the employer has to offer an adequate working position to the employee.
- The mandatory **Social Security System** in Germany consists of health insurance, home care and nursing insurance, pension insurance and unemployment insurance. Generally, it is mandatory that all employees are insured by the German Social Security System. Health, home care and nursing, unemployment and pension insurance premiums are paid equally by the employer and by the employee (50% each). Premiums amount to approximately 22% of the employees' gross salary for each the employer and the employee.
- In companies with more than five employees, the employees may elect a **works council**. The works council represents the employees and negotiates, cooperates and consults with the employer in various situations (e.g., hiring of new employees, changes to the place of business, shut down of the business, mass layoffs).
- **German employment termination law** is regulated by various codes and is intended to

give the employee maximum protection against unfair dismissal.

- For example, the employer must observe the **applicable notice period**, which is **ordinarily determined by law** (between four weeks and seven months, depending upon the length of employment). If the employer and the employee have mutually agreed upon a longer contractual notice period, the longer contractual notice period will prevail. Any agreement on a notice period that is shorter than the applicable statutory notice period will be invalid. Generally, termination of employment can only be effected as of the **end of any calendar month**. The employer must therefore keep the effective date of employment termination in mind when calculating when to deliver the notice of termination.
- The employer has to give a **written notice of termination** to the employee. The document has to be signed by the employer. All other forms of notice of termination (i.e., those given orally or by email or fax) are void and have to be redone in a proper way.
- The **German Termination Protection Act** restricts termination of employment if the employee has been employed for more than six months when the notice of termination is given. This act applies, however, only with regard to companies that employ more than five employees. If the act is applicable, the employee may be terminated only for a “particular reason”. The particular reasons enumerated in the act that permit termination include reasons related to the **personal situation of the person to be dismissed** (e.g., long-term sick leave), reasons related to the **behavior of the person to be dismissed** (e.g., theft or fraud to the detriment of the employer) or reasons related to the **business of the employer** (e.g., the employer’s decision to restructure the business, which reduces the number of positions).
- **Special termination protection** against unlawful dismissal applies to an employee that is an officially acknowledged handicapped person, an employee on three years’ maternity leave or a pregnant employee. In these cases, prior approval of various German authorities is required (but usually very difficult to obtain).
- If a company engages in a **mass layoff** (which is deemed to occur when the employer intends to dismiss a large percentage of its employees during a one-month period) prior approval by the employment office is required.