

10 Pitfalls when employing staff in Germany

German Employment Law is complex and subject to various statutory regulations which usually are widely unknown to foreign companies planning to hire staff in Germany. As German Employment Law additionally is said to be largely "employee protection law", it is important for US companies to be familiar with some basic issues:

1 Written employment contract

Each employee has a right to and will expect a written summary of the main terms and conditions of employment. It is furthermore important to know that certain provisions are only enforceable if agreed in writing. The advantage for employers is the possibility to include certain provisions into the agreement, especially with respect to IP rights, confidentiality and non-competition covenants. Several obligations and rights imposed by Germany law may, however, overrule contractual agreements.

2 Protection against dismissal

If an employer employs more than ten employees in Germany, Act Against Unfair Dismissal (*Kündigungsschutzgesetz* - KSchG) applies. Thus, a legally "fair" reason (operational, personal or misconduct of the employee) is required to dismiss an employee who has been employed for more than six months. When employing less than ten employees no reason for dismissal is needed. The dismissal however needs to be in line with the applicable notice period and comply with the principles of good faith and good morals. Special protection against unfair dismissal applies to some groups of employees (e.g. pregnant employees and young mothers, employees during parental leave or severely disabled). The required prior approval of the competent state authorities is usually very difficult to obtain.

3 Notice periods and severance pay

For any ordinary dismissal, the applicable termination notice period needs to be observed. The statutory notice period increases with times of service and prevails if it is longer than a period agreed in the employment contract. During the initial six months of employment, a probationary period can be agreed in which dismissal is possible with two weeks' notice. Despite no statutory entitlements or calculations of severance payments exist, they are often agreed upon in termination or settlement agreements ending a law suit for unfair dismissal.

4 Statutory holiday entitlement

Employees in Germany have a statutory right to 20 days paid holiday per year in a five day working week. Nevertheless many employment contracts provide for a higher number (25 to 30 days) of paid vacation days. Severely disabled employees may claim additional five working days of vacation pursuant statutory law.

5 Working time regulations

The regular number of hours during a working day (weekdays excluding Sundays und public holidays) must not exceed eight hours. Extensions up to 10 hours are permissible if the average daily working time does not exceed eight hours within the last six months or 24 weeks. In a regular five-day week (Monday to Friday), the average working time is between 35 and 40 hours. Though German law on working hours provides exemptions to work on Sundays and public holidays, they might be subject to prior approval by the competent state authorities in some cases.

6 Continued remuneration during sickness

Employees are entitled to six weeks continued full remuneration from the employer for each illness during a calendar year. Afterwards employees can apply for sick pay with the statutory (or voluntary private) health insurance for 78 weeks.

7 Maternity and parental leave

There is a fully paid ban on working later than six weeks before the expected due date and up to eight weeks after the actual birth date (extended to 12 weeks for premature or multiple births). During unpaid child raising leave (up to three years) the employment contract is suspended and the previous position must still be available when the employee returns.

8 Minimum wage

As of January 1st 2020 the minimum wage for employees is EUR 9,35 per hour. This applies to all employees except apprentices and interns within certain internships. Liability may arise, if a company does not pay the minimum wage to its employees. The minimum wage increases per year. In 2021 the minimum wage is EUR 9,50.

9 Non-compete and non-solicitation provisions

In addition to statutory restrictions employment contracts usually include detailed non-compete restrictions. Such can only be enforced in Germany if they are reasonable, the prohibition does not exceed two years and the employer pays the employee compensation for the duration of the prohibition of at least 50 per cent of the last received remuneration.

10 Works council

Works councils, established by initiative of employees in operations with at least five employees, have broad information, consultation and especially determination rights. For example, a works council needs to be consulted before any dismissal as otherwise the dismissal is void.

Moreover, council members, spare members of the works council, election candidates for the works council and election board members can be terminated only by extraordinary notice for cause and only after the approval of the works council has been obtained.

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